

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
December 16, 2009

ITEM: 10

SUBJECT: NPDES Permit Rescission: Hubbs-SeaWorld Research Institute, Leon Raymond Hubbard, Jr., Marine Fish Hatchery, Agua Hedionda Lagoon, San Diego County, An Order Rescinding Order No. 2001-237, NPDES Permit No. CA0109355, (Tentative Order No. R9-2009-0090) (*Joann Cofrancesco*)

PURPOSE: To rescind Order No. No. 2001-237, NPDES Permit No. CA0109355, Waste Discharge Requirements for Hubbs-SeaWorld Research Institute, Leon Raymond Hubbard, Jr. Marine Fish Hatchery, Agua Hedionda Lagoon, San Diego County.

PUBLIC NOTICE: Copies of the tentative order were mailed on November 9, 2009 to Hubbs-SeaWorld Research Institute and to all known interested parties and agencies and posted on the web on November 10, 2009. The Regional Water Board Agenda was mailed and posted on the web by November 23, 2009.

DISCUSSION: At the November 14, 2007 meeting, this Regional Water Board considered adoption of Tentative Order No. R9-2007-0026, which was drafted to reissue Waste Discharge Requirements (WDRs) for the Hubbs-SeaWorld Research Institute, Leon Raymond Hubbard, Jr. Marine Fish Hatchery in Agua Hedionda Lagoon (Facility). The Regional Water Board deferred the item, directed staff to continue working with the discharger to investigate options for regulating the Facility, and directed staff to bring the item back to the Board at a future meeting.

Since the November 14, 2007 meeting, Regional Water Board staff met with the discharger and new information concerning the NPDES permitting regulations for hatcheries or fish farms became available from the US Environmental Protection Agency. Federal courts have recently issued rulings that hatcheries or fish farms, which do not meet the definition of a concentrated aquatic animal production (CAAP) facility in 40 Code of Federal Regulations (CFR) 122.24 and Appendix C of 40 CFR 122, are not point source discharges and, therefore, are not required to obtain NPDES permit coverage. Most recently, on October 19, 2009, the United States District Court for the Western District of Washington issued a decision upholding the position that where a hatchery or fish farm falls below thresholds in Appendix C of 40 CFR 122 for a CAAP, they will not be considered "point sources" subject to NPDES permit requirements.

According to the April 13, 2006 NPDES permit reissuance application submitted by Hubbs-SeaWorld Research Institute, the Facility produces up to 26,510 pounds of warm water species per year. The Facility falls below the aquatic animal production described in federal regulations of 45,454 harvest weight kilograms (approximately 100,000 pounds) of warm water aquatic animals per year [40 CFR 122 Appendix C, Section (b) (2)]. Thus, the Facility does not meet the definition of a CAAP facility, is not considered a point source, and is not required to be regulated under an NPDES permit. It has also been determined that the Facility is not a significant contributor of pollution to waters of the U.S. and does not warrant a case-by-case designation as a CAAP point source discharge pursuant to 40 CFR 122.24(c).

Based on the above, staff prepared Tentative Order No. R9-2009-0090 to rescind the NPDES permit for the facility for consideration of adoption by the Regional Water Board.

Although the discharge from the Facility does not require an NPDES permit, the Regional Water Board is required to regulate the Facility as a nonpoint source discharge, using the administrative permitting authorities provided in state law pursuant to the California Water Code. In light of the recent federal court rulings described above, the Regional Water Board will be taking steps in the future to regulate those aquatic animal facilities which are exempt from NPDES permit requirements, under WDRs or conditional waivers of WDRs. In the interim period, the Regional Water Board will be requiring Hubbs-SeaWorld to continue a monitoring and reporting program to track the intake and effluent flow volumes and pollutant levels at the Facility. The Regional Water Board Executive Officer plans on issuing a 13267 Investigative Order to Hubbs-SeaWorld prior to the December 16, 2009 Regional Water Board meeting to require this monitoring and reporting at the Facility. If issued prior to the meeting, a copy of the Investigative Order will be provided to the Regional Water Board members.

To date, the Regional Water Board has received no comments on the Tentative Rescission Order. All comments received will be considered, and responses to comments will be prepared and provided to the Regional Water Board members in the second agenda mailing and to the Discharger and other interested parties.

**SIGNIFICANT
CHANGES:**

N/A

LEGAL ISSUES:

None

SUPPORTING DOCS:

1. Location Map
2. Transmittal Letter for Tentative Order No. R9-2009-0090
3. Tentative Order No. R9-2009-0090
4. Order No. 2001-237, NPDES Permit No. CA0109355

RECOMMENDATION:

Adoption of Tentative Order No. R9-2009-0090 is recommended.