

ENFORCEMENT SUMMARY REPORT
May 13, 2009

ITEM: 12

SUBJECT: Administrative Assessment of Civil Liability, South Orange County Wastewater Authority, the South Coast Water District Groundwater Recovery Facility. The Regional Board will consider adoption of a tentative Order that would impose a \$204,000 mandatory minimum penalty recommended in Complaint R9-2008-0028 for violations of Order No. R9-2006-0054, NPDES No. CA0107417, Waste Discharge Requirements for the South Orange County Wastewater Authority, Discharge to the Pacific Ocean via the San Juan Creek Ocean Outfall, Orange County. (Tentative Order R9-2009-0048) (Jeremy Haas)

PURPOSE: The Regional Board will conduct a hearing and may approve, modify, or reject assessment of the recommended penalty. The Regional Board may also consider the Discharger's proposal for directing a portion of imposed liability toward supplemental environmental projects.

PUBLIC NOTICE: On February 27, 2009, ACL Complaint No. R9-2009-0028 and its supporting documents were posted on the Regional Board website and distributed to known interested parties. The Regional Board published notice of today's item on its website on April 4, 2009 and in the Orange County Register newspaper on April 10, 2009.

DISCUSSION: The South Coast Water District (SCWD) operates the Groundwater Recovery Facility, which treats low-quality groundwater to produce potable water and generates brine waste (Supporting Document No. 1). SCWD is a member agency of the South Orange County Wastewater Authority (SOCWA). On August 16, 2006, the Regional Board adopted NPDES Order No. R9-2006-0054, which established effluent limitations for the discharge of brine from the facility into the San Juan Creek Ocean Outfall for disposal into the Pacific Ocean (Supporting Document No. 2). The NPDES permit was issued to SOCWA because it

owns and holds the NPDES permit for the San Juan Creek Ocean Outfall on behalf of all its member agencies.

NPDES Permit No. R9-2006-0054

The NPDES Permit establishes effluent limitations for SOCWA's San Juan Creek ocean outfall and individual facilities that discharge into the combined ocean outfall. SOCWA submitted a Report of Waste Discharge, dated August 10, 2004, with subsequent revisions and supplements, to apply for a NPDES permit renewal to discharge treated municipal wastewater from several publicly owned treatment works (POTWs) and other non-municipal wastewater flows (brine from desalination facilities and dry weather nuisance stream flows) through the San Juan Creek Ocean Outfall (Ocean Outfall) to the Pacific Ocean.

In the report of waste discharge, SOCWA anticipated the future addition of discharges from the SCWD Groundwater Recovery Facility. According to SOCWA, the Recovery Facility was expected to be completed in Spring 2007 and have an estimated brine flow to the Ocean Outfall of approximately 0.125 MGD.

The NPDES Permit established technology-based effluent limitations for the brine from the Groundwater Recovery Facility based upon Table A of the 2005 California Ocean Plan. Effluent limitations for discharges from the Recovery Facility were established for total suspended solids, turbidity, pH, oil and grease, and settleable solids. The point of compliance with the effluent limitations is the discharge from the Recovery Facility prior to mixing with other flows in the Ocean Outfall.

The NPDES Permit established monitoring requirements for discharges of brine from the Groundwater Recovery Facility. As described in the Permit's Fact Sheet, brine discharge from the SCWD's Groundwater Recovery Facility was required to be sampled at the compliance point prior to mixing with any other flows directed to the Ocean Outfall in order to determine compliance with the technology-based effluent limitations. Monitoring was required for flow and the effluent limitation constituents. SOCWA was required to submit monitoring reports in accordance with the schedule within the NPDES Permit.

The adoption of the NPDES Permit by the Regional Board was not petitioned by the Discharger to the State Board for review within the required 30-day time period. The Permit and all its requirements became effective on October 1, 2006.

ACL Complaint No. R9-2009-0028

On February 27, 2009, the Assistant Executive Officer of the Regional Board issued Administrative Civil Liability (ACL) Complaint No. R9-2009-0028 (Supporting Document 3) to SOCWA for alleged violations of effluent limitations established in NPDES Order R9-2006-0054. The alleged violations are all subject to mandatory minimum penalties (MMPs) pursuant to California Water Code section 13385(h) and (i). As a result, the Complaint proposed that the Regional Board impose MMPs of two hundred four thousand dollars (\$204,000) for sixty eight alleged violations of total suspended solids, settleable solids, and turbidity effluent limitations that occurred from August 2007 through October 2008. Discretionary civil liability above the mandatory minimum of \$204,000 for the violations alleged in the Complaint was not recommended.

Statutory exemptions to MMPs do not apply to the violations alleged in Complaint No. R9-2009-0028. In October 2008, the prosecution team informed SOCWA and SCWD that statutory exemptions did not apply to the Recovery Facility's violations of effluent limitations (Supporting Document No. 4). Specifically, SOCWA did not meet the statutory requirements for MMP exemptions during a facility's start-up period. Further, the violations are not subject to the MMP exemption for discharges subject to cease and desist or time schedule orders because none were in place and such enforcement orders cannot be retroactively imposed. Both issues are discussed in Findings 6 and 7 of the tentative ACL Order.

SOCWA has not refuted the violations. However, on March 25, 2009, SOCWA informed the prosecution team that it intended to exercise its right to a public hearing on the ACL Complaint. On April 24, 2009, SOCWA provided its evidence against assessment of the recommended liability (Supporting Document No. 5).

Summary of Discharger's Comments and Staff Responses

In the supplemental agenda package the prosecution team will provide a summary of its responses to SOCWA's comments.

Supplemental Environmental Projects (SEPs)

On April 24, 2009, SOCWA submitted two applications for SEPs (Exhibits F and G to Supporting Document No. 5). The prosecution team has not fully evaluated the applications. The prosecution team expects to provide a summary with recommendation in the supplemental agenda package.

LEGAL CONCERNS:

None

SUPPORTING
DOCUMENTS:

1. Location Map
2. Tentative ACL Order No. R9-2009-0048
3. Complaint No. R9-2009-0028
4. October 6, 2008 letter to SOCWA
5. Evidence and SEPs from SOCWA, dated April 21, 2009

RECOMMENDATION:

The adoption of Tentative Order R9-2009-0048 is recommended assessing a civil liability of \$204,000 against the South Orange County Wastewater Authority for the violations alleged in Complaint No. R9-2009-0028.