

ENFORCEMENT SUMMARY REPORT
April 14, 2010

- ITEM: 8
- SUBJECT: Administrative Civil Liability against the County of San Diego Municipal Storm Water Program. The San Diego Water Board will consider adoption of a tentative Order that would accept an offer to settle administrative civil liability proposed in Complaint No. R9-2009-0089 for violation of construction storm water “wet season” requirements within the San Diego Municipal Storm Water Permit, Order No. R9-2007-0001. The proposed settlement supports the assessment of \$57,350. (Tentative Order R9-2010-0025) (*Frank Melbourne*)
- PURPOSE: The San Diego Water Board will consider adoption of tentative Order No. R9-2010-0025 (Supporting Document No. 1), implementing the Settlement Agreement (Supporting Document No. 2). If the San Diego Water Board rejects the tentative Order, the matter may be rescheduled to a future public hearing at which time the San Diego Water Board will receive evidence, testimony and consider assessment of liability.
- PUBLIC NOTICE: Notice of the San Diego Water Board's consideration of the tentative Order, the Settlement Agreement, and the opportunity for public comment was posted on the San Diego Water Board's website¹ and e-mailed to interested parties on March 2, 2010. Notice was also published in the San Diego Union-Tribune on March 10, 2010 with written comments on the proposed settlement requested by April 5, 2010.
- DISCUSSION: The Assistant Executive Officer issued Administrative Civil Liability Complaint No. R9-2009-0089 on November 30, 2009 (Supporting Document No. 3) to the County of San Diego (County) for alleged violations of Order No. R9-2007-0001, *NPDES No. CAS0108758, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining*

¹ http://www.waterboards.ca.gov/sandiego/water_issues/programs/compliance/Hearing_Schedules.shtml

the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority (Permit). The \$77,800 Complaint was issued after the San Diego Water Board discovered that the County amended its Storm Water Ordinance by redefining the "Wet Season." The County, on March 8, 2008 changed their Ordinance start date for the "Wet Season" definition from October 1 to November 11. The Permit requires "Wet Season" activities to begin on October 1, and accordingly, the County's storm water program requires more stringent pollution prevention and reduction during the "Wet Season." The "Wet Season," especially the first storm of the year is when pollutants are most likely to be discharged to receiving waters.

The Complaint alleges that by removing the first 40 days of the "Wet Season," the County increased the likelihood that pollutants would be discharged in two ways:

- 1) The County inspects construction sites at a greater frequency during the "Wet Season" therefore some construction sites were not inspected, or had fewer inspections during this disputed period.
- 2) The County, when it did inspect sites during the disputed period, applied a lesser BMP standard. Therefore, when there were storm events during the disputed 40-day period of 2007 and 2008, the construction sites may have had no BMPs or inadequate BMPs to counter erosion and sedimentation.

Compliance with the Permit

The County regained compliance with the Permit, On August 5, 2009, when it revised its ordinance and changed its "Wet Season" definition to be consistent with the Permit definition of "Wet Season" as the timeframe from October 1 through April 30.

Liability Amount

After issuance of the Complaint, the Prosecution Team and County Staff entered into settlement negotiations. A proposed settlement was reached, whereby the County agreed to pay a liability of \$57,350. The liability amount recoups the economic benefit enjoyed by the County (\$19,771) and the San Diego Water Board staff costs (\$20,929).

LEGAL CONCERNS: None.

**SUPPORTING
DOCUMENTS:**

1. Tentative Order No. R9-2010-0025
2. Settlement Agreement
3. ACL Complaint No. R9-2009-0089

RECOMMENDATION: The Prosecution Team recommends adoption of tentative Order No. R9-2010-0025.