

EXECUTIVE OFFICER SUMMARY REPORT
August 16, 2006

ITEM: 17

SUBJECT: City of Escondido, Hale Avenue Resource Recovery Facility: Administrative Assessment of Civil Liability against the City of Escondido for violations of Order No. 99-72, NPDES No. CA0107981, Waste Discharge Requirements for the City of Escondido, Hale Avenue Resource Recovery Facility, Discharge to the Pacific Ocean Via the Escondido Land Outfall and the San Elijo Ocean Outfall. The Regional Board will consider accepting a proposed settlement in response to Administrative Civil Liability Complaint No. R9-2005-0265. If the Regional Board rejects the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Order No. R9-2006-0095) (Rebecca Stewart)

PURPOSE: To consider acceptance an offer proposed by the City of Escondido to settle the allegations of violations and administrative civil liability proposed in Complaint No. R9-2005-0265.

PUBLIC NOTICE: A public notice seeking public input on the proposed settlement offer was published in the San Diego Union-Tribune, the North County Times, and the Regional Board website on June 27, 2006. Written comments were accepted through July 26, 2006.

DISCUSSION: The City of Escondido owns and operates the Hale Avenue Resource Recovery Facility (HARRF) which discharges up to 18 million gallons per day (MGD) of secondary treated wastewater to the Pacific Ocean pursuant to waste discharge requirements prescribe by this Regional Board. In addition, the HARRF can discharge up to 9 MGD of tertiary treated wastewater to Escondido Creek during extreme wet weather conditions as well as producing recycled water for reuse within its jurisdiction.

The Regional Board began a detailed evaluation of the City's compliance with its permits in response to a

significant upset at the treatment plant that lasted from May thru August 2004 and resulted in nearly 400 exceedances of prescribed effluent limitations.

On December 30, 2005, the Executive Officer issued Complaint No. R9-2005-0265 to the City of Escondido in the amount of \$1,797,150 for multiple alleged violations of Orders Nos. 93-70; 96-31, as amended; 99-72; and R9-2003-0394; the alleged violations included effluent limit and flow violations subject to mandatory minimum penalties (MMP) under section 13385 of the Water Code; the remainder of the alleged violations were subject to discretionary administrative civil liability (ACL). The Complaint encompasses all of the alleged violations relating to the City of Escondido that were known to the Regional Board at the time of issuance.

On May 8, 2006, after several meetings to discuss the allegations, the City proposed to settle all of the allegations addressed in the Complaint for a total liability of \$1,152,150. If the Regional Water Board accepts the proposed settlement, the Regional Water Board will issue an Order reflecting the following provisions of the settlement offer:

1. The City of Escondido will pay \$690,000 to the State Water Resources Control Board, for deposit into the Cleanup and Abatement Account. This amount is based on the following:
 - a. A liability of \$657,000 for 219 alleged effluent limitation violations that occurred between May 3, 2004 and August 17, 2004, in the discharge from the Hale Avenue Resource Recovery Facility (HARRF) in violation of Order No. 99-72. The liability is equal to the mandatory minimum penalty required by California Water Code section 13385(h) and (i).
 - b. A liability of \$33,000 for 11 alleged effluent limitation violations that occurred between January 9, 2005 and February 25, 2005, in the discharge from the HARRF in violation of Order No. R9-2003-0394. The liability is equal to the mandatory minimum penalty required by California Water Code section 13385(h) and (i).

2. The City will be released from the imposition of \$462,150 in discretionary liability conditioned on timely submission of the final reports of two studies conducted at the treatment plant entitled: "Wastewater Treatment and Disposal Facilities Capacity Study" and "Flow Project Report". The reports are due to the Regional Water Board no later than December 29, 2006.
3. The City will be released from the imposition of \$645,000 in discretionary liability for effluent limitation violations that are exempt from Mandatory Minimum Penalties under the following defenses available to the City:
 - a. Effluent limitation violations that were caused by a "single operational upset" (SOU). For the purpose of imposition of MMP, 174 effluent violations occurred during the SOU are treated as a single violation and collapsed into a single \$3,000 penalty in accordance with criteria established in Water Code section 13385(f)(1).
 - b. Flow limitation violations that were caused by "Unanticipated Natural Disaster". For the purpose of imposition of MMP, 47 Flow violations that occurred during unanticipated rainfall events that were exceptional, are exempt from MMP in accordance with section 13385(j)(1)(B) of the Water Code.

The City did not propose funding of any Supplemental Environmental Projects (SEPs) as part of the settlement. The City indicated its unwillingness to pay for any additional costs or the potential long term responsibility associated with performing SEPs as the basis for not proposing funding of projects in the settlement offer.

If the settlement offer is not accepted by the Regional Board, as proposed by the City, the matter will be rescheduled for a public hearing at a future date.

The City's settlement offer has the following positive aspects:

1. The settlement is a sufficient amount of liability to deter the City, and other dischargers, from non-compliance;

2. The City waives the right to petition the State Board on this matter;
3. The City has committed to complete treatment capacity and disposal capacity studies to direct future planning;
4. The City has committed to complete a flow project study;
5. The settlement is consistent with the State Board's Water Quality Enforcement Policy;
6. Settlement allows the Regional Board to redirect form enforcement resources to other high priority violations.

No written comments were received during the 30-day comment period.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Location Map
2. Tentative Order No. R9-2006-0095
3. Public Notice of Settlement dated June 26,2006
4. Complaint No. R9-2005-0265

RECOMMENDATION: The adoption of tentative Administrative Civil Liability Order No. R9-2006-0095 is recommended.