

ENFORCEMENT SUMMARY REPORT
December 10, 2008

ITEM: 12

SUBJECT: Administrative Assessment of Civil Liability: SFPP, L.P., an operating partnership of Kinder Morgan Energy Partners, L.P., Mission Valley Terminal Remediation Dewatering Project. The Regional Board will consider a Tentative Order that would impose a \$222,000 penalty, including \$93,000 in mandatory minimum penalties, based on Complaint No. R9-2008-0046 for violations of Order No. R9-2001-0096, NPDES No. CAG919002, General Waste Discharge Requirements for Groundwater Extraction Waste Discharges From Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters Within the San Diego Region Except for San Diego Bay. (Tentative Order No. R9-2008-0134) (Jeremy Haas)

PURPOSE: The Regional Board may approve, modify, or reject the Tentative Order. If the Tentative Order is rejected, a hearing will be scheduled to be held at a future Board meeting.

PUBLIC NOTICE: On June 6, 2008, ACL Complaint No. R9-2008-0046 and its supporting documents were posted on the Regional Board website and mailed to interested parties. On November 8, 2008, the Regional Board published a notice of this item in the San Diego Union-Tribune newspaper.

DISCUSSION: SFPP, L.P, an operating partnership of Kinder Morgan Energy Partners, L.P. (hereinafter Discharger) operates a groundwater remediation system at the Mission Valley Terminal at 9950 San Diego Mission Road San Diego, CA 92108. Effluent waste water from the system is discharged into Murphy Canyon Creek and is subject to numerical effluent limitations contained in Order No. R9-2001-0096 (see Facility Map, Supporting Document 1). Tentative Order No. R9-2008-0134 would impose mandatory minimum penalties (MMPs) for 31 effluent limitation violations and a discretionary penalty for persistent violations of total nitrogen effluent limitations (Supporting Document 2).

ACL Complaint No. R9-2008-0046 (Supporting Document 3) was issued on June 6, 2008 based on monitoring data submitted through January 31, 2008. The original Complaint amount of \$229,000 has been modified as described in Findings five through nine of the tentative Order.

1. Revisions to Alleged MMP Violations.

- a. Two violations of total nitrogen effluent limitations subject to MMPs that occurred on April 8, 2008 have been added (see Finding 3).
- b. Three violations occurring prior to January 1, 2006 have been determined to not be subject to MMPs based on guidance from the Office of Chief Counsel regarding applicability of MMPs to effluent limitations in general NPDES Permits (see Finding 6).
- c. Another violation not subject to MMPs was dismissed based on a review of the data. The dismissal caused two subsequent violations to no longer be subject to the chronic MMP criteria (see Finding 7).

2. Revisions to Recommended Discretionary Penalties.

- a. Recommended discretionary penalties for persistent total nitrogen violations have been increased based on data collected prior to the Complaint, but submitted after the Complaint was issued. Discretionary penalties have been extended through April 8, 2008, which is the last reported violation of the instantaneous maximum total nitrogen effluent limitation. The Complaint stated the alleged violation of total nitrogen effluent limitations continue and liability continues to accrue.
- b. Recommended discretionary penalties for four toxicity violations are not included in the tentative Order. Further discussions of toxicity data collection, analysis and interpretation are expected to occur when the Discharger applies for coverage under Order No. R9-2008-0002. That Order conditionally reissues dewatering NPDES requirements within Order No. R9-2001-0096 that expire on March 12, 2009 (see Finding 8).

3. Recommended Suspended Penalties.

The tentative Order also recommends a conditionally-suspended penalty for the nitrogen violations occurring from January 16, 2008 through April 8, 2008; The suspended penalty corresponds to the amount of discretionary penalty added to the Complaint. The Discharger is installing additional treatment devices to its groundwater remediation system, which are designed to reduce the concentrations of nitrogen in the effluent. The Discharger has stated that the nitrogen treatment system is expected to be operational by December 31, 2008. In consideration of the expected implementation, \$16,600 is recommended to be suspended if the Discharger provides documentation prior to March 30, 2009 demonstrating that discharges, monitored weekly in February 2009, are in compliance with effluent limitations for total nitrogen. A discussion of the costs associated with the treatment system is provided in Supporting Document 4. The suspension would not apply to any mandatory penalties required by the Water Code.

The Discharger has reviewed the allegations within Complaint No. R9-2008-0046 and has discussed the terms of the tentative Order with prosecution staff of the Regional Board. The Discharger agrees to resolution of the applicable allegations within Complaint No. R9-2008-0046 under the terms of the tentative Order.

One comment letter on Complaint No. R9-2008-0046 has been received from the City of San Diego (Supporting Document 5).

SUPPORTING
DOCUMENTS:

1. Location Map
2. Tentative ACL Order No. R9-2008-0134
3. ACL Complaint No. R9-2008-0046
4. Memo from Discharger Describing Expected Costs of the Nitrogen Treatment System
5. Comment Letter from the City of San Diego

RECOMMENDATION:

The adoption of Tentative Order No. R9-2008-0134 is recommended.