State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
January 12, 2011

ITEM: 11

SUBJECT: Public Hearing: Administrative Assessment of Civil Liability, Eastern Municipal Water District (EMWD), Temecula Valley Regional Water Reclamation Facility (TVRWRF), Riverside County. The San Diego Water Board will consider adoption of a Tentative Order that would impose $524,800 in civil liability for violations of Order No. R9-2000-0165 identified in Complaint No. R9-2010-0085. (Tentative Order No. R9-2011-0010) (*Robert Pierce*).

PURPOSE: The San Diego Water Board will conduct a public hearing and consider adoption of Tentative Administrative Civil Liability (ACL) Order No. R9-2011-0010 (Supporting Document No. 2). The San Diego Water Board may approve, modify, or reject assessment of the recommended liability.

PUBLIC NOTICE: Notice of the San Diego Water Board's consideration of the Tentative ACL Order was posted on the San Diego Water Board website and distributed to the Agenda mailing list on October 21, 2010.

DISCUSSION: EMWD is required to operate and maintain the TVRWRF in compliance with requirements of San Diego Water Board Order No. R9-2000-0165, *Waste Discharge Requirements for Eastern Municipal Water District Temecula Valley Regional Water Reclamation Facility Riverside County*, as amended. EMWD reported to the San Diego Water Board that on December 25 - 26, 2009, EMWD discharged approximately 2.39 million gallons of untreated raw sewage from the head works structure of the TVRWRF into Murrieta Creek (See Site Map Supporting Document No. 1).

EMWD reported that it recovered approximately 966,800 gallons of sewage and returned it to the system for treatment. The remainder (approximately 633,200 gallons based on the September 3, 2010 revised estimate of the spill) of untreated sewage that entered Murrieta Creek saturated the channel bed and infiltrated to the sub-surface or evaporated.

On February 1, 2010, the San Diego Water Board issued Investigative Order No. R9-2010-0009 requesting detailed information on the discharge. On March 3, 2010 EMWD submitted the required technical report.

On July 23, 2010, the San Diego Water Board Assistant Executive Officer issued Administrative Civil Liability Complaint No. R9-2010-0085 in the amount of $1,035,310 to EMWD for violating Discharge Prohibitions A.1, A.2, A.3 and A.4 of Order No. R9-2000-0165, Federal Clean Water Act section 301, and Water Code section 13376.

The penalty proposed in the Tentative Order reflects the revised spill estimate that is smaller than in the original Complaint. EMWD originally estimated the volume of the spill to be 2.39 million gallons. On September 3, 2010 EMWD presented new evidence to the San Diego Water Board Prosecution Team and requested that the original estimated volume of discharge be revised downward. The Prosecution Team concurred that information provided by EMWD justifies a reduction in the estimated discharge volume to 1.6 million gallons. In applying the revised discharge volume to the 2009 State Board Water Quality Enforcement Policy (Enforcement Policy) penalty calculation methodology, the final liability recommended by the Prosecution Team has been revised to $524,800.

According to the Water Code and Enforcement Policy the total maximum liability for this discharge is $16,000,000 and the minimum liability amount the San Diego Water Board should assess is $27,119. The recommended amount of discretionary assessment is based upon consideration of factors contained in Water Code section 13327, which include: the nature, circumstance, extent, and gravity of the violations, the ability to pay, the effect on ability to continue in business, prior history of violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. These factors are applied to the penalty calculation methodology contained in section VI of the Enforcement Policy.

Submission of Evidence

Pursuant to the hearing procedures distributed with the ACL Complaint and finalized on August 11, 2010, the Prosecution Team and EMWD submitted evidence and policy statements on September 2, 2010 and September 22, 2010, respectively (Supporting Document Nos. 8 and 9). The Prosecution Team submitted rebuttal evidence on October 4, 2010 (Supporting Document No. 12).

The Prosecution Team submitted evidence of potential conflict of interest for two Board Members: William Green may have potential bias concerning EMWD based on his request for EMWD's General Manager's endorsement of his appointment to the Board, and Marc Luker may have potential bias based on his father's position as EMWD Assistant General Manager. The Prosecution Team requests that the Board Members recuse themselves or state on the record that they are capable of adjudicating without bias despite the concern.

LEGAL CONCERNS: NONE

KEY ISSUES:

1. EMWD is challenging the proposed penalty. Specifically, EMWD asserts less liability should be imposed for environmental harm, culpability, deviation from the requirement, and history of violations than recommended in the Tentative Order.

2. The State Water Board Enforcement Policy penalty calculation methodology must be used to determine the amount of liability imposed in a discretionary ACL Order.

SUPPORTING DOCUMENTS:

1. Location Map
2. Tentative ACL Order No.R9-2010-0131
3. ACL Complaint R9-2010-0085 with Technical Analysis
4. EMWD Dept. 895 Control Technician Report
5. EMWD Spill Investigation Findings and Report
6. January 25, 2010 Biological Resources Damage Assessment
7. July 15, 2010 Follow-Up Habitat Monitoring Report
8. Evidence and Policy Statements submitted by EMWD on September 22, 2010
9. Evidence and Policy Statements submitted by Prosecution Team on September 2, 2009
10. 2009 State Board Water Quality Enforcement Policy
11. TVRWRF Waste Discharge Requirements and Amendments
12. Rebuttal Statement submitted by Prosecution Team on October 4, 2010.
13. Prosecution Team's Notice of Potential Bias of Board Member Green
14. Prosecution Team's Notice of Potential Bias of Board Member Luker

All documents provided on CD. Documents were also previously provided in the Agenda Packages for the postponed October, November, and December Board Meeting hearings.

RECOMMENDATION: Recommendations from the Advisory and Prosecution staff teams will be provided at the hearing.