

State of California
Regional Water Quality Control Board
San Diego Region

ENFORCEMENT SUMMARY REPORT
December 12, 2007

- ITEM: 15
- SUBJECT: Administrative Assessment of Civil Liability Complaint against the North County Transit District (NCTD) for violations of California State Water Resources Control Board (State Board) Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity (Permit) at their Sprinter Rail construction site. The Regional Board will consider whether to raise, lower, or reject assessment of \$160,000 civil liability recommended in Complaint No. R9-2007-0093. If NCTD elects to waive their right to a hearing, the Regional Board will consider comments received during the public review period and decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order R9-2007-0219, Supporting Documents 1, 2 & 3)
(Ben Neill)
- PURPOSE: The Regional Board will hear testimony regarding the allegations in the Complaint (Attachment 3) and consider whether to raise, lower, or reject assessment of the recommended civil liability.
- PUBLIC NOTICE: On November 8, 2007, a public notice was published in the daily newspaper circulation of the San Diego Union Tribune, the Riverside Press-Enterprise, and the Orange County Register (Supporting Document 15). In addition, a notice was published on the Regional Board's web site.
- DISCUSSION: On August 31, 2007, an Administrative Civil Liability (ACL) Complaint No. R9-2007-0093 was issued to NCTD recommending that the Regional Board impose a civil liability in the amount of \$160,000 for violations cited in Notice of Violation (NOV) No. R9-2007-0050, dated March 19, 2007, and NOV No. R9-2007-0063, dated April 3, 2007. (Supporting Documents 5 & 6) and summarized as follows:
1. Failure to Implement Best Management Practices (BMPs) – The NCTD failed to implement and maintain

adequate BMPs. (2 days @ \$10,000 per violation = \$20,000)

2. Failure to Conduct Adequate Site Inspections -- NCTD failed to accurately assess their site's condition and the effectiveness of implemented BMPs. (4 inspections @ \$10,000 per violation = \$40,000)
3. Unauthorized Discharges of Sediment to the Municipal Separate Storm Sewer System and Waters of the United States -- On ten separate incidences, NCTD discharged sediment from the Sprinter Rail construction site. (10 discharges @ \$10,000 per violation = \$100,000)

The violations alleged in the complaint are described in greater detail in the Technical Analysis dated August 31, 2007 (Supporting Document 4). NCTD submitted required technical reports in response to all NOVs (Supporting Documents 8, 9, & 10).

A public hearing was originally scheduled for November 14, 2007. The scheduled hearing date was extended to allow NCTD additional time to develop a comprehensive response. Upon a request by NCTD, the public hearing was rescheduled to December 12, 2007. NCTD and Regional Board staff met after the Complaint was issued to discuss the allegations in the Complaint and to explore settlement.

The Sprinter Rail site has been the subject of numerous public complaints to the Regional Board staff regarding their compliance with the Permit. All public comments that were received are in support of the complaint (Supporting Document 14).

On October 4, and November 26, 2007 NCTD submitted a report in their defense to the ACL. As a part of the defense, NCTD claimed, both times, that the project is in compliance with the construction stormwater Permit. Regional Board staff re-inspected a portion of the Sprinter Rail project on October 5, 2007 and observed multiple violations, similar to those identified in the ACL complaint. Notice of Violation No. R9-2007-0208 was issued on October 26, 2007 for these new violations (Supporting Documents 11 & 12).

Approximately 30 days later, on November 27, 2007, the Regional Board again inspected the Sprinter Rail, accompanied by representatives of both NCTD and NCTD's contractor, West Coast Rail Constructors. The inspection

confirmed continued violations of the Permit. This included violations previously identified in the October 2007 inspection that have not been corrected.

On November 28, 2007, the last day of the written comment period, West Coast Rail Constructors submitted comments on the ACL Complaint (Supporting Document 13).

Regional Board's analysis of the comments received and recommendations, if any, for modifying the liability imposed on NCTD will be included in the second agenda mailing.

The Regional Board intends to conduct an additional compliance evaluation inspection prior to the public hearing on December 12, 2007.

KEY ISSUES: None.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

- (1) Location Map
- (2) Tentative Order No. R9-2007-0219
- (3) ACL Complaint No. R9-2007-0093
- (4) Technical Analysis, August 31, 2007
- (5) NOV R9-2007-0050, March 19, 2007
- (6) NOV R9-2007-0063, April 3, 2007
- (7) NOV R9-2007-0208, October 26, 2007
- (8) NCTD response to NOV R9-2007-0050, April 6, 2007
- (9) NCTD response to NOV R9-2007-0063, April 24, 2007
- (10) NCTD response to NOV R9-2007-0208, November 7, 2007
- (11) NCTD letter, October 4, 2007 with attachments
- (12) NCTD letter, November 26, 2007 with attachments
- (13) Sheppard Mullin letter, November 28, 2007
- (14) Public Comments
- (15) Public Notices
- (16) Public Newspaper Articles

RECOMMENDATION: The adoption of Tentative Order No. R9-2007-0219 is recommended.

The Executive Officer will provide a recommendation to the Regional Board on the assessment of civil liability at the conclusion of the item.