



California Regional Water Quality Control Board San Diego Region



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Linda S. Adams
Secretary for
Environmental Protection

November 9, 2009

Donald B. Kent, Executive Director
Hubbs-SeaWorld Research Institute
2595 Ingraham Street
San Diego, CA 92109

CERTIFIED MAIL
7009 1410 0002 2000 0255

In reply refer to:
230780: JCoanfrancesco

Dear Mr. Kent:

SUBJECT: Tentative Order No. R9-2009-0090; An Order Rescinding Order No. 2001-237, NPDES Permit No. CA0109355, Hubbs-SeaWorld Research Institute, Leon Raymond Hubbard, Jr., Marine Fish Hatchery, Agua Hedionda Lagoon, San Diego County

Enclosed is a copy of Tentative Order No. R9-2009-0090. This Order, if adopted by the San Diego Regional Water Board, would rescind the NPDES permit for Hubbs-SeaWorld Research Institute, Leon Raymond Hubbard, Jr., Marine Fish Hatchery (Hubbs Marine Fish Hatchery or Facility) as contained in Order No. 2001-237, NPDES No. CA0109355. The Regional Water Board action to rescind Order No. 2001-237 is based on recent federal court rulings regarding regulation of concentrated aquatic animal production (CAAP) facilities as described below. Please note that Order No. 2001-237 expired on October 10, 2006, but was administratively extended to remain in effect upon its expiration in accordance with applicable state and federal regulations.

Title 40 Code of Federal Regulations (CFR), Part 122.24 and Appendix C of 40 CFR 122 contain the definition and criteria for determining whether an aquatic animal production facility is a point source discharge subject to the NPDES permit program. Federal courts have recently issued rulings that aquatic facilities, which do not meet the definition of a CAAP facility in 40 CFR 122.24, are not point source discharges and therefore are not required to obtain NPDES permit coverage. Most recently, on October 19, 2009, the United States District Court for the Western District of Washington issued a decision upholding the position that where a concentrated aquatic animal production facility falls below certain thresholds, they will not be considered "point sources" subject to NPDES permit requirements.

The Hubbs Marine Fish Hatchery facility falls below the aquatic animal production and feeding thresholds described in 40 CFR 122.24 and Appendix C of 40 CFR 122 for point sources. The Regional Water Board has also determined that the Hubbs Marine Fish Hatchery facility is not a significant contributor of pollution to waters of the U.S. and does not warrant a case-by-case designation as a CAAP point source discharge pursuant to 40 CFR 122.24(c). Accordingly, the Hubbs-SeaWorld Research Institute Facility does not meet the definition of a CAAP facility, and is not required to obtain

California Environmental Protection Agency



NPDES permit coverage. Based on these considerations, the Regional Water Board plans to consider rescission of Order No. 2001-237, NPDES No. CA0109355 at its December 16, 2009 meeting.

The December 16, 2009 Board meeting will begin promptly at 9:00 a.m. and will be held at the following location:

Water Quality Control Board
Regional Board Meeting Room
9174 Sky Park Court
San Diego, California

Please review and comment on the tentative order at your earliest convenience. It is recommended that written comments be submitted as soon as possible to enable staff to amend the tentative order, if necessary, and allow changes to the tentative order to be fully reviewed by the Regional Water Board and interested parties.

The public comment period will remain open until the Regional Water Board takes action on December 16, 2009. However, to ensure that the Regional Water Board has the opportunity to fully study and consider written material, comments should be received by the Regional Water Board no later than 5:00 p.m. on Tuesday, December 1, 2009. The final deadline for submittal of written comments, however, is Tuesday, December 8, 2009.

Although the discharge from the Facility does not require an NPDES permit, the Regional Water Board is required to regulate the Facility as a nonpoint source discharge, using the administrative permitting authorities provided in state law pursuant to the California Water Code. In light of the recent federal court rulings described above, the Regional Water Board will be taking steps in the future to regulate those aquatic animal facilities which are exempt from NPDES permit requirements, under waste discharge requirements (WDRs) or conditional waivers of WDRs. In the interim period, the Regional Water Board will be requiring you to continue a monitoring and reporting program (MRP) to track the intake and effluent flow volumes and pollutant levels. A MRP will be issued to you under separate cover in the near future.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence, please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have any questions or comments, please contact Joann Cofrancesco at (858) 637-5589 or via email at jcofrancesco@waterboards.ca.gov.

Respectfully,



David T. Barker
Supervising Engineer

Donald B. Kent, Executive Director
Hubbs-Seaworld Research Institute

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DTB:bdk:jlc

Enclosure: Tentative Order No. R9-2009-0090.

cc (w/Enclosure):

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