

EXECUTIVE OFFICER SUMMARY REPORT
April 13, 2011

ITEM: 9

SUBJECT: Administrative Assessment of Civil Liability, Healthy Times, Inc., Administrative Civil Liability, for violations of Order No. 97-03-DWQ. The San Diego Water Board will consider adoption of a tentative Order that would impose a \$9,492 penalty recommended in Complaint R9-2010-0126 against Healthy Times, Inc., for failure to submit the Fiscal Year (FY) 2007-2008 and 2008-09 Annual Reports and failure to pay the FY 2007-2008, 2008-2009, and 2009-2010 annual fees required by State Water Resources Control Board Order No. 97-03, NPDES Permit No. CAS000001, *Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities* (Order No. 97-03-DWQ or Industrial Storm Water Permit). Water Code section 13399.33 requires the San Diego Water Board impose a mandatory penalty of no less than \$1,000 plus staff costs for each annual report violation. Water Code section 13261 authorizes the San Diego Water Board to impose discretionary penalties for failure to pay annual fees required by Order No. 97-03. There is no mandatory minimum liability for failure to pay annual fees. The San Diego Water Board may approve, modify, or reject assessment of the recommended penalty. (Tentative Order R9-2011-0031) (*Fisayo Osibodu*)

PURPOSE: The San Diego Water Board may approve, modify, or reject assessment of \$9,492 in civil liability as recommended in Complaint No. R9-2010-0126 (Supporting Document No. 3).

PUBLIC NOTICE: On November 17, 2010, a notice of public hearing was posted on the San Diego Water Board website and distributed to Healthy Times, Inc., and known interested persons. The public comment period ended March 11, 2011, and no comments were received. The hearing date was postponed from March to April at the discharger's request to allow more time to submit evidence in support of its position.

DISCUSSION:

Failure to Submit Two Annual Reports

The State Water Board's industrial storm water permit requires the submittal of an annual report to document an industrial facility's status of compliance and results of water quality monitoring. Annual reports are due by July 1 of each year. Complaint No. R9-2010-0126 alleges that Healthy Times, Inc., failed to submit the FY 2007/08 and 2008/09 Annual Reports. The materials submitted by the San Diego Water Board's Prosecution Team show that on September 8, 2008, and October 17, 2008, the San Diego Water Board issued Notices of Violation to Healthy Times, Inc., for failing to submit the FY 2007/08 Annual Report and that the violation could subject it to assessment of administrative civil liability. Healthy Times, Inc., has not submitted the FY 2007/08 Annual Report. Therefore, the Complaint recommends liability of \$1,300. The recommended liability amount includes the minimum penalty of \$1,000 plus staff costs of \$300 as required by Water Code section 13399.33 (c) and (d).

The materials submitted by the San Diego Water Board's Prosecution Team show that on December 1, 2009, and March 9, 2010, the San Diego Water Board issued Notices of Violation to Healthy Times, Inc., for failing to submit the FY 2008/09 Annual Report and that the violation could subject it to assessment of administrative civil liability. Healthy Times, Inc., has not submitted the FY 2008/09 Annual Report. Therefore, the Complaint recommends liability of \$1,600. The recommended liability amount includes the minimum penalty of \$1,000 plus staff costs of \$600 as required by Water Code section 13399.33 (c) and (d).

The total liability recommended in the Complaint for failure to file two annual storm water reports is \$2,900.

Failure to Pay Three Annual Fees

Water Code section 13260 and the Industrial Storm Water Permit requires submittal of an annual fee to maintain permit coverage. For FY 2007/08 the annual fee was \$830; while the annual fee for FY 2008/09 and 2009/10 was \$1,008. Healthy Times, Inc., allegedly failed to submit the annual fee for each FY 2007/08, 2008/09, and 2009/10.

The materials submitted by the Prosecution Team show that each October, the State Water Board invoiced Healthy Times, Inc., for the annual fee with payment required within 30 days. The State Water Board followed up the invoices with Demand for Payment letters, and then Notices of Violation for the failure to pay the annual fees. Both the Demand for Payment letters and the Notices of Violation stated that pursuant to Water Code section 13261(b)(1), the San Diego Water Board may assess civil liability of up to \$1,000 for every day that Healthy Times, Inc. failed to pay its annual fee. Healthy Times, Inc., is alleged to have violated Water Code section 13260 for 1,096 days (FY 2007/08 annual fee); 712 days (FY 2008/09 annual fee); and 347 days (FY 2009/10 annual fee). The fees have not been received; therefore the days of violation are continuing.

The Complaint recommends \$1,960 in civil liability for failing to submit the \$830 FY 2007/08 annual fee. This liability amount includes \$300 in staff costs and \$94 in interest.

The Complaint recommends \$2,316 in civil liability for failing to submit the \$1,008 FY 2008/09 annual fee. This liability amount includes \$300 in staff costs and \$97 in interest.

The Complaint recommends \$2,316 in civil liability for failing to submit the \$1,008 FY 2009/10 annual fee. This liability amount includes \$300 in staff costs and \$11 in interest.

The total recommended liability for failure to pay annual fees for three consecutive fiscal years is \$6,592.

Total Recommended Civil Liability

Complaint No. R9-2010-0126 recommends the imposition of civil liability of \$9,492 pursuant to Water Code sections 13261 and 13399.33 for the alleged failure to submit two annual reports and three annual fees.

No comments concerning this matter were received.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Location Map
2. Tentative ACL Order No. R9-2011-0031

3. Notice of Public Hearing and Complaint No. R9-2010-0126 with Technical Analysis
4. Prosecution Team Evidence & Policy Statement
5. Healthy Times, Inc.'s Evidence & Policy Statement
6. Prosecution Team's Rebuttal

RECOMMENDATION: The Advisory Team is available to assist the San Diego Water Board with its evaluation of this matter and the Executive Officer will provide a recommendation prior to the board's deliberation on the evidence in this matter.