

**REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**ENFORCEMENT SUMMARY REPORT
MARCH 5, 2020**

ITEM 6d

SUBJECT

Tentative Order: Settlement Agreement and Stipulation for Entry of Administrative Civil Liability in the Matter of OHL USA, Inc., Temecula, CA (Tentative Order No. R9-2020-0028; WDID 9 33C374007) (*Rebecca Stewart*)

STAFF RECOMMENDATION

The Prosecution Team recommends adoption of Tentative Order No. R9-2020-0028 (**Supporting Document 1**) and asserts that the proposed resolution of the alleged violations is fair, reasonable, fulfills the San Diego Water Board's enforcement objectives, is in the best interest of the public, and no further action is warranted concerning the alleged violations.

KEY ISSUES

Adoption of the Tentative Order No. R9-2020-0028 (Tentative Order) will approve the terms of the settlement agreement between the Prosecution Team and OHL USA (the Discharger), Inc. to resolve alleged violations as described in the Tentative Order. Should the San Diego Water Board decide not to adopt the Tentative Order, the Prosecution Team may either take no action, re-open settlement discussions with the Discharger, or proceed with a contested evidentiary hearing at a future meeting before the San Diego Water Board.

PRACTICAL VISION

The San Diego Water Board's regional enforcement priorities align with the Practical Vision by focusing on violations that affect one or more key beneficial use categories in a key area for that use. This enforcement action was initiated because the discharge of sediment and other construction related pollutants to Murrieta Creek and the downstream Santa Margarita River is a significant threat to habitats and ecosystems in multiple key areas within the region and is therefore a priority through the lens of the Practical Vision.

DISCUSSION

This Tentative Order proposes to resolve liability for violations of State Water Board Order No. 2009-0009-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (General Permit) a general permit for storm water discharges associated with construction and land disturbance activities, which occurred during the construction of a United States Army Corps of Engineers flood control project in Murrieta Creek, within the City of Temecula.

Murrieta Creek and the Santa Margarita River and Estuary are key areas for habitats and ecosystems that support several areas of special importance located downstream including San Diego State University's Santa Margarita Ecological Reserve, the County of San Diego's Santa Margarita Preserve, and the 192-acre Santa Margarita River Estuary. These areas of special importance provide valuable habitat and important refuge, foraging areas, and breeding grounds for several threatened and or endangered species. Sediment discharges from construction activities have the potential to harm the WARM, COLD, and RARE beneficial uses of Murrieta Creek and the Santa Margarita River, and the EST, WILD, and RARE beneficial uses of the Estuary.

The General Permit requires dischargers to calculate a construction site's Risk Level based upon the site's sediment and receiving water risks during periods of soil exposure, and requires the implementation of best management practices (BMPs) using the best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) to reduce pollution from storm water runoff. The General Permit prescribes the types of BMPs required based upon a site's calculated Risk Level, with lower risk sites (Risk Level 1) requiring less robust BMPs and higher risk sites (Risk Levels 2 and 3) requiring more robust BMPs.

Approximately one month after the Discharger submitted a Notice of Intent to comply with the General Permit the San Diego Water Board received a citizen complaint on October 16, 2015, with photographic evidence, indicating that construction was occurring within the Murrieta Creek channel without any visible BMPs. Staff promptly notified the Discharger via email of problems with its Storm Water Pollution Prevention Plan (SWPPP) and implementation of BMPs.

Staff inspected the Site in January 2016 after rain events and issued a Notice of Violation on January 22, 2016, citing multiple violations of the General Permit. On February 5, 2016, staff conducted a Site inspection and concluded that the Site was in substantive compliance.

During the next rainy season, however, on January 20, 2017, staff conducted a Site inspection and again observed discharge, BMP, and SWPPP violations. Additional inspections on April 17, 2017, and May 17, 2017, revealed continued noncompliance with requirements of the General Permit. The site was not brought into compliance until approximately June 9, 2017.

Under the terms of the settlement, the Discharger agrees to an administrative civil liability of \$741,466, paid to the State Water Pollution Cleanup and Abatement Account. The Discharger also agrees to create a position to oversee permit compliance throughout the corporation, assign a senior manager as the Legally Responsible Party, and discontinue the use of the QSP associated with the alleged violations at construction sites in California for a minimum of 5 years. Prosecution Team staff believe that these corrective actions will largely address the potential for future violations of a similar nature.

A summary of the penalty calculation is provided in **Supporting Document No. 2**. The total liability was determined by applying the methodology in the 2010 State Board Water Quality Enforcement Policy.¹

LEGAL CONCERNS

None.

PUBLIC NOTICE

Notice of the San Diego Water Board's planned consideration of the Tentative Order was provided with the Agenda notice. The settlement agreement was publicly noticed on the San Diego Water Board website on January 14, 2020, with a 30-day comment period and emailed to the "Penalty Assessment Notice" email list subscribers (**Supporting Document 3**). No comments were received during the public comment period. No changes were made to the settlement agreement.

SUPPORTING DOCUMENTS

1. Tentative Settlement Order No. R9-2020-0028
2. Technical Analysis Supporting Administrative Civil Liability Contained in Order No. R9-2020-0028 Against OHL USA, Inc., for Noncompliance with State Water Resources Control Board Order No. 2009-0009-DWQ, January 2020
3. Notice of Written Comment Period

¹The 2010 Enforcement Policy is available at:
https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf