

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF JULY 30 - 31, 2015

Prepared on July 6, 2015

ITEM NUMBER: 11

SUBJECT: Proposed Resolution to Refer Refugio Oil Spill Matter for Formal Enforcement to the California Attorney General

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KEY INFORMATION:

Location: Release site is approximately one mile west of Refugio State Beach.

Type of Discharge: Crude oil release from pipeline

Existing Orders: None

THIS ACTION: Adopt Resolution R3-2015-0026

SUMMARY

This item provides an update on the status of the cleanup of the Refugio Oil Spill and includes a recommendation for the Board to adopt Resolution No. R3-2015-0026 to authorize referral of enforcement related to the oil spill to the California Attorney General.

DISCUSSION

Status Update On Cleanup of Refugio Oil Spill

The Refugio Oil Spill occurred on May 19, 2015, approximately one mile west of Refugio State Beach in Santa Barbara County. The oil spill resulted from a buried pipeline rupture; the pipeline conveys crude oil from Exxon Mobil's three offshore platforms to an onshore receiving plant. The pipeline is located north of the 101 freeway and approximately 100,000 gallons of oil was released from this location. The oil that surfaced from the pipeline release location flowed through a stormwater drainage conduit under the freeway and the Union Pacific Railroad tracks into the Pacific Ocean. An estimated 20,000 gallons of oil reached the ocean.

The cleanup of the Refugio Oil Spill continues to be managed by Unified Command. The Unified Command is a structure that brings together the "Incident Commanders" of all major responsible agencies involved in the incident in order to coordinate an effective response while at the same time carrying out their own jurisdictional responsibilities. The Unified Command links the agencies responding to the incident and provides a forum for these entities to make consensus decisions.

Water Board cleanup staff continues to actively participate in the Refugio Oil Spill cleanup activities. Every week, the Unified Command Refugio Response Joint Information Center provides updates on the incident status. Attachment 1 includes the latest incident status update provided by Unified Command. The ocean and the majority of the shoreline have been successfully cleaned up and the remaining areas requiring cleanup (or confirmation sampling that the cleanup is complete) are focused in the vicinity of the pipeline release. The release

area has been separated into five sections as shown in Attachment 2 (Figure titled “Culvert Sections Overview”). A description of each section and the status of the cleanup for that section are summarized as follows:

Section 1 Release Site - Section 1 represents the pipeline release site located north of Highway 101 and the drainage inlet shown as Feature A up to the drainage inlet just north of Highway 101 Northbound shown as Feature B on the map. The portion of the pipeline that ruptured has been removed and replaced with a new pipeline section. As of the date when this staff report was prepared, Plains Pipeline LP has excavated a majority of the oily soils and confirmation sampling is ongoing to ensure all residual oils have been removed to established cleanup levels. Contaminated soil is stored in roll-off bins awaiting proper disposal.

Section 2 Drainage Pipe – Section 2 represents the drainage inlet and conduit that extends under Highway 101 Northbound and 101 Southbound (Features B and C, respectively, on the map) to the culvert inlet that runs under the Union Pacific Railroad track (Feature D on the map). To date, this section of the drainage conduit has been properly cleaned and confirmation testing is in progress to ensure there are no impacts to stormwater runoff in the future as it passes through this drainage conduit.

Section 3 Railroad Culvert – Section 3 includes the drainage inlet (Feature D on the map) on the north of the railroad tracks to the termination point on the south of the tracks, just before the drainage outlet shown as Feature E on the map. To date, this section of the drainage conduit has also been properly cleaned and confirmation testing is in progress to ensure there are no impacts to future stormwater runoff passing through this section of the drainage conduit.

Section 4 Bluff Area – Section 4 includes the drainage outlet to the south of the railroad tracks to the approximate edge of the Cliff Face. The Bluff Area impacted by the release is generally longer than it is wide as it follows the path of historical drainage. The approximate length of the impacted area is 200 feet. To date, a majority of the oily soil has been excavated and confirmation sampling is ongoing to evaluate remaining pollution. Water Board staff is involved in finalizing a backfill and restoration plan to ensure this area is properly restored to natural conditions and that a new stormwater management plan is in place for this area.

Section 5 Cliff Face – Section 5 consists of the cliff face. This area is the most challenging area to cleanup up due to the unstable rocks in this area and difficult access issues. Water Board staff is working with the Unified Command to develop a remediation approach that will remove as much oil as practical while keeping worker safety in mind. On the day that this staff report was being prepared, contractors just started implementation of a Unified Command approved remedial approach that includes excavating accessible material with a spider backhoe and using super sacks to transport oily material (e.g., oily rocks) via helicopter to a transport area from which proper disposal can occur. The remedial approach also includes using dry ice to remove surface staining on the rocks.

In general, the cleanup is proceeding well. Attachment 3 shows before and after photos depicting cleanup progress. Water Board staff will continue to be involved with the remaining cleanup until the release area no longer poses a threat to water quality.

Referral for Enforcement to California Attorney General

The following section of this staff report pertains to our enforcement strategy to prevent future discharges and to encourage dischargers to take the necessary steps and incur the necessary expenses to prevent future spills.

Resolution No. R3-2015-0026 is a formal referral for the California Attorney General to petition a court of competent jurisdiction to impose, assess, and recover civil liability, as well as seek injunctive and declaratory relief, as appropriate, from Plains Pipeline LP, Plains Marketing GP Inc., PAA GP Holdings, LLC and any other appropriate persons or entities (“Dischargers”) in accordance with California Water Code (“Water Code”) sections 13350 or 13385. Dischargers own and operate Line 901 (“Pipeline”) in Santa Barbara County of the Central Coast Region.

Water Code sections 13350 and 13385 specify civil liabilities for certain violations related to discharges to waters of the state and waters of the United States, respectively. These civil liabilities may be imposed administratively by the Regional Water Board or judicially by the superior court. In order to seek civil liability judicially pursuant to Water Code section 13350, the Water Board must first hold a hearing. Water Code 13350(g) states, in relevant part:

The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess, and recover the sums. Except in the case of a violation of a cease and desist order, a regional board or the state board shall make the request only after a hearing, with due notice of the hearing given to all affected persons.

Water Board staff is asking the Board to make a determination, after holding a public hearing, that there is reasonable justification to refer this matter to the Attorney General.

Water Board Staff Analysis and Basis for Recommendation***Judicial Enforcement Allows More Appropriate Maximum Civil Liability Limits***

Judicial enforcement allows greater penalties to be imposed under either Water Code section 13350 or 13385. Water Code section 13350 provides that a court may impose a maximum civil liability of \$15,000 per day or \$20 per gallon discharged to a water of the state. In an administrative proceeding, Water Code section 13350 would allow only \$5,000 per day or \$10 per gallon discharged. Similarly, Water Code section 13385 provides that a court may impose a maximum civil liability of \$25,000 per day and \$25 per gallon discharged to a water of the United States in excess of 1,000 gallons that is not cleaned up. In an administrative proceeding, Water Code section 13385 would allow only \$10,000 per day or \$10 per gallon discharged in excess of 1,000 gallons that is not cleaned up.

Because of the severity and impact of the discharge in the Central Coast Region, and to create a sufficient deterrent, Water Board staff believes civil liability in an amount higher than could be imposed administratively by the Board is warranted in this case.

The State Water Resources Control Board’s (State Water Board) Enforcement Policy seeks to establish both specific and general deterrence. For the Dischargers, which are multi-million dollar businesses, Water Board staff believes the availability of a potentially higher civil liability is needed to specifically deter the Dischargers from causing future discharges and to encourage them to take the necessary steps and incur the necessary expenses to prevent future spills. Additionally, Water Board staff believes a higher civil liability than this Board can impose

administratively will send the appropriate message to compliant dischargers that those who are not compliant will not gain a competitive economic advantage.

Judicial Enforcement Allows Better Opportunity for Inter-Agency Coordination

In addition to the Water Board, there are at least six other federal, state, and local government agencies with potential jurisdiction to pursue enforcement actions relating to the spill. These include the United States Environmental Protection Agency, the United States Coast Guard, the California Department of Fish and Wildlife, the State Lands Commission, the Santa Barbara County Petroleum Office, and the Santa Barbara County Environmental Health Department. In the event any of these government agencies elect to pursue some type of enforcement action available to it relating to the spill, the California Attorney General's Office is better suited to coordinate efforts by and among government agencies. In addition, the California Attorney General can act to centrally orchestrate the sharing of information and evidence gathered by each of the respective agencies in order to build a stronger and more defensible enforcement action.

The Complex Factual and Legal Issues Presented By This Matter Are Better Suited To Judicial Resolution

Water Board staff finds that a number of complex factual and legal issues make the matter more suited to judicial resolution. For example, expert testimony may be needed to determine whether certain discharges were of hazardous materials, to make jurisdictional determinations with respect to waters of the state, and/or waters of the United States, to establish the extent of toxicity of the various discharges, to establish the nature of the harm caused by the discharge, and to set the level of economic benefit the Dischargers received through its non-compliance. It is anticipated that the Dischargers will offer expert testimony on these topics, and the Attorney General's office has the resources and expertise to meet the challenges and time commitment necessary to engage in resolving these and other issues that are likely to be the subject of expert testimony.

It is also anticipated that the Dischargers will elect to depose current Water Board staff, consultants, and third-party witnesses prior to an adjudicatory proceeding. The Dischargers are also likely to propound document requests, interrogatories, and other requests for written information from the Board. It would be appropriate for the Attorney General's Office to attend depositions and to defend Water Board staff and to respond to formal written discovery, tasks it is well equipped to undertake as the State's litigation counsel. While pursuing administrative civil liability may lessen the amount of discovery, that benefit is far outweighed by the reasons discussed here.

Alternatives

The Board has several options. It can refer this matter to the Attorney General to pursue a judicial assessment of civil liability, it can direct Water Board staff to issue a complaint seeking administrative civil liability, or it can direct staff not to pursue enforcement at all. Under the first option, a court would assess civil liability. Under the second option, the Board would decide the appropriate civil liability for the alleged violations.

RECOMMENDATION

Sufficient evidence exists to seek civil liability against the Dischargers under Water Code sections 13350 or 13385. Due to the complexity of this case as described in this staff report, a judicial assessment of liability is most appropriate. Water Board staff and the State Water Board Office of Enforcement recommend that the Board refer this matter to the California Attorney General's Office by approving Resolution No. R3-2015-0026.

ATTACHMENTS

1. Attachment 1: Incident Status Report dated June 22, 2015
2. Attachment 2: Map Showing Cleanup Sections
3. Attachment 3: Before and After Photos
4. Attachment 4: Resolution No. R3-2015-0026

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