

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**EXECUTIVE OFFICER SUMMARY REPORT
MEETING DATE: May 12, 2010**

ITEMS: 9 through 22

SUBJECT: Multiple Dischargers – Hearings to Consider Administrative Civil Liability for Failure to Submit or Late Submittal of the Annual Monitoring Report Required Under the Statewide NPDES General Permit for Discharges of Storm Water Associated with Industrial Activities

DISCUSSION:

For items 9 through 22, the Board’s Prosecution Team has proposed administrative civil liability penalties for Board consideration against dischargers who are alleged to have failed to have timely submitted their required 2008/2009 Annual Reports to the Board. This Executive Officer Summary Report describes issues common to all items 9 through 22, while individual Executive Officer Summary Reports have been prepared specific to each of the items.

The Statewide NPDES General Permit for Discharges of Storm Water Associated with Industrial Activities (State Board Order No. 97-03-DWQ) (Industrial Stormwater Permit or Permit) regulates discharges of stormwater that has been exposed to industrial activities. Industrial facility operators are required to file a “Notice of Intent to Comply” with the Industrial Stormwater Permit to be covered under it. Those covered by the Permit (permittees) are, in part, required to do the following:

- Operate their facility in a clean way and implement stormwater runoff controls pursuant to a Storm Water Pollution Prevention Plan, which is developed by and is specific to each industrial facility and incorporates the Permit’s requirements;
- Make periodic observations of the effectiveness of their Storm Water Pollution Prevention Plan and associated runoff controls, and determine whether the facility’s operations and runoff controls can be improved to operate in a cleaner way; and,
- Report once per year to Regional Water Boards regarding the discharges, if any, that occurred from the facility over the year and report any changes made to correct observed problems. This report, called the Annual Report, is due July 1 of each year, and is the only report permittees are required to make under the Permit.

As of July 1, 2009, approximately 1,400 industrial facilities in our region were covered under the Industrial Stormwater Permit and required to submit a 2008/2009 Annual Report to the Board. Each year, a number of these facilities fail to submit their reports on time, and the Water Code requires Regional Water Boards to take enforcement action against such facilities. This year, to both reduce the number of late reports and reduce staff time spent tracking all 1400 annual reports, this Board’s staff initiated a new compliance system in coordination with the State

Board's Office of Enforcement as described in the September and October 2009 Executive Officer's Reports. On August 3, 2009, Board staff sent approximately 180 "Expedited Settlement Letters" to permittees who had not submitted their 2008/2009 Annual Report by one month after the July 1 due date. These letters noted the lateness of the permittee's 2008/2009 Annual Report and offered to settle the violation for \$1,000, conditioned on the Board's receipt of the late Annual Report and a signed Acceptance and Waiver Form by September 4, 2009. The Expedited Settlement Letter process resolved approximately 135 late submittals. However, some permittees failed to meet the conditions of the settlement offer as follows: (1) failed to submit their 2008/2009 Annual Report by the September 4, 2009, deadline; or (2) submitted their 2008/2009 Annual Report, but failed to submit a signed Acceptance and Waiver Form agreeing to the \$1,000 settlement.

On February 16, 2010, the Board's Prosecution Team staff issued 47 administrative civil liability complaints (Complaints) against the permittees who did not settle under the Expedited Settlement Letter process. The liabilities assessed in the Complaints range from \$2,825 to \$13,300, based on days late, with the highest amounts proposed when Board staff did not receive a 2008/2009 Annual Report from the Discharger prior to preparation of the Complaint. The assessed liabilities include \$1,800 for the recovery of staff costs incurred for enforcement of each matter.

Permittees receiving a Complaint have the right by law to a Board hearing on the Complaint within 90 days. As such, the Complaints the Board's Prosecution Team issued in February must be heard by the Board by May 17, settled within that period, or be waived within that period.

Of the 47 Complaints, a few were withdrawn due to changes in facility ownership, changes in permittee contact addresses, or other due process reasons. As reported in this month's Executive Officer's Report, 23 Complaints have been resolved by payment of the assessed liabilities. At the time the May Board meeting agenda was finalized, there were 17 outstanding unresolved Complaints, of which items 9 through 22 were scheduled to be considered at the May Board meeting. Since that time, two permittees (items 16 and 21) have settled their Complaints. The remaining cases are expected to be heard at the June or July Board meetings.

The individual Executive Officer Summary Reports for items 9 through 12 that follow describe the background, liability amount, and comment status of each Complaint and includes a tentative order prepared by the Board's Prosecution Team that would assess the liability amount proposed in each Complaint. The Board must consider each tentative order separately, and I will have a recommendation on each at the close of the hearing for each item.