

**TO:** Central Coast Water Board Advisory Staff

**FROM:** Central Coast Water Board Prosecution Staff

**DATE:** March 21, 2014

**SUBJECT:** Prosecution Staff's Legal and Technical Analysis in Support of Proposed ACL Order No. R3-2014-0002, for the Inn at Pasatiempo, Santa Cruz, Santa Cruz County, Scheduled for Hearing May 23, 2014

## **SUMMARY**

On November 6, 2013, the Central Coast Water Board Assistant Executive Officer issued Administrative Civil Liability Complaint No. R3-2014-0002 (Complaint) to Pasatiempo Investments, LP; Pasatiempo II investments, LP; Richard S. Gregersen; and Adventco Holding Company (Dischargers). The Complaint alleges that the Dischargers violated Waste Discharge Requirements (WDR) Order No. 99-136 and California Water Code Section 13267 by failing to submit self-monitoring reports in a timely manner. The Central Coast Water Board requires the monitoring reports in a timely manner in order to determine the Dischargers' compliance with WDR Order No. 99-136.

The purpose of this action is to resolve the Dischargers' alleged violations of WDR Order No. 99-136. The Dischargers are chronically late with their monitoring reports and it is appropriate for the Water Board to impose civil liability in an amount to deter the Dischargers continued non-compliance and promote the Dischargers' successful and timely implementation of WDR Order No. 99-136.

## **DISCUSSION**

### **Background**

WDR Order No. 99-136 permits the discharge of wastewater to two independent, on-site treatment and disposal facilities. One disposal facility is a septic system; the other is an enhanced on-site waste water treatment system. The Inn consists of a 54-room motel, conference rooms, and restaurant located at 555 Highway 17, Santa Cruz, Santa Cruz County, in the San Lorenzo River watershed.

### **Permit Requirements**

WDR Order No. 99-136 (Prosecution Staff Exhibit 1), Provision D.4, requires the Dischargers to comply with Monitoring and Reporting Program No. 99-136 (revised February 28, 2001)

(Prosecution Staff Exhibit 2). Quarterly reports for monitoring are to be submitted by the 15<sup>th</sup> days of January, April, July, and October.

### **Alleged Violations**

Central Coast Water Board staff conducted a ten-year file review and found that the Dischargers' monitoring report submittals were chronically late and, in the cases of the 4<sup>th</sup> quarter 2006, 1<sup>st</sup> quarter 2009, and 3<sup>rd</sup> quarter 2011 reports, were not submitted as of November 4, 2013 (the 3<sup>rd</sup> quarter 2011 report was ultimately submitted on December 28, 2013). Copies of the available self-monitoring report transmittal letters are Prosecution Staff Exhibits 3 through 12.

Table 1. Recent Violations

<b>Late Submitted Quarterly Report</b>	<b>Due Date</b>	<b>Date Submitted</b>	<b>Days Late</b>
3 <sup>rd</sup> Quarter 2010	October 15, 2010	August 27, 2012	683
4 <sup>th</sup> Quarter 2010	January 15, 2011	August 27, 2012	591
1 <sup>st</sup> Quarter 2011	April 15, 2011	August 27, 2012	501
3 <sup>rd</sup> Quarter 2011	October 15, 2011	December 28, 2013	752 as of November 4, 2013 [approximate date of Complaint]
1 <sup>st</sup> Quarter 2012	April 15, 2012	September 17, 2012	156
2 <sup>nd</sup> Quarter 2012	July 15, 2012	September 6, 2013	419
3 <sup>rd</sup> Quarter 2012	October 15, 2012	September 6, 2013	326
4 <sup>th</sup> Quarter 2012	January 15, 2013	September 6, 2013	234
1 <sup>st</sup> Quarter 2013	April 15, 2013	September 6, 2013	144
2 <sup>nd</sup> Quarter 2013	July 15, 2013	September 6, 2013	53

Table 1 demonstrates the most recent late submittals from the Dischargers. The Central Coast Water Board notified the Dischargers of the third quarter 2010 through the first quarter 2012 report violations via a notice of violation (NOV) dated August 21, 2012 (Prosecution Staff Exhibit 13). In response, the Dischargers submitted the late reports except for the third quarter 2011 report, which was not submitted as of November 4, 2013, when the Complaint was issued, but was eventually submitted on December 28, 2013 (Prosecution Staff Exhibit 12). Even after the issuance of the August 2012 NOV, the Dischargers continued the pattern of not furnishing monitoring reports in a timely manner. After the NOV, the Dischargers did not submit further

monitoring reports until staff sent emails, made phone calls, and scheduled a site compliance inspection.

Water Board Staff chose three violations from the above list of violations to be representative of the Dischargers' repeat violations.

**Alleged Violation #1:** The Dischargers failed to submit their third quarter 2011 report on or before the October 15, 2011 due date. Central Coast Water Board staff sent a Notice of Violation to the Dischargers notifying them of their failure to submit this monitoring report. As of November 4, 2013, the Dischargers had not submitted the report, resulting in 752 days of violation. Although the third quarter 2011 report was ultimately submitted on December 28, 2013 (Prosecution Staff Exhibit 12), the penalty calculation remains as proposed in the November 2013 Complaint.

**Alleged Violation #2:** The Dischargers failed to submit their third quarter 2012 report on or before the October 15, 2012 due date. On February 11 and March 7, 2013, Central Coast Water Board staff sent emails to the Dischargers' representative informing them of this violation (Prosecution Staff Exhibit 14). Water Board staff also spoke to the Dischargers' representative by telephone regarding this violation. The report was submitted September 6, 2013 (Prosecution Staff Exhibit 8), resulting in 327 days of violation.

**Alleged Violation #3:** The Dischargers failed to submit their fourth quarter 2012 report on or before the January 15, 2013 due date. On February 11 and March 7, 2013, Central Coast Water Board staff sent emails to the Dischargers' representatives informing them of this violation (Prosecution Staff Exhibit 14). Water Board staff also spoke to the Dischargers' representative by telephone regarding this violation. The report was submitted on September 6, 2013 (Prosecution Staff Exhibit 9), resulting in 235 days of violation.

### **Other Violation History**

Between 2001 and 2012, the Dischargers received nine notices of violation for late reporting and for effluent limit violations. (Prosecution Staff Exhibits 13, 15 through 23.) The Dischargers received two cease and desist orders in 1995 and again in 1999, issued in part for failure to submit reports. (Prosecution Staff Exhibits 23 and 24.) In 1999, the Dischargers paid administrative civil liability for late and incomplete monitoring reports. (Prosecution Staff Exhibit 25.) On March 5, 2014, the Assistant Executive Officer signed a Time Schedule Order that required the Dischargers to report on progress to upgrade their failing enhanced on-site waste water treatment system. (Prosecution Staff 26.)

### **Maximum Civil Liability**

Pursuant to Water Code section 13268, the maximum penalty for the violations described above is \$1,000 per day for each violation. The maximum penalty the Central Coast Water Board may impose is **\$1,314,000**, based on a calculation of the total number of per-day violations times the statutory maximum penalty (1314 total days of violation X \$1,000).

Water Code Section 13268 establishes the amount of liability as the maximum unless reduced in consideration of the factors listed in Water Code section 13327 as discussed in the Complaint. It is common in most administrative civil liability proceedings for the consideration of factors to warrant some reduction in the recommended civil liability. The Dischargers' chronic late submittal of SMRs

supports the prosecution staff's recommendation to impose substantial civil liability, though less than the maximum as justified in consideration of factors provided in the Complaint.

### **ENVIRONMENTAL SUMMARY**

This enforcement action by a regulatory agency is exempt from the requirements of the California Environmental Quality Act (Public Resources Code sections 21000-21177), pursuant to title 14, California Code of Regulations, section 15321.

### **RECOMMENDATION**

Adopt Administrative Civil Liability Order No. R3-2014-0002, imposing liability of \$24,700 against the Dischargers.

### **ENCLOSURES**

1. Prosecution Staff Exhibit List and Exhibits
2. Prosecution Staff Witness List