

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WQ 2004 - 0016**

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In the Matter of the Petition of

**CITY OF PISMO BEACH**

For Review of Mandatory Minimum Penalty Order No. R3-2004-008

City of Pismo Beach Wastewater Facility

Issued by the

California Regional Water Quality Control Board,  
Central Coast Region

***SWRCB/OCC FILE A-1642***

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**BY THE BOARD:**

On May 13, 2004, the Central Coast Regional Water Quality Control Board (Regional Board) issued an order (No. R3-2004-008) to the City of Pismo Beach (City) assessing mandatory minimum penalties in the amount of \$735,000 for various violations committed by the City in the operation of its wastewater facility. The City filed a timely petition with the State Water Resources Control Board (State Board). The City and the Regional Board have signed a stipulated agreement (a copy of which is attached) asking that the State Board remand the matter to the Regional Board for further consideration in light of numerous things that have come to light since the issuance of the order. This order remands the matter to the Regional Board, without prejudice, for further consideration of the assessment of mandatory minimum penalties.

**I. BACKGROUND**

The City operates a wastewater collection, treatment, and disposal system to provide sewerage service to its residents. Treated municipal wastewater is discharged directly to an ocean outfall jointly owned by the City and the South San Luis Obispo County Sanitation District. The operation of the City's facility is regulated by waste discharge requirements issued by the Regional Board, Order No. 99-31 (NPDES No. CA 0048151). Over a period of about two years, from July 2001 through May 2003, the discharge from the facility failed in numerous ways

to comply with the terms of the waste discharge requirements. The Executive Officer for the Regional Board issued a complaint for mandatory minimum penalties pursuant to Water Code section 13385, a hearing was held before the Regional Board, and the order was adopted. The City and the Regional Board continued to discuss the issues addressed in the order after the City filed its petition with the State Board. Because of the way the statute is phrased, the Regional Board did not have jurisdiction to modify the order after its issuance (Water Code § 13323(d)) and only the State Board retains administrative jurisdiction to overturn or modify the order. In cases where both the discharger and a regional board have asked that administrative penalty orders be revisited, the State Board has been inclined, in the interests of justice, to go along with such requests. (See *Petition of City of San Diego*, Order No. WQ 88-9.)

## II. SUMMARY AND CONCLUSIONS

It is clear from the contents of the stipulation filed with the State Board and signed by both the City and the Regional Board, that there are many unresolved issues, that the Regional Board may not have given proper consideration to certain factors, and that the Regional Board may wish to consider supplemental environmental projects proposed by the City. To refuse to grant the request to remand the matter to the Regional Board would be contrary to the interests of justice and the past history of the State Board. A remand is the proper remedy.

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### III. ORDER

IT IS HEREBY ORDERED that Order No. R3-2004-008, issued by the Regional Board assessing mandatory minimum penalties to the City, is hereby remanded to the Regional Board, without prejudice, for any further consideration the Regional Board chooses to undertake.

### CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 18, 2004.

AYE: Arthur G. Baggett, Jr.  
Peter S. Silva  
Richard Katz  
Gary M. Carlton  
Nancy H. Sutley

NO: None.

ABSENT: None.

ABSTAIN: None.



Debbie Irvin  
Clerk to the Board