

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Lane, Suite 101
San Luis Obispo, California 93401**

STIPULATED ORDER NO. R3-2004-0126

**MANDATORY PENALTY
IN THE MATTER OF
CITY OF SAN LUIS OBISPO WATER RECLAMATION FACILITY
SAN LUIS OBISPO COUNTY**

The California Regional Water Quality Control Board, Central Coast Region (Regional Board) finds that:

1. On October 13, 1995, the Regional Board adopted *Waste Discharge Requirements Order No. 95-48, NPDES Permit No. CA00492246, for City of San Luis Obispo (Discharger)'s Water Reclamation Facility, San Luis Obispo County* (Order No. 95-48). On May 31, 2002, the Regional Board adopted *Waste Discharge Order No. R3-2002-0043, NPDES Permit No. CA00492246, for City of San Luis Obispo Water Reclamation Facility, San Luis Obispo County* (Order No. R3-2002-0043). Order No. R3-2002-0043 replaced Order No. 95-48.
2. California Water Code section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation.
3. California Water Code section 13385(h)(2) provides a serious violation occurs if the discharge exceeds the effluent limitations for a Group II pollutant, as specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations, by 40 percent or more.
4. California Water Code section 13385(i) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in a consecutive six-month period:
 - a) Exceeds a waste discharge requirement effluent limitation;
 - b) Fails to file a report pursuant to Section 13260;
 - c) Files an incomplete report pursuant to Section 13260; or
 - d) Exceeds a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
5. California Water Code section 13385(l) states:

“(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the...regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).”
6. California Water Code section 13385(f)(2)(A) & (B) states:

“...a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in a violation of

more than one effluent limitation and the violation continues for more than one day, if...the discharger demonstrates all of the following:

- i. The upset was not caused by wastewater treatment plant operator error and was not due to discharger negligence;
- ii. But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day;
- iii. The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.
- iv. The discharger is implementing an approved pretreatment program, if so required by federal or state law.

...[the single operational upset provision] only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.”

- 7. The Discharger is implementing an approved pretreatment program.
- 8. Order No. 95-48 includes in part the following Effluent Limitations:

Effluent Limitation No. 2:

“Effluent shall not exceed the following limits:

Constituent	Unit of Measurement	Daily Maximum
Total Dissolved Solids	mg/L	Water Supply + 450 mg/L

Effluent Limitation No. 4:

“The discharge shall be continuously disinfected so that the effluent contains a median most probable number (MPN) of coliform organisms of less than 2.2 per 100 milliliters. The median is to be based on the results of the last seven samples for which analyses have been completed. No single sample shall exceed 240 MPN per 100 mL.”

Effluent Limitation No. 11:

“The discharge shall contain no chlorine residual.”

- 9. Order No. R3-2002-0043 includes in part the following Effluent Limitations:

Effluent Limitation No. 2:

“...effluent shall not exceed the following limits:

Constituent	Units	Monthly (30-Day) Average
Biochemical Oxygen Demand (BOD), 5-day	mg/L	10
Total Suspended Solids	mg/L	10

Effluent Limitation No. 4.e:

“The median number of fecal coliform organisms in the effluent shall not exceed 2.2 MPN/100 milliliters (mL) of wastewater or the median number of total coliform organisms in effluent shall not exceed 23 MPN/100 mL of wastewater. Coliform numbers shall be determined by the results of the bacteriological analyses for the last 7 days on which samples were taken. The maximum number of total coliform organisms in any sample shall not exceed 240 MPN/100 mL.”

Effluent Limitation No. 4.e:

“Until December 31, 2004, compliance determinations for total chlorine residual shall be based on 99% compliance. To determine 99% compliance with effluent limitations for total chlorine residual, the following conditions shall be satisfied:

- i. The total time during which the total chlorine residual values are above 0.1 mg/L (instantaneous maximum value) shall not exceed 7 hours and 26 minutes in any calendar month.
 - ii. No individual excursion from 0.1 mg/L shall exceed 30 minutes; and
 - iii. No individual excursion shall exceed 2 mg/L.”
10. Total Dissolved Solids, BOD, and Total Suspended Solids are Group I Pollutants. Chlorine Residual is a Group II Pollutant. Total Coliform Organisms is neither a Group I or Group II Pollutant.
 11. Effluent containing constituent values that are greater than serious thresholds (limit + 40% for Group I pollutants, limit + 20% for Group II pollutants) are serious violations. Total Coliform Organisms is neither a Group I or Group II Pollutant, therefore it has no serious threshold.
 12. Effluent containing constituent concentrations that are less than the serious threshold but greater than the permit limits, are chronic violations.
 13. According to monitoring reports submitted by the Discharger, the Discharger committed the following violations of Effluent Limitations of Order No. 95-48 and Order No. R3-2002-0043 in the period September 1, 2001 through March 31, 2004:

No.	Violation Date	Constituent	Permitted Limit	Reported Value	Violation Type
1	9/2/01	Chlorine Residual	No measurable residual	0.23 mg/L	Chronic
2	10/1/01	Chlorine Residual	No measurable residual	0.4 mg/L	Chronic
3	10/12/01	Chlorine Residual	No measurable residual	0.2 mg/L	Chronic
4	11/28/01	Total Dissolved Solids	Water Supply (250 mg/L) plus 450 mg/L (=700 mg/L)	710 mg/L	Chronic ¹

¹ Violation subject to mandatory minimum penalty

No.	Violation Date	Constituent	Permitted Limit	Reported Value	Violation Type
5	11/29/01	Total Coliform	2.2 MPN/100mL	4.8 MPN/100 mL	Chronic ¹
6	1/7/02	Chlorine Residual	No measurable residual	0.16 mg/L	Chronic ¹
7	1/31/02	Total Dissolved Solids	Water Supply (360 mg/L) plus 450 mg/L (=810 mg/L)	850 mg/L	Chronic ¹
8	2/6/02	Chlorine Residual	No measurable residual	1.6 mg/L	Chronic ¹
9	1/21/04	Chlorine Residual	No individual excursion above 0.1 mg/L shall exceed 30 minutes	0.58 mg/L over 69 minutes	Serious ¹
10	2/29/04	Total Suspended Solids	10 mg/L 30-Day Average	10.7 mg/L	Chronic
11	2/29/04	BOD	10 mg/L 30-Day Average	11 mg/L	Chronic
12	3/8/04	Total Coliform	23 MPN/100 mL 7-Day Median	240 MPN/100 mL	Chronic ²
13	3/9/04	Total Coliform	23 MPN/100 mL 7-Day Median	240 MPN/100 mL	Chronic ²
14	3/10/04	Total Coliform	23 MPN/100 mL 7-Day Median	175 MPN/100 mL	Chronic ²
15	3/13/04	Total Coliform	23 MPN/100 mL 7-Day Median	175 MPN/100 mL	Chronic ²
16	3/14/04	Total Coliform	23 MPN/100 mL 7-Day Median	185 MPN/100 mL	Chronic ²
17	3/16/04	Total Coliform	23 MPN/100 mL 7-Day Median	240 MPN/100 mL	Chronic ²
18	3/17/04	Total Coliform	23 MPN/100 mL 7-Day Median	160 MPN/100 mL	Chronic ²
19	3/17/04	Total Coliform	240 MPN/100 mL Maximum	400 MPN/100 mL	Chronic ²
20	3/18/04	Total Coliform	23 MPN/100 mL 7-Day Median	315 MPN/100 mL	Chronic ²
21	3/19/04	Total Coliform	23 MPN/100 mL 7-Day Median	80 MPN/100 mL	Chronic ²
22	3/20/04	Total Coliform	23 MPN/100 mL 7-Day Median	240 MPN/100 mL	Chronic ²
23	3/22/04	Total Coliform	240 MPN/100 mL Maximum	315 MPN/100 mL	Chronic ²
24	3/27/04	Total Chlorine Residual	2 mg/L Maximum	>2.2 mg/L	Chronic ²

14. According to Finding No. 13, the Discharger committed eight (8) chronic violations in the period September 1, 2001 through February 6, 2002. California Water Code section 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each chronic violation, not counting the first three, occurring in a consecutive six-month period. The mandatory minimum penalty for these chronic violations ($8 - 3 = 5 \times \$3,000$) is fifteen thousand dollars (\$15,000).

15. Violations listed as No. 12 through 24 in Finding No. 13 occurred due to a single operational upset of the Discharger's biological treatment process. The Discharger has demonstrated operator error or negligence did not cause the upset, the violations would not have occurred nor continued for more than one day but for the upset, and all reasonable and immediately feasible actions to reduce noncompliance were taken. In accordance with California Water Code section 13385(f)(2), violations listed as No. 12 through 24 are considered a single chronic violation for the purpose of assessing penalties.

16. According to Finding No. 13, the Discharger committed one (1) serious violation in the period January 21, 2004 through March 31, 2004. The amount of the mandatory penalty for the serious violation is (1 x \$3,000) three thousand dollars (\$3,000). The Discharger also committed fifteen (15) chronic violations in the period January 21, 2004 through March 31, 2004. However, violations listed as No. 12 through 24 are considered a single chronic violation for the purpose of assessing penalties. California Water Code section 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars

² Violation subject to single operational upset provision.

(\$3,000) for each chronic violation, not counting the first three³, occurring in a consecutive six-month period. The mandatory minimum penalty for chronic violations in the period January 21, 2004 through March 31, 2004 is $(4 - 3 = 1 \times \$3,000)$ three thousand dollars (\$3,000).

17. The total amount of the mandatory penalty for violations of effluent limitations occurring in the period September 1, 2001 through March 31, 2004 $(\$15,000 + \$3,000 + \$3,000)$ is twenty-one thousand dollars (\$21,000).
18. The Executive Officer of the Regional Board issued Mandatory Penalty Complaint No. R3-2004-0126 on July 15, 2004, pursuant to California Water Code Section 13385. The Complaint proposed imposing a mandatory penalty in the amount of twenty-one thousand dollars (\$21,000).
19. In a letter dated August 10, 2004, the Discharger requested the maximum mandatory penalty amount possible (\$18,000) be directed to the Froom Ranch Road Decommissioning Project. The project is located within City-designated open space known as the DeVaul Property. The objective is to decrease and control sediment inputs to Froom Creek from the unpaved and unstable Froom Creek jeep road. Froom Creek is a tributary to San Luis Obispo Creek and provides habitat for steelhead trout. Reduction of sediment inputs and the threat of catastrophic slope failure will improve water quality and fish spawning habitat in Froom Creek, and reduce sediment inputs to San Luis Obispo Creek. Decommissioning will include re-grading, installation of erosion control devices, and revegetation. The jeep road will be converted to a hiking trail. Decommissioning is scheduled to begin immediately and be completed by the end of Fall 2004 (by December 20, 2004). The project includes two years of maintenance by the California Conservation Corps. Primary funding for the project is a \$75,000 grant from California Department of Fish and Game. The Discharger has not previously budgeted money for this project.
20. The Froom Ranch Road Decommissioning Project qualifies as a Supplemental Environmental Project in accordance with the State Water Resources Control Board's Enforcement Policy, Resolution No. 2002-0040. The project goes above and beyond the obligation of the Discharger and is not an action required of the Discharger by any rule or regulation of any entity. The project will benefit water quality and will not directly benefit Regional Board functions or staff.
21. On August 13, 2004, the Discharger was notified of staff's intent to recommend that \$18,000 of the mandatory penalty be directed to the Froom Ranch Road Decommissioning Project. The Discharger concurred with the recommendation.
22. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000, et seq.), in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

³ Serious violations also count as chronic violations for the purpose of enumerating chronic violations.

IT IS HEREBY ORDERED, pursuant to California Water Code Section 13385, the City of San Luis Obispo is assessed a Mandatory Penalty in the amount of twenty-one thousand dollars (\$21,000).

The City of San Luis Obispo shall submit written proof of payment to the Froom Ranch Road Decommissioning Project Account, in the amount of eighteen thousand dollars (\$18,000) to the *Regional Water Quality Control Board, Attn: Matt Thompson, 895 Aerovista Place, Suite 101, San Luis Obispo, California, 93401*, by **October 30, 2004, 5:00 P.M.** Written proof may consist of an approved Administrative Officer's report and Budget Amendment Request to transfer funds to the Froom Ranch Road Decommissioning Project Account. If proof of payment to the Project Account is not submitted by October 30, 2004, 5:00 P.M., the suspended liability shall be immediately due and payable to the State Water Resources Control Board.

The City of San Luis Obispo shall submit written certification of completion of the decommissioning portion of the project and a post-project accounting of expenditures related to the project **no later than 30 days after completion of the project**. If the final total cost of the project (including the 2 years of maintenance) is less than ninety-three thousand dollars⁴ (\$93,000), the City of San Luis Obispo shall remit the difference, up to eighteen thousand dollars (\$18,000), to State Water Resources Control Board, **no later than 30 days after completion of the project**.

If the decommissioning portion of the project is not completed by **February 20, 2005**, the City of San Luis Obispo shall submit quarterly progress reports to the Executive Officer.

The City of San Luis Obispo shall also submit a check payable to State Water Resources Control Board in the amount of three thousand dollars (\$3,000) to *SWRCB Accounting, Attn: Enforcement, P.O. Box 100, Sacramento, California 95812-0100* by **October 10, 2004, 5:00 P.M.**

Any person affected by this action of the Regional Board may petition the State Water Resources Control Board to review the action in accordance with California Water Code Section 13320, and Title 23, California code of Regulations, Section 2050. The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812, must receive the petition by October 10, 2004. Copies of the law and regulations applicable to filing petitions will be provided upon request

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Coast Region, on September 10, 2004.

Executive Officer

⁴ \$93,000 is the California Department of Fish and Game grant amount (\$75,000) plus the amount of suspended penalty (\$18,000).