

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

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R3-2005-0137

IN THE MATTER OF:

**LOS OSOS COMMUNITY SERVICES DISTRICT
LOS OSOS WASTEWATER PROJECT
San Luis Obispo County**

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

1. On October 27, 2000, the Central Coast Water Board adopted Order No. 00-131, a time schedule order concerning Los Osos Community Services District in San Luis Obispo County. Order No. 00-131 specifies the following requirements.

"IT IS HEREBY ORDERED, pursuant to Section 13308 of the California Water Code, Los Osos Community Services District, shall comply with the following time schedule for implementation of a wastewater management plan for the Basin Plan prohibition area in Los Osos which will result in compliance with the Cease and Desist Orders.

Task	Completion Date
Submit proof of circulation of draft Environmental Impact Report	December 15, 2000
Submit final California Environmental Quality Act (CEQA) document	April 1, 2001
Submit proof of voter approval of assessment district or comparable means of financing community wastewater system	July 29, 2001
Submit approved complete construction design plans	July 15, 2002
Submit County Use and Coastal Development permits	July 15, 2002
Commence construction of the community sewer system	September 6, 2002
Complete construction of the community sewer system	August 30, 2004
Report on compliance (per California Water Code Section 13267)	Two weeks after each above date, as well as quarterly reports beginning January 15, 2001.

"This Board reserves its jurisdiction to modify the time schedule in this Order to permit a specified task or tasks to be completed at later dates if the CSD demonstrates and the Board determines that the delay was beyond the reasonable control of the CSD to avoid.

"If the CSD fails to complete a task in compliance with the time schedule (or Board approved modification of the time schedule), the CSD shall be liable in the amount of \$10,000 per day for each day in which the violation of the time schedule occurs."

2. The Los Osos CSD has failed to implement its community wastewater management plan in accordance with the schedule specified in Time Schedule Order No. 00-131. Specifically, the Los

Osos CSD commenced construction on the community sewer system 1080 days behind the schedule specified in Order No. 00-131. Completion of construction of the community sewer system is currently (as of October 1, 2005) at least 396 days behind the schedule.

3. The Water Quality Control Plan, Central Coast Region (Basin Plan) prohibits all discharges after November 1, 1988, from on-site disposal systems within the Los Osos/Baywood Park area ("Prohibition Zone") depicted in the Prohibition Boundary Map included as Attachment "A" of Resolution No. 83-13 (attached). The Prohibition is set forth in Section VIII.D.3.i of the Basin Plan, page IV-64. Since its formation in 1998, the Los Osos CSD has operated an on-site disposal system at its Fire Station. The CSD also operates on-site community disposal systems serving Bayridge Estates and Vista de Oro subdivisions. The CSD previously operated an on-site system at the Water Division. The Water Board lacks information about the dates of the Water Division discharge or when it ceased. All four of these facilities are located within the Prohibition Zone.
4. The Bayridge Estates subdivision generates about 27,000 gallons per day of wastewater. The CSD's wastewater treatment and disposal system consists of 11 septic tanks and associated leach fields.
5. The Vista de Oro subdivision generates about 11,000 gallons per day of wastewater. The CSD's wastewater treatment and disposal system consists of three septic tanks and associated leach fields.
6. Wastewater generated at the Fire Station, located at 2315 Bayview Heights Drive, Los Osos, passes through a septic tank before being discharged to a leach field.
7. Since at least October 1, 1999, the Los Osos CSD has discharged waste at the Fire Station, Bayridge Estates and Vista de Oro in violation of the prohibition. Since these facilities include on-site septic tanks and leach fields, wastewater is continuously discharged at each facility.
8. These wastewater treatment and disposal systems discharge wastewater that migrates to groundwater. Each leachfield is set in Baywood fine sands, a porous formation through which septic tank effluent readily percolates. Therefore, the District is potentially liable for administrative civil liability of up to \$5,000 per day for each of the three facilities, or \$15,000 per day, from October 1, 1999, to the present, pursuant to Water Code section 13350. The maximum civil liability under Section 13350(e)(1) of the California Water Code is \$32.85 million (as of October 1, 2005). The maximum civil liability under Section 13308 of the California Water Code (as of October 1, 2005) is \$11,190,000.

LEGAL AUTHORITY

9. Section 13308 of the California Water Code states:

"(a) If the regional board determines there is a threatened or continuing violation of any cleanup or abatement order, cease and desist order, or any order issued under Section 13267 or 13383, the regional board may issue an order establishing a time schedule and prescribing a civil penalty which shall become due if compliance is not achieved in accordance with that time schedule."

"(b) The amount of the civil penalty shall be based upon the amount reasonably necessary to achieve compliance, and may not include any amount intended to punish or redress previous violations. The amount of the penalty may not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs."

“(c) Any person who fails to achieve compliance in accordance with the schedule established in an order issued pursuant to subdivision (a) shall be liable civilly in an amount not to exceed the amount prescribed by the order. The regional board may impose the penalty administratively in accordance with Article 2.5 (commencing with Section 13323). If the regional board imposes the penalty in an amount less than the amount prescribed in the order issued pursuant to subdivision (a), the regional board shall make express findings setting forth the reasons for its actions based on the specific factors required to be considered pursuant to Section 13327.”

10. Section 13350(e)(1) of the California Water Code provides that any person who, in violation of any prohibition, discharges waste into waters of the state, or causes or permits waste to be deposited where it is discharged into the waters of the state, shall be liable for administrative civil liabilities of up to \$5,000 for each day of violation.

11. Water Code Section 13327 provides:

“In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.”

12. When the Central Coast Water Board adopted Order No. 00-131, it determined that \$10,000 per day was the amount necessary to achieve compliance with the time schedule set forth in Order No. 00-131. The Los Osos CSD has not complied with the time schedule and has not demonstrated that a daily amount less than \$10,000 is appropriate.

IT IS HEREBY ORDERED: Pursuant to California Water Code Section 13308, Los Osos Community Services District is assessed a total civil liability of eleven million one hundred ninety thousand dollars (\$11,190,000) to be delivered to the Central Coast Water Board at the letterhead address by January 1, 2006. The check is to be made payable to the State Water Resources Control Board.

This Order only resolves liability that the Los Osos Community Services District incurred through October 1, 2005, and does not relieve the Los Osos Community Services District from liability for additional violations of Order No. 00-131, the Basin Plan prohibition that was the subject of the Complaint, or any other violation.

I, Roger W. Briggs, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an order adopted by the Central Coast Water Board on December 1, 2005.

Roger W. Briggs, Executive Officer

Date