

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401-7906**

**ORDER NO. R3-2005-009
(Revised Order No. R3-2004-0008)**

**MANDATORY PENALTY
IN THE MATTER OF
CITY OF PISMO BEACH WASTEWATER FACILITY
SAN LUIS OBISPO COUNTY**

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

1. On July 12, 1999, the Regional Board adopted *Order No. 99-31 (NPDES No. CA0048151)*, *Waste Discharge Requirements for the City of Pismo Beach, San Luis Obispo County* and updated the requirements on September 10, 2004, by adoption of *Order No. R3-2004-0051*.
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 discharge 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 that "(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)."

**Item No. 5 Attachment No. 1a
March 24-25, 2005 Meeting
City of Pismo Beach
Wastewater Facility**

6. Order Nos. 99-31 and R3-2004-0051 include in part the following Effluent Limitations:

Constituent	Units	Monthly (30-day) Average	Weekly (7-day) Average	Maximum
BOD, 5-day	mg/L	30	45	90
BOD, 5-day	lb/day	438	657	1314
Total Suspended Solids	mg/L	30	45	90
Settleable Solids	mL/L	1.0	1.5	3.0
Fecal Coliform	MPN/100 ml		200*	2000
BOD, 5-day	% removal		Order No. 99-31 requires 80% minimum Order No. R3-2004-0051 requires 85% minimum	

*Order No. R3-2004-0051 specifies limit as 7-sample median rather than 7-day average.

7. Biochemical Oxygen Demand (BOD, 5-day), total suspended solids and settleable solids are Group I Pollutants. Fecal coliform is not listed as a Group I or a Group II Pollutant.
8. Effluent containing constituent concentrations that are greater than serious thresholds (limit + 40% for Group I pollutants, limit + 20% for Group II pollutants) are serious violations. Fecal coliform is neither a Group I nor a Group II pollutant, therefore it has no serious threshold.
9. Effluent containing BOD, suspended solids or settleable solids concentrations that are less than the serious threshold but greater than the permit limits, are chronic violations.
10. Effluent containing fecal coliform values that exceed a 7-day average (between July 1, 2001, and September 9, 2004) or 7-sample median (after September 10, 2004) of 200 MPN/100 ml or maximum of 2000 MPN/100 ml are chronic violations.
11. 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 (MMPs) in the amount of \$735,000 for violations of the effluent limits set forth above. All of the violations cited in the Complaint that resulted in Order No. R3-2004-0008 (Administrative Civil Liability Complaint No. R3-2003-050) were alleged as mandatory MMPs, and not as discretionary penalties under section 13385(c).
12. After the hearing, the City and the Regional Board continued to discuss the issues addressed in the Order No. R3-2004-0008. The City and Regional Board staff agreed that the City had over-reported violations of average limits and that the over-reporting resulted in the assessment of MMPs for reported violations that were not actually chronic violations for purposes of California Water Code Section 13385. The Regional Board's Executive Officer and the Discharger stipulated that the State Water Resources Control Board should vacate Order No. R3-2004-0008 so that the Executive Officer could reissue an administrative civil liability complaint with the MMPs calculated correctly. The correct calculations are set forth below. This Complaint amends and supercedes Complaint No. R3-2003-050. This Complaint also alleges violations that occurred subsequent to the issuance of Complaint No. R3-2003-050 (April 2003 through November 30, 2004).
13. According to monitoring reports submitted by the Discharger, the Discharger committed the following violations of Effluent Limitations specified in Order Nos. 99-31 and R3-2004-0051 during the period July 1, 2001 through November 30, 2004:

No.	Date	Effluent Constituent	Reported Value	Permitted Limit	Violation Type
1	7/14/01	Fecal Coliform 7-day average	280 MPN/100 ml	200 MPN/100 ml	Chronic
2	7/15/01	Settleable Solids maximum	8 mL/L	3 mL/L	Serious

No.	Date	Effluent Constituent	Reported Value	Permitted Limit	Violation Type
3	7/15/01	Suspended Solids maximum	132 mg/L	90 mg/L	Serious
4	7/16/01	Suspended Solids maximum	96 mg/L	90 mg/L	Chronic
5	7/20/01	Suspended Solids maximum	124 mg/L	90 mg/L	Chronic
6	7/21/01	Fecal Coliform 7-day average	250 MPN/100 ml	200 MPN/100 ml	Chronic
7	7/21/01	Settleable Solids weekly average	2.46 mL/L	1.5 mL/L	Serious
8	7/21/01	Suspended Solids weekly average	87 mg/L	45 mg/L	Serious
9	7/21/01	BOD weekly average	70 mg/L	45 mg/L	Serious
10	7/26/01	Settleable Solids maximum	5 mL/L	3 mL/L	Serious
11	7/27/01	Settleable Solids maximum	44 mL/L	3 mL/L	Serious
12	7/27/01	Suspended Solids maximum	196 mg/L	90 mg/L	Serious
13	7/28/01	Fecal Coliform 7-day average	401 MPN/100 ml	200 MPN/100 ml	Chronic
14	7/28/01	Settleable Solids weekly average	8.00 mL/L	1.5 mL/L	Serious
15	7/28/01	Suspended Solids weekly average	60 mg/L	45 mg/L	Chronic
16	7/31/01	Settleable Solids monthly average	3.9 mL/L	1.0 mL/L	Serious
17	7/31/01	Settleable Solids maximum	44 mL/L	3 mL/L	Serious
18	7/31/01	Suspended Solids monthly average	53 mg/L	30 mg/L	Serious
19	7/31/01	Suspended Solids maximum	253 mg/L	90 mg/L	Serious
20	8/1/01	Suspended Solids maximum	172 mg/L	90 mg/L	Serious
21	8/7/01	Suspended Solids weekly average	50 mg/L	45 mg/L	Chronic
22	8/14/01	BOD weekly average	55 mg/L	45 mg/L	Chronic
23	8/14/01	Fecal Coliform 7-day average	762 MPN/100 ml	200 MPN/100 ml	Chronic
24	8/20/01	BOD maximum	130 mg/L	90 mg/L	Serious
25	8/20/01	BOD maximum mass	1423 lb/day	1314 lb/day	Chronic
26	8/21/01	Fecal Coliform 7-day average	390 MPN/100 ml	200 MPN/100 ml	Chronic
27	8/21/01	BOD weekly average	96 mg/L	45 mg/L	Serious
28	8/22/01	BOD maximum	100 mg/L	90 mg/L	Chronic
29	8/28/01	BOD weekly average	71 mg/L	45 mg/L	Serious
30	8/28/01	Fecal Coliform 7-day average	562 MPN/100 ml	200 MPN/100 ml	Chronic
31	8/31/01	Suspended Solids monthly average	34 mg/L	30 mg/L	Chronic
32	8/31/01	BOD monthly average	62 mg/L	30 mg/L	Serious
33	8/31/01	BOD monthly average mass	624 lb/day	438 lb/day	Serious
34	9/7/01	Fecal Coliform 7-day average	254 MPN/100 ml	200 MPN/100 ml	Chronic
35	9/21/01	Fecal Coliform 7-day average	258 MPN/100 ml	200 MPN/100 ml	Chronic
36	5/5/02	Suspended Solids maximum	97 mg/L	90 mg/L	Chronic*
37	5/5/02	Settleable Solids maximum	4.5 mL/L	3 mL/L	Serious
38	5/7/02	Settleable Solids maximum	3.5 mL/L	3 mL/L	Chronic
39	5/7/02	Settleable Solids weekly average	1.63 mL/L	1.5 mL/L	Chronic
40	5/7/02	BOD weekly average	62 mg/L	45 mg/L	Chronic
41	5/7/02	Fecal Coliform 7-day average	386 MPN/100 ml	200 MPN/100 ml	Chronic
42	5/21/02	Fecal Coliform 7-day average	697 MPN/100 ml	200 MPN/100 ml	Chronic
43	5/29/02	Settleable Solids maximum	14 mL/L	3 mL/L	Serious
44	5/30/02	Suspended Solids monthly average	35 mg/L	30 mg/L	Chronic
45	5/30/02	BOD monthly average	48 mg/L	30 mg/L	Serious

No.	Date	Effluent Constituent	Reported Value	Permitted Limit	Violation Type
46	5/30/02	BOD maximum	94 mg/L	90 mg/L	Chronic
47	5/30/02	Suspended Solids maximum	140 mg/L	90 mg/L	Serious
48	8/6/02	Settleable Solids maximum	13 mL/L	3.0 mL/L	Serious
49	8/7/02	Suspended Solids maximum	92 mg/L	90 mg/L	Chronic
50	8/7/02	Suspended Solids weekly average	50 mg/L	45 mg/L	Chronic
51	8/7/02	Settleable Solids weekly average	2.17 mL/L	1.5 mL/L	Serious
52	8/7/02	BOD weekly average	66 mg/L	45 mg/L	Serious
53	8/14/02	BOD weekly average	60 mg/L	45 mg/L	Chronic
54	8/31/02	BOD monthly average mass	481 lb/day	438 lb/day	Chronic
55	8/31/02	BOD monthly average	48 mg/L	30 mg/L	Serious
56	8/31/02	Suspended Solids monthly average	31 mg/L	30 mg/L	Chronic
57	11/21/02	Fecal Coliform 7-day average	262 MPN/100 ml	200 MPN/100 ml	Chronic
58	4/14/03	BOD weekly average	75 mg/L	45 mg/L	Serious
59	4/18/03	BOD maximum	120 mg/L	90 mg/L	Chronic
60	4/21/03	BOD weekly average mass	1131 lb/day	657 lb/day	Serious
61	4/21/03	BOD weekly average	105 mg/L	45 mg/L	Serious
62	4/30/03	BOD monthly average	72 mg/L	30 mg/L	Serious
63	4/30/03	BOD monthly average mass	672 lb/day	438 lb/day	Serious
64	5/14/03	BOD weekly average	78 mg/L	45 mg/L	Serious
65	5/31/03	BOD monthly average	54 mg/L	30 mg/L	Serious
66	5/31/03	BOD monthly average mass	442 lb/day	438 lb/day	Chronic
67	10/14/03	Fecal Coliform 7-day average	283 MPN/100 ml	200 MPN/100 ml	Chronic
68	10/28/03	Fecal Coliform 7-day average	324 MPN/100 ml	200 MPN/100 ml	Chronic
69	3/7/04	Fecal Coliform 7-day average	322 MPN/100 ml	200 MPN/100 ml	Chronic*
70	3/14/04	BOD weekly average	71 mg/L	45 mg/L	Serious
71	3/31/04	BOD monthly average	49 mg/L	30 mg/L	Serious
72	3/31/04	BOD monthly average mass	453 lb/day	438 lb/day	Chronic
73	5/13/04	Settleable Solids maximum	9 mL/L	3 mL/L	Serious
74	5/14/04	Fecal Coliform 7-day average	697 MPN/100 ml	200 MPN/100 ml	Chronic
75	5/16/04	BOD maximum	110 mg/L	90 mg/L	Chronic
76	5/21/04	BOD weekly average	62 mg/L	45 mg/L	Chronic
77	9/23/04	Fecal Coliform 7-sample median	900 MPN/100 ml	200 MPN/100 ml	Chronic
78	9/24/04	Fecal Coliform 7-sample median	1600 MPN/100ml	200 MPN/100 ml	Chronic
79	9/27/04	Fecal Coliform 7-sample median	1600 MPN/100ml	200 MPN/100 ml	Chronic
80	9/28/04	Fecal Coliform 7-sample median	1600 MPN/100ml	200 MPN/100 ml	Chronic
81	9/29/04	Fecal Coliform 7-sample median	1600 MPN/100ml	200 MPN/100 ml	Chronic
82	9/30/04	Fecal Coliform 7-sample median	1600 MPN/100ml	200 MPN/100 ml	Chronic
83	10/1/04	Fecal Coliform 7-sample median	300 MPN/100ml	200 MPN/100 ml	Chronic

*Denotes Chronic violation not subject to Mandatory Minimum Penalties

14. According to Finding 13, the Discharger committed thirty-seven (37) "serious" violations in the period from July 1, 2001, to November 30, 2004. In accordance with California Water Code section 13385(h), the amount of mandatory penalty for the above serious violations (37 x \$3,000) is one hundred eleven thousand dollars (\$111,000).

15. According to Finding 13, the Discharger committed forty-six (46) "chronic" violations in the period from July 1, 2001 to November 30, 2004. Violation No. 1 was preceded by more than three violations within a six-month period prior to July 1, 2001, (addressed in Order No. 01-117) therefore each subsequent violation is subject to mandatory penalty. Violation Nos. 36 and 69 are preceded by fewer than three violations within a six-month period therefore no mandatory penalty for Violation Nos. 36 or 69 is required. In accordance with California Water Code section 13385(i) the mandatory minimum penalty for the above chronic violations $[(46 - 2) \times \$3,000]$ is one hundred thirty two thousand dollars (\$132,000).
16. The total amount of the mandatory penalty from July 1, 2001 to December 31, 2004 (\$111,000 + \$132,000) is two hundred forty three thousand dollars (\$243,000).
17. The Executive Officer of the Regional Board issued Mandatory Penalty Complaint No. R3-2005-0009 on January 21, 2005, pursuant to Water Code Section 13385. The complaint proposed imposing a mandatory penalty in the amount of three hundred fifty-one thousand dollars (\$351,000). Subsequent analysis indicates the City is liable for a penalty of \$243,000, per Finding No. 16.
18. The 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.
19. On February 23, 2005, the City of Pismo Beach submitted a supplemental environmental project (SEP) proposal to defer the maximum allowable amount of the mandatory minimum penalty. The City's SEP proposal is included in this Order as Attachment 1 and is incorporated by this reference. The SEP proposal consists of five distinct elements formerly included in Order No. R3-2004-0008, including:
 1. Wastewater Reclamation Feasibility Study,
 2. Agricultural Short Courses,
 3. Pier Area Bacteria Source Tracking,
 4. Pismo Creek Watershed Management Plan, and
 5. Pismo Creek Watershed Implementation Fund.Any SEP funds not expended through the above five elements will be returned to the State Water Resources Control Board, Cleanup and Abatement Account.
20. All elements of the proposed project qualify as a SEP in accordance with the State Water Resources Control Board's Enforcement Policy, Resolution No. 2002-0040. The proposed SEP goes above and beyond the obligations of the Discharger and is not an action required of the Discharger by any rule or regulation of any entity or that the Discharger would undertake in the absence of this enforcement action. The SEP will benefit water quality by reducing potential threats to both Pismo Creek and the Pacific Ocean.
21. The proposed SEP meets the Additional SEP Qualification Criteria as outlined in the State Board's Water Quality Enforcement Policy. These criteria include water quality focus, geographic nexus, type of violation, beneficial use protection, region wide use/benefit, and institutional stability and capacity. Projects 2, 4 and 5 are more likely to produce actual water quality improvements and are therefore a higher priority than projects 1 and 3.

IT IS HEREBY ORDERED, pursuant to California Water Code Section 13385, the City of Pismo Beach is assessed a Mandatory Penalty in the amount of two hundred forty three thousand dollars (\$243,000):

1. The City of Pismo Beach shall expend one hundred twenty-nine thousand dollars (\$129,000) to implement and complete the SEP described in Part 2, 4 and 5 of Finding No. 19, above. The SEP Scope of Work,

deliverables, budget elements, and task schedule shall be developed and submitted for Executive Officer approval by April 25, 2005.

- A SEP shall only consist of measures that go above and beyond the obligation of the discharger.
 - The SEP should directly benefit and/or improve groundwater or surface water quality or quantity, and the beneficial uses of waters within the Pismo Creek Watershed.
 - The SEP shall not directly benefit the SWRCB or RWQCB functions or staff.
 - The SEP shall not be an action, process or product that is otherwise required of the discharger by any rule or regulation of any entity (e.g., local government, California Coastal Commission, United States Environmental Protection Agency, United States Army Corps of Engineers, etc.) or proposed as mitigation to offset the impacts of a discharger's project(s).
2. Upon completion of each element of the SEP and each approved project to be funded by the Pismo Creek Watershed Implementation Fund, the Discharger shall submit:
 - a. Written proof certifying completion of the element as outlined in the SEP proposal; and
 - b. A post-project accounting of expenditures related to the SEP element.
 3. If any milestone is not completed to the satisfaction of the Executive Officer by its respective due date as set forth in paragraph 1, the suspended liability shall be immediately due and payable to the State Water Resources Control Board. It is the Discharger's responsibility to pay the amount(s) due, regardless of any agreement between the Discharger and any third party contracted to implement the SEP.
 4. Whenever the Discharger or its agents or subcontractors, or any fiscal agent holding SEP funds, publicize an element of the SEP, they shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action against the City of Pismo Beach.
 5. Upon request of the Discharger, the Executive Officer may extend any due date if the Executive Officer determines that delays are due to circumstances beyond the Discharger's reasonable control.
 6. Upon completion of all elements and associated projects of this SEP, or after five (5) years (March 25, 2010), all unexpended penalty funds pursuant to this Order will be paid to the State Water Resource Control Board, Cleanup and Abatement Account.
 7. The City of Pismo Beach shall also submit a check payable to State Water Resources Control Board in the amount of one hundred fourteen thousand dollars (\$114,000) to *SWRCB Accounting, Attn: Enforcement, P.O. Box 100, Sacramento, California 95812-0100* by **April 25, 2005, 5:00 P.M.**
 8. 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 April 25, 2005. 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 March 25, 2005.

Executive Officer