

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

ORDER NO. R3-2014-0002

**ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
PASATIEMPO INVESTMENTS, PASATIEMPO II INVESTMENTS, RICHARD S.
GREGERSEN, AND ADVENTCO HOLDING CORPORATION**

**THE INN AT PASATIEMPO
555 HIGHWAY 17, SANTA CRUZ**

SANTA CRUZ COUNTY

The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), having held a public hearing on May 23, 2014, to receive evidence and comments on the allegations contained in Administrative Civil Liability Complaint No. R3-2014-0002, dated November 6, 2013, having considered all the evidence and public comment received, and on the Prosecution's recommendation for administrative assessment of Civil Liability in the amount of \$24,700, however finds that an assessed penalty of \$_____ is applicable as follows:

1. Pasateimpo Investments, Pasatiempo II Investments, Richard S. Gregersen, and Adventco Holding Corporation (Dischargers) own and/or operate the Inn at Pasatiempo (the Inn or Facility) and collect, treat, and dispose of domestic wastewater at two independent treatment and disposal facilities at the Inn. The Inn consists of a motel, conference rooms and restaurant. The wastewater treatment facilities are subject to Waste Discharge Requirements Order No. 99-136, adopted on November 19, 1999, by the Central Coast Water Board.
2. 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.
3. 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. Water Board staff also spoke to the Dischargers' representative by telephone regarding this violation. The report was submitted September 6, 2013, resulting in 327 days of violation.

4. The Central Coast Water Board regulates the Facility by Waste Discharge Requirements (WDR) Order No. 99-136, adopted by the Central Coast Water Board on November 19, 1999. Order No. 99-136 permits the discharge of wastewater to two independent on-site treatment and disposal facilities.
5. WDR Order No. 99-136, Provision D.4, requires the Dischargers to comply with Monitoring and Reporting Program No. 99-136 (revised February 28, 2001), and that requirement is made pursuant to California Water Code section 13267. 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.
6. Water Code section 13268, subdivision (a), provides that any person failing or refusing to furnish a technical or monitoring program reports as required under section 13267, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

MAXIMUM CIVIL PENALTY

7. Water Code section 13268, subdivision (b), provides that civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The maximum liability in this case is \$1,314,000.

PENALTY METHODOLOGY

8. Pursuant to California Water Code Section 13327, the Central Coast Water Board must consider the following factors in determining the amount of liability for the violations:
 - Nature, circumstances, extent, and gravity of the violations,
 - Whether the discharge is susceptible to cleanup or abatement,
 - Degree of toxicity of the discharge,
 - Discharger's ability to pay,
 - Effect on the Discharger's ability to continue in business,
 - Voluntary cleanup efforts undertaken by the Discharger,
 - Discharger's prior history of violations,
 - Discharger's degree of culpability,
 - Economic benefit or savings, if any, resulting from the violation, and
 - Other matters that justice may require.
9. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for

assessing administrative civil liability. Use of the methodology addresses the factors in Water Code section 13327. Attachment A of ACL Complaint No. R3-2014-0002 is included in Attachment 2 of the Staff Report and incorporated herein, and analyzes the violations under the Enforcement Policy's penalty calculation methodology. This methodology is set forth in detail below:

1. Step 1 – Potential for Harm for Discharge Violations

This step is not applicable because the violation is not a discharge violation.

2. Step 2 – Assessment for Discharge Violations

This step is not applicable because the violation is not a discharge violation.

3. Step 3 – Per Day Assessments for Non-Discharge Violations

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements in accordance with Step 3 of the Enforcement Policy analysis (Enforcement Policy, pages 15-16). The **potential for harm** was determined to be **minor** because the failure to submit self-monitoring reports did not increase the amount of pollution discharged or threatened to discharge into Waters of the State. The **deviation from requirements** was determined to be **moderate** because the requirement to submit reports was not met and the effectiveness of the WDR Order was partially compromised. Using these categories as applied in Table 3 of the Enforcement Policy, the per day factor is 0.20.

Pursuant to California Water Code section 13268, violations of Water Code section 13267 are subject to administrative civil liability of up to one thousand dollars (\$1,000) for each day the violation occurs.

As of 4 November 2013, the Dischargers have accrued a total of **1,314 days of violation** for failing to submit the third quarter 2011 self-monitoring report (total 752 days late), submitting the third quarter 2012 self-monitoring report 327 days late and submitting the fourth quarter 2012 self-monitoring report 235 days late. The Dischargers are subject to an initial liability amount of **\$1,314,000**.

The Enforcement Policy (page 18) provides an alternative approach to penalty calculation where the violation does not cause daily detrimental impacts to the environment or the regulatory program. The alternative approach calls for daily penalties for the first violation, plus an assessment of one day for each five day period of violation until the 30th day, plus one violation for each additional thirty day period. The alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable as the failure to submit required monitoring reports does not cause a daily detrimental impact to the environment or the regulatory program.

In cases eligible for the alternative approach and where a water board elects to use it, the methodology provides that liability shall not be less than the liability for the first day of the violation, plus an assessment for each five-day period of violation until the 30th day, plus an assessment for each subsequent 30 days of violation. Using the third violation as an example, as of June 7, 2013, the Dischargers' violation lasted 234 days. Using the alternative approach, the Dischargers accrue a per-day assessment for days 1 (for the first day), 5, 10, 15, 20, 25, 30 (for each 5-day period up to the 30th day), 60, 90, 120, 150, 180, and 210, (for each 30 days thereafter), for a total of 13 days' worth of violations. Prosecution staff used this alternative approach in Step 3 of the penalty calculation in Attachment B, which also shows the Penalty Day Range Generator for each violation.

Applying the per-day factor to the adjusted number of days of violation rounded to the nearest full day equals **60 total days of violation**. A calculation of initial liability totals **\$12,000** (0.2 per day factor X 60 adjusted days of violation X \$1,000 per day). This equates to the following breakdown by alleged violation:

- a) Alleged violation #1: $(.2 \times 31 \times \$1,000) = \$6,200$
- b) Alleged violation #2: $(.2 \times 16 \times \$1,000) = \$3,200$
- c) Alleged violation #3: $(.2 \times 13 \times \$1,000) = \$2,600$

4. Step 4 – Adjustment Factors

a) Culpability

The Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 and 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a multiplier of 1.2 has been selected for all three alleged violations because a reasonable and prudent person would have turned in the monitoring reports on time.

b) Cleanup and Cooperation

The Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation. In the case of Violation 1, a multiplier of 1.3 is used because the Dischargers have not turned in this monitoring report despite numerous communications between Central Coast Water Board Staff and the Dischargers, including a notice of violation. For Violations 2 and 3 a multiplier of 1.1 was selected because the monitoring reports were late but they were turned in.

c) History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used for this factor. In this case a multiplier of 1.2 has been chosen for all three alleged violations. This is because the Dischargers are chronically late with their monitoring reports; they have received numerous NOVs for late or missing monitoring reports and have also received a previous Administrative Civil Liability for late monitoring reports.

5. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount of \$20,793.60 is determined by adding the amounts for each violation above. Accordingly, the Total Base Liability amount for the violations is calculated by multiplying the initial amount by the adjustment factors and adding the three alleged violations together (Initial Liability) x (Culpability) x (Cleanup) x (History of Violations):

- a) Alleged Violation #1: $(\$6,200) \times (1.2) \times (1.3) \times (1.2)$
- b) Alleged Violation #2: $(\$3,200) \times (1.2) \times (1.1) \times (1.2)$
- c) Alleged Violation #3: $(\$2,600) \times (1.2) \times (1.1) \times (1.2)$

6. Step 6 – Ability to Pay and Ability to Continue in Business

The Enforcement Policy states that if the Central Coast Water Board has sufficient financial information to assess the Dischargers' ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the Dischargers' ability to continue in business, then the Total Base Liability amount may be adjusted downward.

The Inn at Pasatiempo generates income from 54 rooms, a pool and conference rooms. This corresponds with the Dischargers' apparent ability to pay the recommended liability. Prosecution staff recommends a multiplying factor of 1 in Step 6 of the penalty calculation in Attachment B, which has a neutral influence on the initial liability established above.

7. Step 7 – Other Factors as Justice May Require

If the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this. In addition, the costs of investigation and enforcement are "other factors as justice may require," and should be added to the liability amount.

The State and Regional Water Board has incurred \$3,900 in staff costs associated with the investigation and enforcement of the violations alleged herein. Central Coast Water Board staff, including technical staff, management, and legal counsel, time informing the Dischargers by letter, email, telephone and in person of its responsibilities, investigating the alleged violations, reviewing

past monitoring reports, and preparing enforcement documents. This represents approximately 26 hours of staff time devoted to investigating and drafting the complaint at \$150 an hour. Staff costs continue to accrue through any hearings held on this matter. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liability Amount.

Adjusted Combined Total Base Liability Amount: \$20,793.60+\$3,900 (Staff Costs) = **\$24,693.60.**

8. Step 8 – Economic Benefit

The Economic Benefit Amount is any savings or monetary gain derived from the act or omission that constitutes the violation. The Enforcement Policy states that the adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

Water Board staff estimates two (2) hours of the Discharger's consultant time needed to prepare and submit each quarterly report at a cost of \$150 per hour. This equates to estimated cost savings of \$300 for the monitoring report not submitted.

9. Step 9 – Maximum and Minimum Liability Amounts

There is no statutory minimum for Water Code section 13268 violations.

The Maximum Liability Amount is **\$1,314,000.** The maximum administrative liability amount is the maximum amount allowed by Water Code section 13268: one thousand dollars (\$1,000) for each day in which the violation occurs. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Dischargers could face penalties for the total number of days in violation (1,314 total days X \$1,000 per day).

The proposed liability falls within these maximum and minimum liability amounts.

10. Step 10 – Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit monitoring reports is rounded to **\$24,700.**

10. This Order on Complaint is effective and final upon issuance by the Regional Board. Payment must be received by the Regional Board no later than thirty days from the date on which this Order is issued.

11. In the event that Dischargers fail to comply with the requirements of this Order, the Executive Officer or his/her delegee is authorized to refer this matter to the Office of the Attorney General for enforcement.
12. 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 the California Code of Regulations Title 14, Chapter 3, section 15321.

IT IS HEREBY ORDERED, pursuant to California Water Code section 13268, that Pasateimpo Investments, Pasatiempo II Investments, Richard S. Gregersen, and Adventco Holding Corporation are assessed administrative civil liability in the amount of \$24,700.

The Discharger shall submit a check payable to State Water Resources Control Board in the amount of **\$24,700** to *SWRCB Accounting, Attn: Enforcement, P.O. Box 100, Sacramento, California 95812-0100* by **June 23, 2014**. A copy of the check shall also be submitted to *Regional Water Quality Control Board, Attn: Harvey Packard, 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401* by **June 23, 2014**. The check shall be made out to the *Clean Up and Abatement Account* and shall include the administrative liability Order No. R3-2014-0002.

Any person aggrieved by this action of the Central Coast Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of the order, except that if the thirtieth day following the date of the order falls on a Saturday, Sunday, or state holiday, the petition must be received by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the internet at http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

I, Kenneth A. Harris Jr., 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 May 23, 2014.

Kenneth A. Harris Jr.
Executive Officer

Attachment – Penalty Calculation Methodology Worksheet

Instructions

1. Select Potential Harm for Discharge Violations
2. Select Characteristics of the Discharge
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Standard
5. Click "Determine Harm & per Gallon/Day..."
6. Enter Values into the Yellow highlighted fields

Select Item Potential Harm for Discharge Violations
 Select Item Characteristics of the Discharge
 Select Item Susceptibility to Cleanup or Abatement
 Select Item Deviation from Requirement

Select Item Potential Harm for Discharge Violations
 Select Item Characteristics of the Discharge
 Select Item Susceptibility to Cleanup or Abatement
 Select Item Deviation from Requirement

Discharger Name/ID:	Violation 1: Failure to Submit 3rd Qtr. 2011 Rpt.	Violation 2: Late Submittal 3rd Qtr. 2012 Rpt.	Violative
Step 1 Potential Harm Factor (Generated from Button)			
Step 2 Per Gallon Factor (Generated from Button)			
Gallons			
Statutory / Adjusted Max per Gallon (\$)			
Total	\$ -		
Per Day Factor (Generated from Button)			
Days			
Total	\$ -		
Step 3 Per Day Factor (PFH minor; Dev moderate)	0.2		0.2
Days [Adj for Multiple Days of Violation per EP Step 4 & below]	31		16
Statutory Max per Day [Water Code 13385(c)]	1,000		1,000
Total	\$ 6,200.00	\$ 3,200.00	\$ 3,200.00
Initial Amount of the ACL	\$ 6,200.00	\$ 3,200.00	\$ 3,200.00
Step 4 Culpability [High]	1.2		1.2
Cleanup and Cooperation [Poor cooperation]	1.3		1.1
History of Violations	1.2		1.2
Step 5 Total Base Liability Amount	\$ 20,793.60	\$ 20,793.60	\$ 20,793.60
Step 6 Ability to Pay & to Continue in Business [see Notes]	1		1
Other Factors as Justice May Require [see Notes]	1		1
Staff Costs [26 hours at \$150/hour]	3,900		3,900
Economic Benefit [est. \$300 per report]	300		300
Step 8 Minimum Liability Amount	\$ 24,693.60	\$ 24,693.60	\$ 24,693.60
Step 9 Maximum Liability Amount	\$ 1,314,000	\$ 24,693.60	\$ 24,693.60
Step 10 Final Liability Amount	\$ 24,693.60	\$ 24,693.60	\$ 24,693.60

Rounded Amount for Recommendation: \$24,700

Penalty Day Range Generator		Violation 1	
Start Date of Violation=	10/15/11	Start Date of Violation=	10/15/11
End Date of Violation=	11/4/13	End Date of Violation=	11/4/13
Maximum (Actual) Days of Violation (Step 3) =	752	Days	752
Minimum (Alternative) Days of Violation (Step 3) =	31	Days (for Multiple Days of Violation >30)	31

Penalty Day Range Generator		Violation 2	
Start Date of Violation=	10/15/12	Start Date of Violation=	10/15/12
End Date of Violation=	9/6/13	End Date of Violation=	9/6/13
Maximum (Actual) Days of Violation (Step 3) =	327	Days	327
Minimum (Alternative) Days of Violation (Step 3) =	16	Days (for Multiple Days of Violation >30)	16

Penalty Day Range Generator		Violation 3	
Start Date of Violation=	1/15/13	Start Date of Violation=	1/15/13
End Date of Violation=	9/6/13	End Date of Violation=	9/6/13
Maximum (Actual) Days of Violation (Step 3) =	235	Days	235
Minimum (Alternative) Days of Violation (Step 3) =	13	Days (for Multiple Days of Violation >30)	13

Abbreviations:
 PFH = Potential For (Environmental) Harm
 EP = Enforcement Policy
 NOV = Notice of Violation

Statutory Maximum is:
 Proposed Amount is: