



# California Regional Water Quality Control Board

## Los Angeles Region



Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

Linda S. Adams  
Agency Secretary

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Arnold Schwarzenegger  
Governor

December 18, 2008

Mr. Jim Thorsen  
Manager, City of Malibu  
23815 Stuart Ranch Road  
Malibu, CA 90265

Dear Mr. Thorsen:

**TRANSMITTAL OF RESOLUTION NO. R4-2008-011 FOR TERMINATION OF MEMORANDUM OF UNDERSTANDING REGARDING ONSITE WASTEWATER TREATMENT SYSTEM FOR THE CITY OF MALIBU (FILE NO. 08-019)**

Our letter of September 26, 2008, transmitted tentative Resolution for Termination of Memorandum of Understanding (MOU) regarding onsite wastewater treatment system for the City of Malibu. Our letter of October 1, 2008, transmitted revised tentative Resolution.

Pursuant to Division 7 of the California Water Code, this Regional Board at a public meeting held on November 20, 2008, reviewed the revised tentative Resolution for termination of MOU, considered all factors in the case, and adopted Resolution No. R4-2008-011 (copies enclosed).

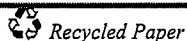
We are sending the Resolution to the City of Malibu only. For recipients on the mailing list, an electronic copy is available at [www.waterboards.ca.gov/losangeles](http://www.waterboards.ca.gov/losangeles) or a hard copy of the enclosure will be furnished upon request. If you have any questions or need additional information, please call Project Manager, Ms. Elizabeth Erickson at (213)620-2264 or Unit Chief, Dr. Rebecca Chou at (213) 620-6156.

Sincerely,

Wendy Phillips, P.G., C.E.G., C.H.G.  
Chief of Groundwater Cleanup and Permitting Section

Enclosure: Resolution R4-2008-011

*California Environmental Protection Agency*



*Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.*


Mr. Jim Thorsen  
City of Malibu

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December 18, 2008

cc: Mayor Pamela Conley Ulich, City of Malibu  
Mr. Graig George, Mr. Granville Bowman, Dr. Andrew Sheldon, City of Malibu  
Mr. J.J. O'Brien, Weintraub Financial  
Mr. Don Schmitz, Schmitz and Associates, Inc.  
Mr. John Yaroslaski, Ensitu Engineering, Inc.  
Mr. Mark Pesterella, Department of Public Works, County of Los Angeles  
Mr. Chi Deip, CA Dept. of Public Health Drinking Water Program  
Ms. Tatiana Gaur, Santa Monica Baykeeper  
Mr. Carlos Borja, Los Angeles County of Public Works, Cross Connections  
Ms. Katherine Nguyen, Surfrider Foundation

***California Environmental Protection Agency***

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**State of California**  
**California Regional Water Quality Control Board, Los Angeles Region**

**RESOLUTION NO. R4-2008-011**

**Consideration of Termination of the Memorandum of Understanding for  
Onsite Wastewater Treatment Systems for the City of Malibu**

**Background**

1. The Regional Board completed a Memorandum of Understanding (MOU) with the City of Malibu (City) on September 17, 2004, delegating the Board's authority to the City as a Qualified Local Agency (QLA) to manage residential and small commercial septic systems to improve water quality in the Civic Center area, requiring that their discharge be "consistent with any applicable state or regional water quality control plans and in the public interest."
2. On September 19, 2008, the Regional Board issued a 30-day notice letter informing the City of Malibu of the Regional Board's intent to terminate the MOU with the City of Malibu at its November 13, 2008 Board meeting.

**History**

3. After 2001, existing businesses in the Civic Center area, near Legacy Park and Malibu Lumber Plaza, were enrolled by the Regional Board in General Waste Discharge Requirements (GWDR) Order No. 01-031 with the expectation that a centralized wastewater treatment plant or long-term remedy would be constructed and/or the businesses' substandard septic systems would be upgraded to meet future TMDL water quality requirements.
4. A letter to interested parties from the Malibu City Manager dated July 11, 2003, states in part that "the Malibu City Council voted unanimously to embark on a course that will resolve sewage treatment issues in the Civic Center by installing a City operated clean water facility...The concept involves the installation of a wastewater treatment facility along with storm water retention facilities near the Civic Center on the area currently known as the Chili Cook-off site. . . ." The Malibu's Civic Center Integrated Water Management Concept Plan of that date further defines the City's plans. The document cites a detailed analysis of wastewater collection, reclamation and reuse alternatives (Fuog, 1997). It further quotes the findings of the 2003 draft Questa study stating in part: "the Chili Cook-off property [Legacy Park] is a suitable area to provide capacity for the treatment, reuse and dispersal of wastewater effluent produced in the study area when combined with recycling of treated wastewater to the greatest extent feasible, groundwater recharge/percolation systems in the study area and irrigation of landscape/open space area..." (Page 2.) The MOU was signed by the City in September 2004. In 2005, Questa completed a final study quantifying options for sewage disposal in the Civic Center area.

5. In 2007, City consultants found that the percolation capacity at Legacy Park was less than anticipated. In 2008, the City proposed that additional effluent from the commercial development, Malibu Lumber, be discharged through irrigation and subsurface disposal in Legacy Park. These factors diminish the subsurface assimilative capacity in the Civic Center area. The subsurface capacity estimated in the City's final 2005 Questa report, when mounding is considered, is 58,000 to 67,000 gallons per day (gpd) and even without the reduced capacity at Legacy Park these flows are less than Questa's predicted wastewater treatment flows of 120,000 to 200,000 gpd.
6. Recycling and Wastewater Treatment Plan (WWTP) capacities were again investigated by the Legacy Park contractor, but not quantified in the Legacy Park, September 2008, Final Environmental Impact Report (FEIR), uncertified at the September 23, 2008 Malibu Planning Commission meeting. Instead, the FEIR offers a programmatic review of an unspecified future wastewater treatment system. The Legacy Park FEIR states that "a final decision has not been made regarding the type of technology or size of the wastewater system....the wastewater treatment system is addressed at a programmatic level." (page S-16.) This statement contrasts with the City's integrated water management plan, completed at the time of adoption of two Santa Monica Bay Bacteria Total Maximum Daily Loads.
7. The Legacy Park FEIR lists 10 residential projects and 4 commercial and municipal projects in the Civic Center area which are proposed, in the planning stage, under construction, or recently completed. These projects create additional subsurface discharges that are or will be permitted by the City, or have pending Reports of Waste Discharge (ROWD) with the Regional Board. The City further states that the cumulative effects of these projects are to be mitigated through Malibu's Legacy Park Project because "the proposed project would have an overall beneficial impact on cumulative water quality by increasing the City of Malibu's storm water treatment capacity." (Page 4-10.) It does not quantify the water quality effects which may result if groundwater levels rise and flood existing leach fields or if the volume of wastewater generated continues to increase without the construction of a WWTP or other long term remedy.
8. On May 7, 2007, the Regional Board received a ROWD or application for Waste Discharge Requirements (WDRs) for Malibu Lumber. On July 27, August 17, and September 27 of 2007, Regional Board staff provided written comments on the Final Environmental Impact Report for Malibu Lumber, noting that it did not assess the cumulative or critical effects from the project and other projects in the Civic Center area.
9. In January 2008, the Malibu City Council approved funding for a groundwater study. The Request for Proposal (RFP) was released in April 2008. Despite a meeting between Regional Board staff and the City and a March 3, 2008 letter from the Regional Board on deficiencies in the RFP concerning the absence of transient tests to assess short term critical effects, the RFP was limited to an expansion of a previous steady state model based on existing Malibu well coverage and future collection of data from those wells. The ongoing groundwater modeling study, as designed, cannot assess limitations arising from critical effects.

10. A conditional approval of the ROWD was sent on May 16, 2008, signaling the Regional Board's readiness to prepare the first new commercial WDR in the Civic Center area since the City of Malibu was incorporated. The letter specified the commitments and additional technical documentation to be provided by the City and Malibu Lumber, specifically (a) engineering design for an upgraded treatment system to provide disinfection at the highest level of Title 22 standards, (b) locations for monitoring wells to continuously measure elevation of the water table to ensure a minimum of five feet of separation is maintained from the base of the leach field to groundwater and specifying modifications to facility operations sufficient to postpone discharge if five feet of separation was not maintained, (c) design ensuring the leach field is constructed to maintain a water quality of 1 milligrams per liter (mg/L) for total nitrogen in the summer in the underlying groundwater, (d) use of the highest recorded groundwater levels and conservative percolation values in the final design of the leach field, and (e) documentation showing that the operation of Malibu Lumber would not preclude the operation of Legacy Park, adjacent properties and/or a WWTP. The documents provided by August 27, 2008, did not include these materials.
11. On September 12, 2008, the City affirmed its intent to issue a permit for Malibu Lumber under the MOU.
12. On September 19, 2008, the Regional Board issued a 30-day notice letter informing the City of their intent to terminate the MOU for the City of Malibu.
13. Despite the City's implementation of the MOU and Regional Board permitting activities since 2001, water quality impairments of local water bodies continue to be measured. A Notice of Violation was issued in 2007 to the City of Malibu and Los Angeles County for failure to meet the Santa Monica Bay bacteria TMDL dry weather limits.
14. Regional Board staff is concerned because existing Civic Center businesses, the Malibu Country Marts (MCMs) I, II, and III projects, appear to demonstrate that the area has reached its disposal capacity under some conditions. The MCMs have to pump and dispose of approximately 12% of their wastewater offsite in order to maintain their septic system. The Regional Board has issued Notices of Violation to all three MCMs for failure to comply with Time Schedule Orders. The City has not approved the construction of the advanced treatment systems required by the WDRs.
15. Regional Board staff believes that the assimilative capacity of the Civic Center area will be exceeded when the proposed projects begin operation, under certain conditions. Some existing Onsite Wastewater Treatment (OWTS) commercial systems in the Civic Center fail to adequately treat the entire volume of waste generated and do not maintain the minimum 5 feet of separation between the water table and the base of the leach field. Existing mounding studies completed as part of WDR applications demonstrate that additional technical analysis will better characterize, but not eliminate, evidence that discharge may not be assimilated into the groundwater during periods of 30 days to 6 months during wet weather conditions creating unacceptable separation between the water table and the surface. Groundwater discharge during these periods violates State

Board Resolution 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters of California." Continued residential permitting, and pending requests for waste discharge applications to the Regional Board are predicted to largely or completely utilize the remaining disposal capacity in the Civic Center area for uses other than a wastewater treatment systems.

### **Memorandum of Understanding**

16. The 2004 GWDR Order No. 04-008, grants waivers for residential, and some small commercial facilities in jurisdictions where an MOU exists with the Regional Board.
17. The City of Malibu MOU states that sections 13290 and 13291 of the California Water Code (CWC) "authorize the Regional Board to delegate implementation of these standards [state and regional water quality control plans] to a Qualified Local Agency (QLA)." Between 2007 and 2008, Regional Board staff clearly and repeatedly described the standards which the City should use in the oversight of Civic Center area projects.
18. Section IX of the MOU is titled "Enforcement" and states that "Either party may terminate this MOU without cause upon thirty days written notice to the other part. . . . The Regional Board shall make any determination to terminate the MOU at a publicly noticed hearing."
19. The City has failed to comply with State and Regional Board regulations and policies in the regulation of Civic Center area projects. At a minimum, the City did not impose and enforce Regional Board requirements for (a) public notice, (b) evaluation of impacts to adjacent properties, and (c) ensuring and maintaining a minimum of 5 feet of separation between the water table and the base of leach fields, despite Regional Board staff collaboration. Specifically, for sufficient public notice, the City should provide a minimum of 30 day public notice and notify neighbors within 500 feet of the discharge before modifying or permitting any residential facility. To evaluate impacts to adjacent properties and before permitting a commercial or residential facility, the City should require a hydrological evaluation demonstrating that the additional discharge will not elevate the groundwater beneath the leach fields of the adjacent properties to less than 5 feet under any conditions. Finally, a minimum of five feet of separation should be maintained at all times between the base of any leach or disposal field and the groundwater. Monitoring wells should be used or installed to document the performance of all septic systems.

**WHEREAS, the California Regional Water Quality Control Board, Los Angeles, finds that:**

1. Pursuant to the language of the MOU, the MOU may be terminated with the City of Malibu without cause.
2. The Regional Board has ultimate jurisdiction over all of the on-site wastewater treatment systems in the City of Malibu.

**THEREFORE, be it resolved that:**

1. The Regional Board directs staff to renegotiate the MOU with the City of Malibu to address process concerns and exclude commercial buildings from the new MOU. At a minimum, additional topics for renegotiation shall be: (a) public notice, (b) evaluation of impacts to adjacent properties, (c) maintaining and monitoring a minimum of 5 feet of separation and (d) meeting future TMDL water quality requirements. The renegotiated MOU shall be brought back to the Regional Board within twelve months of this date.
2. The Regional Board directs staff to develop a septic system prohibition consistent with Water Code section 13280 et seq. and to bring a proposal to the Regional Board within twelve months of this date for consideration and possible adoption.

I, Tracy J. Egoscue, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on November 20, 2008.

  
Tracy J. Egoscue  
Executive Officer