



California Regional Water Quality Control Board

Central Coast Region



Linda S. Adams
Secretary for
Environmental
Protection

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Arnold Schwarzenegger
Governor

May 18, 2007

CERTIFIED MAIL 7004 1350 0003 9897 8152

Charles Grace, General Manager
San Simeon CSD
111 Pico Avenue
San Simeon, CA 93452

Dear Mr. Grace:

PROPOSED MANDATORY MINIMUM PENALTY ORDER NO. R3-2006-0102, SAN SIMEON COMMUNITY SERVICES DISTRICT, SAN LUIS OBISPO COUNTY

Attached is proposed *Mandatory Minimum Penalty Order No. R3-2006-0102* (Order). Unless you waive your right to a hearing, we will present this Order to the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) at the Central Coast Water Board meeting on **July 6, 2007**, at the Watsonville City Council Chambers, 250 Main Street, Watsonville, California. The meeting is scheduled to begin at 8:30 a.m.; however, no specific time has been set for consideration of this item.

We carefully considered your February 27, 2007 letter, in which you identify and request that the proposed penalty amount be directed to nine compliance projects needed to solve existing problems at the wastewater treatment facility. These projects amount to approximately \$165,400. San Simeon is not a small community with financial hardship. Applying the penalties towards compliance projects is not appropriate because San Simeon does not have a low population density or meet any of the other impending criteria of California Water Code section 13385(k) that would allow the penalty to be directed to these compliance projects. Furthermore, the impending criteria of Water Code section 13385(k) will not apply to preexisting mandatory penalties.

The attached Order therefore proposes the maximum allowable amount, \$37,500, be directed to your proposed supplemental environmental project of tertiary treatment facilities construction. The Central Coast Water Board has approved this supplemental environmental project through adoption of two previous mandatory minimum penalty orders. These previous orders require tertiary treatment facilities construction to be completed by **September 25, 2007**. The proposed Order is consistent with these previous orders and also requires completion of tertiary treatment facilities construction by September 25, 2007, or the suspended penalty must be forfeited to State Water Resources Control Board.

We recently learned that you have not yet begun construction of tertiary treatment facilities. We strongly encourage you to begin construction as soon as possible to avoid forfeiting suspended penalties to State Water Resources Control Board. Please be advised that this and previous mandatory penalty orders state that the Executive Officer may only extend the September 25, 2007 deadline for reasons that are beyond your reasonable control.

Also, please provide written progress reports on the compliance projects identified in your February 27, 2007 letter along with your quarterly monitoring reports. If we do not see adequate

California Environmental Protection Act



Item No. 9 Attachment No. 3
September 7, 2007 Meeting
San Simeon CSD WWTP - MMP

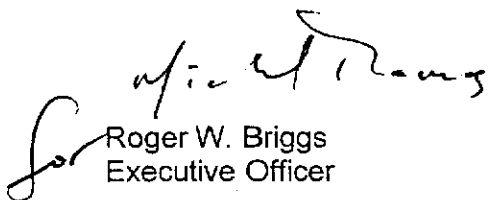
progress on these compliance projects, we may consider a cleanup and abatement order or other enforcement order to ensure these projects are completed soon.

If San Simeon Community Services District wishes to avoid a Board hearing, please sign and submit the Waiver of Hearing Form that we previously sent you as soon as possible, but no later than **May 30, 2007**. If you sign and submit the Waiver of Hearing form by May 30, 2007, we will ask that you stipulate to an agreement that memorializes due dates for making payments and completing the SEP. We will then consider the matter settled and there will be no Board hearing.

We have granted two requests for continuance of this matter and will not consider any further requests.

If you have questions, please contact **Matt Thompson at (805) 549-3159** or Harvey Packard at (805) 542-4639.

Sincerely,


Roger W. Briggs
Executive Officer

Attachment: Mandatory Minimum Penalty Order No. R3-2006-0102

cc:

All San Simeon CSD Interested Parties

Terry Lambeth, President
San Simeon CSD
P.O. Box 26
San Simeon, CA 93452

Rob Schultz
595 Harbor Street
Morro Bay, CA 93442

Tom O'Neill
ECO Resources
2230 E. Bidwell Street, Suite 200
Folsom, CA 95630

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

ORDER NO. R3-2006-0102

MANDATORY MINIMUM PENALTY
IN THE MATTER OF
SAN SIMEON COMMUNITY SERVICES DISTRICT
WASTEWATER TREATMENT PLANT
SAN LUIS OBISPO COUNTY

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

1. On May 31, 2002, the Central Coast Water Board, adopted *Waste Discharge Requirements Order No. R3-2002-0046, NPDES Permit No. CA0047961, for San Simeon Community Services District and Local Sewering Entity of Hearst San Simeon State Historical Monument, San Luis Obispo County* (Order No. R3-2002-0046).
2. California Water Code section 13385(h)(1) requires the Central Coast Water 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 by 20 percent or a Group I pollutant by 40 percent or more. Group I and II pollutants are specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations.
4. California Water Code Section 13385.1(c) states that for the purposes of section 13385.1(a)(1), section 13385(f)(2), (h), (i) and (j), "effluent limitation" means a numeric or numerically expressed narrative restriction on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants authorized to be discharged from a location that is specified in waste discharge requirements. An effluent limitation may be final or interim, and may be expressed as a prohibition. An effluent limitation, for those purposes, does not include a receiving water limitation, a compliance schedule, or a best management practice."
5. California Water Code section 13385(i) requires the Central Coast Water 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) Violates 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) Violates 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.
6. 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)."
7. Order No. R3-2002-0046 includes in part the following:

Effluent Limitation No. 2:

"Effluent shall not exceed the following limits:

Constituent	Units	30-Day Average	7-Day Average	Daily Maximum
Settleable Solids	mL/L	1.0	1.5	3.0

Effluent Limitation No. 4:

"Effluent shall not exceed the following limits:

Constituent	Units	6-Month Median	Daily Maximum	Instantaneous Maximum
Total Chlorine Residual	mg/L	0.23	0.93	6.96
Total Coliform Bacteria	MPN/100 mL	—	230	2400

8. Settleable Solids is a Group I Pollutant. Total Chlorine Residual is a Group II Pollutant. Discharges of 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 Bacteria is neither a Group I nor Group II Pollutant; therefore serious violations do not apply to Total Coliform Bacteria.
9. A chronic violation occurs when effluent contains a constituent concentration that is less than the serious threshold but greater than the permit limit.

10. According to monitoring reports submitted by the Discharger, the Discharger committed the following violations of effluent limitations of Order No. R3-2002-0046 in the period July 1, 2005, through August 31, 2006. The three violations listed prior to July 1, 2005, are included for the purpose of enumerating chronic violations subject to mandatory penalties:

No.	Violation Date	Constituent	Permitted Limit	Reported Value	Violation Type	CWQIS Viol. No.
--	5/13/05	Total Chlorine Residual	0.93 mg/L Daily Maximum	6.80 mg/L	Serious	--
--	6/7/05	Total Coliform	230 MPN/100 mL Daily Maximum	300 MPN/100 mL	Chronic	--
--	6/28/05	Settleable Solids	1.5 mL/L 7-Day Average	1.75 mL/L	Chronic	--
1	7/9/05	Total Coliform	230 MPN/100 mL Daily Maximum	900 MPN/100 mL	Chronic	359623
2	7/29/05	Total Coliform	230 MPN/100 mL Daily Maximum	500 MPN/100 mL	Chronic	359624
3	8/24/05	Total Coliform	230 MPN/100 mL Daily Maximum	>1600 MPN/100 mL	Chronic	359626
4	8/30/05	Total Chlorine Residual	0.93 mg/L Daily Maximum	2.2 mg/L	Serious	359625
5	9/2/05	Total Chlorine Residual	0.93 mg/L Daily Maximum	2.2 mg/L	Serious	359628
6	9/6/05	Total Chlorine Residual	0.93 mg/L Daily Maximum	1.5 mg/L	Serious	359629
7	9/7/05	Total Coliform	230 MPN/100 mL Daily Maximum	>1600 MPN/100 mL	Chronic	368525
8	9/30/05	Total Chlorine Residual	0.93 mg/L Daily Maximum	25 mg/L	Serious	359630
9	11/3/05	Total Coliform	230 MPN/100 mL Daily Maximum	300 MPN/100 mL	Chronic	368522
10	12/22/05	Total Coliform	230 MPN/100 mL Daily Maximum	240 MPN/100 mL	Chronic	363528
11	1/4/06	Total Coliform	230 MPN/100 mL Daily Maximum	240 MPN/100 mL	Chronic	364468
12	1/19/06	Total Coliform	230 MPN/100 mL Daily Maximum	500 MPN/100 mL	Chronic	364604
13	2/9/06	Total Coliform	230 MPN/100 mL Daily Maximum	500 MPN/100 mL	Chronic	365744
14	4/11/06	Total Coliform	230 MPN/100 mL Daily Maximum	900 MPN/100 mL	Chronic	408845
15	5/3/06	Total Coliform	230 MPN/100 mL Daily Maximum	300 MPN/100 mL	Chronic	421175
16	5/8/06	Total Coliform	230 MPN/100 mL Daily Maximum	1600 MPN/100 mL	Chronic	421176
17	5/19/06	Total Coliform	230 MPN/100 mL Daily Maximum	350 MPN/100 mL	Chronic	421177
18	5/24/06	Total Chlorine Residual	0.93 mg/L Daily Maximum	7.10 mg/L	Serious	421173
19	6/20/06	Total Chlorine Residual	0.93 mg/L Daily Maximum	52.0 mg/L	Serious	427286
20	8/7/06	Total Coliform	230 MPN/100 mL Daily Maximum	240 MPN/100 mL	Chronic	--

11. According to Finding No. 10, the Discharger committed six serious violations in the period July 1, 2005, through August 31, 2006. The amount of the mandatory penalty for the serious violations (6 x \$3,000) is eighteen thousand dollars (\$18,000).

12. According to Finding No. 10, the Discharger committed fourteen chronic violations in the period July 1, 2005, through August 31, 2006. California Water Code section 13385(i) requires the Central Coast Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation, not counting the first three, occurring in a consecutive six-month period. In this case, at least three effluent violations occurred in the six months prior to the first violation listed in Finding No. 10, therefore none of these chronic violations are exempt from

- mandatory penalty. The mandatory penalty for the above chronic violations (14 x \$3,000) is forty-two thousand dollars (\$42,000).
13. The total amount of the mandatory penalty for violations occurring in the period July 1, 2005, through August 31, 2006 (\$18,000 + \$42,000) is sixty thousand dollars (\$60,000).
 14. The Executive Officer of the Central Coast Water Board issued Mandatory Penalty Complaint No. R3-2006-0102 to the Discharger on October 13, 2006, pursuant to California Water Code Section 13385. The Complaint proposed imposing a mandatory penalty in the amount of sixty thousand dollars (\$60,000).
 15. According to California Water Code section 13385(l), the portion of the mandatory penalty amount that may be directed to a supplemental environmental project (SEP) may not exceed thirty seven thousand five hundred dollars (\$37,500).
 16. In a letter dated February 27, 2007, the Discharger requested that \$37,500 of the mandatory penalties be directed towards a compliance project. The Discharger is not a small community with financial hardship and does not have low population density, therefore does not meet the criteria in California Water Code section 13385(k) to direct the penalty to a compliance project. In this alternative, the Discharger has requested the penalty be directed to an SEP to install tertiary treatment facilities to produce recycled water and eliminate portion of their discharge to the Pacific Ocean. Installation of tertiary treatment facilities will cost at least \$200,000. The Central Coast Water Board has previously approved directing \$99,000 to this SEP, through adoption of Mandatory Penalty Order No. R3-2005-0032 on March 24, 2005, and Stipulated Mandatory Penalty Order No. R3-2005-0120 on December 2, 2005. Those orders require completion of the SEP by September 25, 2007.
 17. This project qualifies as an SEP in accordance with the State Water Resources Control Board's *Water Quality Enforcement Policy*, Resolution No. 2002-0040. The SEP goes above and beyond the obligations of the Discharger (the Discharger is obligated by Order No. R3-2002-0046 to produce secondary-treated and disinfected wastewater, not tertiary-treated wastewater) and is not an action required of the Discharger by any rule or regulation of any entity. The SEP will benefit water quality. The SEP will not directly benefit Central Coast Water Board functions or staff.
 18. 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. Central Coast Water Board staff spent approximately 35 hours responding to these violations and preparing this Order. Accordingly, expended Central Coast Water Board staff costs are \$2,625.

IT IS HEREBY ORDERED, pursuant to California Water Code Section 13385, that San Simeon Community Services District is assessed a Mandatory Penalty in the amount of sixty thousand dollars (\$60,000).

San Simeon Community Services District shall submit written proof of payment to its Tertiary Treatment Facilities Construction Account in the amount of thirty seven thousand, five hundred dollars (\$37,500) to the *Regional Water Quality Control Board, Attn: Matt Thompson, 895 Aerovista Place, Suite 101, San Luis Obispo, California, 93401*, by **August 6, 2007, 5:00 P.M.** The Tertiary Treatment Facilities Construction Account shall be utilized solely for construction of tertiary treatment facilities, not planning, design, or permitting. Written proof may consist of an approved Administrative Officer's report and Budget Amendment Request, or equivalent, to transfer funds to the Tertiary Treatment Facilities Construction Account. If proof of payment to the Tertiary Treatment Facilities Construction Account is not submitted by August 6, 2007, 5:00 P.M., the suspended liability shall be immediately due and payable to the State Water Resources Control Board.

San Simeon Community Services District shall complete construction of tertiary treatment facilities as soon as possible, but no later than **September 25, 2007**. San Simeon Community Services District shall submit written certification of completion of the tertiary treatment facilities construction and a post-project accounting of expenditures related to the project **no later than 30 days after completion of the project, but no later than October 25, 2007**. If this project completion report is not submitted by **October 25, 2007, 5:00 P.M.**, the entire suspended liability plus interest shall be immediately due and payable to the State Water Resources Control Board. If the final total cost of the project is less than \$136,500, San Simeon Community Services District shall remit the difference to State Water Resources Control Board **no later than 30 days after completion of the project**. Upon request of the Discharger, the Executive Officer may extend any of these due dates if the Executive Officer determines that the delays are beyond the Discharger's reasonable control.

San Simeon Community Services District shall submit semiannual reports on the progress of tertiary treatment facilities construction to the Executive Officer by January 31st and July 31st of each year. The Progress Reports shall denote the current balance of the Tertiary Treatment Facilities Construction Account. Progress reports may be submitted with regular monthly monitoring reports.

San Simeon Community Services District shall also submit a check payable to State Water Resources Control Board in the amount of twenty two thousand, five hundred dollars (\$22,500) to *SWRCB Accounting, Attn: Enforcement, P.O. Box 100, Sacramento, California 95812-0100* by **August 6, 2007, 5:00 P.M.** A copy of the check shall also be submitted to *Regional Water Quality Control Board, Attn: Matt Thompson, 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401* by **August 6, 2007, 5:00 P.M.**

Any person affected by this action of the Central Coast Water 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 August 6, 2007. 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 July 6, 2007.

Executive Officer