

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 AEROVISTA PLACE, SUITE 101
SAN LUIS OBISPO, CALIFORNIA**

RESOLUTION NO. R3-2004-0174

Waiver of Waste Discharge Requirements

For

**COMMERCIAL ON-SITE SEWAGE DISPOSAL SYSTEM
PREMIER CINEMAS, 851 McCRAY STREET
HOLLISTER
(APN 20-02-13)
San Benito County**

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

1. California Water Code Section 13260(a) requires that any person discharging waste, or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate Regional Board a report of the discharge (“report of waste discharge” or “ROWD”) or other report containing such information and data as may be required by the Regional Board.
2. The Regional Board prescribes waste discharge requirements except where the Regional Board finds that a waiver of waste discharge requirements for a specific type of discharge is consistent with applicable water quality control plans and is in the public interest pursuant to California Water Code Section 13269.
3. California Water Code Section 13269 provides that all waivers of waste discharge requirements must be conditional, may not exceed five years in duration, and may be terminated at any time by the Regional Board.
4. The subject site consists of a 4.8-acre mixed commercial and industrial property that is currently an unincorporated island of San Benito County located within the City of Hollister at 851 McCray Street. The property is currently not within the City’s sewer services district and requires an on-site wastewater disposal system until such time as a connection to the City of Hollister sewer collection system is available and required. The property is slated for future annexation to the City of Hollister at which time a sewer connection will be required.
5. The project applicant, Premier Cinemas Inc./Mr. Ted Intravia (hereafter Discharger), applied for a permit with the San Benito County Division of Environmental Health (SBCDEH) to install an on-site sanitary wastewater disposal system (septic tank with leachfield soil absorption disposal system) for a 10-screen cinema complex on the commercial portion of the site.
6. In accordance with the Basin Plan, individual commercial sanitary wastewater systems with flows of 2,500 gpd or greater may be subject to individual waste discharge requirements. Evaluation of historic water usage rates for the existing theater complex results in projected daily wastewater flows of approximately 2,033 gallons per day (gpd). An empirical evaluation of projected wastewater flows requested by SBCDEH using gallons per seat per day estimates published in the Manual of Septic Tank Practices published by US Public Health Services resulted in estimated flows of approximately 6,500 gpd.

7. On June 16, 2004, the SBCDEH forwarded the proposed design to the Regional Board and requested a determination regarding the conflicting flow estimates and Basin Plan language stating that sanitary wastewater systems for commercial facilities with flows of 2,500 gpd or greater may require individual waste discharge requirements.
8. The proposed septic and leachfield disposal system design complies with the Central Coast Region Water Quality Control Plan (Basin Plan) and was designed for the empirical loading rate of 6,500 gpd.
9. The proposed system has been designed for connection to the City of Hollister wastewater collection system once the property is annexed and the City's sewer connection moratorium is lifted. The eventual connection of the theater to the City's collection system is required by the conditions of this waiver and SBCDEH permit conditions.
10. The proposed on-site disposal system and eventual connection to the City of Hollister was addressed in the September 28, 2004, San Benito County Notice of Proposed Negative Declaration for rezoning and development of the site property to allow expansion of the theater complex. The City of Hollister prepared and adopted a mitigated negative declaration and monitoring program for the pre-zoning and annexation of the property in 2002.
11. The Regional Board has considered the design information provided in the SBCDEH submittal and has required the Discharger, as a condition of this waiver, to comply with all permit requirements of the SBCDEH.
12. Relevant factors in determining whether a waiver is in the public interest include the following:
 - a) Whether the discharge is already regulated by another governmental entity;
 - b) Whether the discharger will observe reasonable practices to minimize the deleterious effects of the discharge;
 - c) Whether a feasible treatment method exists to control the pollutants in the discharge; and
 - d) Whether conditionally waiving ROWDs and/or waste discharge requirements will adequately protect beneficial uses while allowing the Regional Board to utilize more of its resources to conduct field oversight, public outreach and, where necessary, enforcement.
13. The disposal system is regulated by the SBCDEH, which requires the Discharger to implement operational controls, maintenance activities, and regular monitoring and reporting to prevent water quality impacts as a result of system overloading, power failure, and system failure.
14. The conditions of this waiver protect beneficial uses by:
 - a) Prohibiting pollution, contamination or nuisance;
 - b) Requiring monitoring and compliance with applicable water quality control plans and SBCDEH permit requirements; and
 - c) Requiring the Discharger to grant access to Regional Board staff to perform inspections.
15. If the proposed disposal system is properly operated and maintained in accordance with SBCDEH permit conditions and the conditions of this Resolution, a waiver of waste discharge requirements is in the public interest and is consistent with applicable water quality control plans, including the Water Quality Control Plan, Central Coast Region.
16. Pursuant to CWC Section 13269, this action waiving the issuance of waste discharge requirements for this on-site septic disposal system: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Regional Board from administering

enforcement remedies (including civil liability) pursuant to the CWC.

17. Operation of the system consistent with this Resolution will not degrade groundwater and is consistent with State Water Resources Control Board Resolution 68-16. Resolution 68-16 provides if there is degradation of water quality it must not “unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed [by the water quality control] policies.” In short, the degradation may not violate water quality objectives or in the absence of objectives, must not unreasonably affect existing and designated beneficial uses. Also, if there is degradation the Board must determine that it has been demonstrated the change “will be consistent with the maximum benefit to the people of the State.”
18. The monitoring and reporting requirements of this Resolution are imposed pursuant to CWC Section 13267. The monitoring and reporting are necessary to ensure compliance with the conditions of this Resolution and to verify the adequacy and effectiveness of the conditions.
19. The Executive Officer notified the Discharger of the proposed waiver on November 9, 2004.
20. The Regional Board conducted a public hearing on December 3, 2004, in San Luis Obispo, California, and considered all evidence concerning this matter.

THEREFORE BE IT RESOLVED:

1. In accordance with CWC Sections 13267 and 13269, waste discharge requirements for the proposed on-site commercial sewage disposal system are hereby waived subject to the following conditions:
 - a) The commercial sewage disposal system shall be installed under the oversight of SBCDEH and be operated and maintained in accordance with SBCDEH permit conditions.
 - b) An effluent filter shall be installed on the septic tank outlet and be maintained accordingly.
 - c) SBCDEH will inspect and monitor the system at least once per year during the wet season. The Executive Officer shall terminate this waiver if SBCDEH does not regularly inspect and monitor the system.
 - d) Per SBCDEH permit conditions, the Discharger shall submit an annual monitoring report addressing the use of the system to the Regional Water Quality Control Board and the SBCDEH. The first annual report shall be submitted by December 31st following installation of the mound system and annually thereafter. The report shall contain, at a minimum, the following items:
 - i) The septic tank and effluent filter shall be inspected and information recorded every six months (June and December) for the life of the sewage disposal system. Information collected shall include, but is not limited to, the condition of the tank and effluent filter, the water level in the tank, scum layer/sludge thickness, and the distance of these two layers from the bottom of the outlet. The semiannual inspections shall be performed, and the reports prepared, by a C-42 licensed contractor or other professional technician experienced in the operation and maintenance of on-site disposal systems.
 - ii) The disposal area shall be inspected monthly during the first year of operation and an inspection log shall be maintained and shall be kept onsite
 - iii) The commercial sewage disposal system shall be inspected every year for solids buildup and be pumped as required by a licensed septic tank contractor.
 - e) Peak daily flow shall not exceed 6,500 gallons per day.
 - f) Detailed “as built” drawings shall be provided to the SBCDEH upon installation of the system.

- g) A copy of a signed maintenance and repair agreement shall be submitted to SBCDEH before discharge to the sewage disposal system is initiated.
 - h) Use of the commercial sewage disposal system shall not create a condition of pollution, contamination, or condition of nuisance, as defined by CWC Section 13050.
 - i) Only domestic wastewater and janitorial wash water containing biodegradable soaps from the theater complex shall be discharged to the sewage disposal system.
 - j) The Regional Board and SBCDEH shall be immediately notified of any proposed change(s) in discharge volume, nature, or location.
 - k) The Regional Board and SBCDEH shall be immediately notified of any discharges threatening water quality or public health.
 - l) The Regional Board may inspect the septic tank/leachfield system at any time to evaluate compliance with this Region's Basin Plan.
 - m) At which time the City of Hollister sewer connection ban is lifted and the property is annexed by the City, the Premier Cinemas sewer shall be connected to the City's collection system and the septic tank and leachfield shall be abandoned in accordance with SBCDEH and other local agency requirements. The Discharger shall notify the Regional Board and SBCDEH in writing within 30 days of the sewage disposal system abandonment.
2. This Waiver shall not create a vested right and all such discharges shall be considered a privilege, as provided for in CWC Section 13263.
 3. The Executive Officer or Regional Board may terminate the applicability of the Waiver described herein at any time if the Discharger violates the conditions of this waiver, if such termination is in the public interest, or if the mounded septic disposal system could adversely affect the quality or beneficial uses of the waters of the State.
 4. This Waiver shall become effective on **December 3, 2004**, and shall expire on **December 3, 2009**.
 5. As provided by CWC Section 13350(a), any person may be civilly liable if that person is in violation of a waiver condition or waste discharge requirements, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the State and creates a condition of pollution or nuisance.
 6. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Board within 30 days of the date of this Resolution. 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 a Resolution adopted by the California Regional Water Quality Control Board, Central Coast Region, on December 3, 2004.

Roger W. Briggs, Executive Officer