

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF FEBRUARY 6, 2004

ITEM: 18

SUBJECT: ASSESSMENT OF MANDATORY PENALTY FOR CITY OF PISMO BEACH WASTEWATER FACILITY, SAN LUIS OBISPO COUNTY—ORDER NO. R3-2004-008

KEY INFORMATION:

Location: 550 Frady Lane, Pismo Beach
Type of Waste: Municipal
Design Capacity: 1.5 million gallons per day (MGD)
Present Volume: 1.3 MGD
Treatment: Secondary
Disposal: Pacific Ocean in coastal waters near Pismo Beach.
Existing Order: Waste Discharge Requirements Order No. 99-31

SUMMARY

The City of Pismo Beach (City) operates a wastewater treatment plant (WWTP), which serves a population of approximately 10,000 residents and highly variable transient population due to seasonal tourism.

Proposed Order No. R3-2004-008 imposes a mandatory minimum penalty of \$735,000. The City of Pismo Beach has requested that the maximum amount legally allowed (\$375,000), be directed toward a supplemental environmental project (SEP). Regional Board staff worked closely with the City's staff to develop a reasonable and effective project. The proposed project for the City is to install five permanent restroom facilities in place of existing portable restrooms. The new facilities would reduce local threats to water quality by providing a closed, permanently connected waste collection system in sensitive beach and creek-front areas.

DISCUSSION

The WWTP was originally constructed in 1955, with additions and modifications taking place in 1973 and 1984. The plant is increasingly

demonstrating its inability to reliably treat the City's variable wastewater flows. The estimated dry weather capacity of the WWTP is 1.5 million gallons per day (MGD) and the present dry weather flow is approximately 1.3 MGD. Final effluent is combined with effluent from South San Luis Obispo Sanitation District's (6 miles to the south) and is discharged to the ocean by way of an outfall. The outfall is offshore of Pismo State Beach, approximately two miles south of the Pismo Pier. The point of disposal is approximately 0.84 miles from shore in 55 feet of water.

The discharge from the City is regulated by NPDES Permit No. CA 0048151, Waste Discharge Requirements Order No. 99-31 that were adopted by the California Regional Water Quality Control Board, Central Coast Region (Regional Board), on July 9, 1999.

At the City's request, staff has twice delayed presenting the mandatory minimum penalties to the Regional Board to avoid potentially conflicting legislation. The first delay was in December of 2002, to consider the impacts of

changes in the law (California Water Code section 13385) requiring minimum mandatory penalties. These changes allowed the Regional Board to direct a larger portion of the penalties back to a Board approved supplemental environmental project.

In February, 2003, Assembly Bill 760 (Maldonado) was introduced at the City's request and would have allow the Regional Board to approve the entire penalty into the already planned treatment plant upgrades. This bill was placed in suspension on May 15, 2003. Reconsideration of the legislation is uncertain.

In a letter dated November 17, 2003, the City requested another six-month delay of these mandatory minimum penalties in order to continue exploring their legislative options. The City feels upgrading their treatment facility will fully address this threat to water quality and that all resources (including these penalties) should be directed to that end. In a letter dated December 2, 2003, Regional Board staff responded six months was considered by staff to be unnecessary since it would only allow time enough to restart the legislative process on this bill. Even if this legislation passes, it will not take effect until at least January 1, 2005. Since this action has already been delayed over a year to accommodate the requests of the City, staff does not concur with the City's request to delay this action further.

COMPLIANCE HISTORY AND STATUS

On December 8, 1998, the Executive Officer issued Cleanup or Abatement Order No. 98-83, directing the City to correct various deficiencies in their wastewater collection system.

In July 2000, the Regional Board adopted Order No. 00-059 for mandatory minimum penalties of \$12,000 against the City for effluent violations occurred at its wastewater treatment facility. In December 2001, the

Effluent Limitations B.1.

Constituent	Units	Weekly (7-Day) Average	Monthly (30-Day) Average	Maximum
BOD, 5-day	mg/l	45	30	90
Total Suspended Solids	mg/l	45	30	90
Settleable Solids	mg/l	1.0	1.5	3.0
Fecal Coliform	MPN/100 ml	(7-day median)	200	

Regional Board adopted Order No. 01-117 for mandatory minimum penalties of \$120,000 against the City, again for effluent violations occurred at its wastewater treatment facility.

A large number of the violations since 2000 have been attributed to an overabundance of filamentous bacteria that interfere with the clarification process. Human error and high loading rates have also led to upset conditions in that time period. Staff believes that the City has taken appropriate disciplinary action (education of core staff and termination when necessary) to address operational mistakes. The City has also committed \$10 million for a new WWTP, which should eliminate the current capacity concerns.

Current Status

Since May of 2002, the treatment plant has shown significant improvement in effluent quality and consistency. Treatment plant staff began employing new operating techniques in their aeration units, which have effectively controlled the problematic bacteria that caused a majority of the plant upsets.

Since 1999, the City has been gradually moving toward the replacement of this wastewater treatment plant due to its condition and recent operating record. Groundbreaking should occur within the first quarter of this year and the new facility should be in operation by mid-year 2005. The new treatment system is expected to be more effective and robust, have a larger capacity (1.9 MGD), and be far more reliable than the existing plant. The new plant is designed to better handle the daily and seasonal wastewater flows than the current City wastewater treatment facility.

VIOLATIONS

Waste Discharge Requirements Order No. 99-31 includes in part the following:

Effluent containing a BOD or Suspended Solids 30-Day average concentration of 42 mg/l (average limit + 40%) or more, or a 7-Day Average concentration of 63 mg/l (average limit + 40%) or more, or a single sample containing 126 mg/l (maximum limit + 40%) or more, are serious violations.

Effluent containing BOD or Suspended Solids concentrations that are less than the serious threshold but greater than the permit limits, are chronic violations when they occur four or more times in a consecutive six-month period.

Effluent containing fecal coliform values that exceed a 7-day median of 200 MPN/100 ml four or more times in a consecutive six-month period are chronic violations.

The City submitted monitoring reports that revealed between July 1, 2001 and July 31, 2003, effluent limitations, as listed in the NPDES permit, were exceeded on two hundred and forty five (245) occasions for which the law mandates that minimum penalties be assessed.

Due to the extensive list of violations, this staff report will only summarize and reference the complete list contained in proposed Order No. R3-2004-008 (Attachment 3). One hundred and thirty-five of the violations are defined as chronic and the remaining one hundred and fifteen are considered serious. One hundred and forty four (59%) of the violations were related to biochemical oxygen demand. Forty-one (14%) of the violations were due to settleable solids violations. Forty-three (18%) were related to suspended solids limits. And seventeen (7%) of the violations were of the effluent fecal coliform limit.

As a result of the referenced violations and as mandated by the CWC, the Executive Officer issued Mandatory Penalty Complaint No. R3-2003-050 (Complaint) to the City on October 3, 2003 (Attachment 2). The complaint proposes a mandatory minimum penalty of \$330,000 for the one hundred and ten (110) serious violations, and \$405,000 for the one hundred and thirty five (135) chronic violations, for a total of seven hundred and thirty five thousand dollars (\$735,000).

SUPPLEMENTAL ENVIRONMENTAL PROJECT

California Water Code Section 13385(l) allows the Discharger to direct a portion of the penalty amount to be expended on a supplemental environmental project (SEP). If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be expended on an SEP may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000). Therefore, the Discharger may direct up to three hundred and seventy five thousand dollars (\$375,000) toward a SEP.

On December 31, 2003, the City submitted a supplemental environmental project (SEP) proposal to defer the maximum allowable amount of the mandatory penalty to install five permanent restroom facilities in place of portable restrooms along waterfront locations throughout the City. The proposed beach or creek side locations are Addie street parking lot, the end of Stimson at Stimson Plaza, the parking Lot at Hinds and Dolliver, Main Street Parking Lot at Main and Dolliver and end of Wadsworth on Cypress. The permanent facilities would reduce threats to water quality by providing a closed permanently connected collection system, resulting in fewer sewage spills or accidental discharges of raw sewage (Attachment 3).

Of the variety of potential projects discussed, this proposal for permanent restroom facilities was considered by both Regional Board and City staff to be the most beneficial and consequential choice for the city.

The other viable SEP alternatives considered included 1) directly addressing elevated bacterial levels in the ocean around the Pismo pier recently discovered through County Health Department testing; 2) waterfront land acquisition and preservation; and 3) investigation and cleanup on Pismo Creek to reduce summer algae blooms and associated odor problems. For the money, the permanent restroom project is the only one that is certain to actually reduce tangible impacts to water quality. Staff is awaiting more specific information from the City on its SEP proposal regarding budget, construction schedule, and a location map. This information is needed before staff can fully endorse The City's SEP proposal.

RESPONSE AND COMMENTS

City of Pismo Beach
Dennis Delzeit

The City reviewed the original complaint and noted the following violations were incorrectly included in the complaint:

No.	Date	Constituent	WQCB Value	Actual Value	Permitted Limit	Violation Type
4	July 12, 2001	BOD Avg. 7-Days	51 mg/L	44 mg/L	45 mg/L	Serious
96	August 31, 2001	Settleable Solids 30-Days	34 mg/L	0.4 mg/L	1.0 mg/L	Serious
107	May 5, 2002	Settleable Solids Avg. 7-Days	4.5 mg/L	0.94 mg/L	1.0 mg/L	Serious
110	May 9, 2002	Effluent Suspended Solids one day	140 mg/L	15 mg/L	90 mg/L	Serious
152	August 7, 2002	Effluent Settleable Solids 7-Day	1.94 mL/L	Duplicate Ent Of Line No.	1.5 mL/L	Serious

Staff Response

In response to this comment staff reviewed the Complaint and the Monitoring reports for the dates in question and confirmed that these entries were in error. The Order has now been modified and no longer includes the above entries. This change reduced the mandatory penalty from \$750,000 to \$375,000. This also changes the amount available to the City to perform a SEP project to \$375,000.

Lorie Okun
State Water Resources Control Board
(SWCRB),
Office of Chief Counsel

The Chief counsel provided comments and editing, which did not alter the content of the document.

Staff Response

Minor changes were made to correct syntax and editing.

RECOMMENDATION

Staff recommends adopting Order No. R3-2004-008, to assess the City of Pismo Beach a Mandatory Minimum Penalty in the amount of seven hundred and thirty five thousand dollars (\$735,000) without further delay. Staff also recommends that \$375,000 of this penalty (the maximum allowable) be directed toward the City's proposed supplemental environmental project of replacing portable restrooms with permanent facilities With the caveat that the City provide a detailed description, timeline, and budget for this project. Staff will provide this information to the Board in a supplemental sheet prior to the hearing.

ATTACHMENTS

1. Administrative Civil Liability Order No. R3-2004-008
2. Administrative Civil Complaint No. R3-2003-050
3. December 31, 2003 SEP Proposal from City of Pismo Beach

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