



California Regional Water Quality Control Board

Central Coast Region



Alan C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb3>
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401
Phone (805) 549-3147 • FAX (805) 543-0397

Arnold Schwarzenegger
Governor

September 19, 2005

By Certified Mail

John Moss
City of San Luis Obispo Utilities Department
879 Morro Street
San Luis Obispo, CA 93401

Dear Mr. Moss:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2005-0130, CITY OF SAN LUIS OBISPO, SAN LUIS OBISPO COUNTY


Enclosed please find Administrative Civil Liability Complaint No. R3-2005-0130. I am proposing to the Regional Water Quality Control Board that the City of San Luis Obispo be assessed civil liability in the amount of twenty thousand dollars (\$20,000) for the 40,000-gallon sewage spill that occurred August 2, 2005.

Unless the City of San Luis Obispo waives its right to a hearing and pays the proposed civil liability by **October 12, 2005**, a public hearing on this matter will be held before the Regional Board on **December 2, 2005**, at the above address. We will mail you an agenda separately, no less than ten days before the public hearing.

The State Water Resources Control Board's *Water Quality Enforcement Policy* allows up to the entire penalty amount to be expended on a supplemental environmental project (SEP). You may submit a proposal for one or more SEPs. If you do choose to submit a proposal, please submit it for consideration no later than **October 12, 2005**. The *Water Quality Enforcement Policy* specifies the criteria a SEP must meet to qualify for funding at www.swrcb.ca.gov/plnspols/wqep.doc. You may find a number of SEPs listed, as well as other useful information, on our website at: www.swrcb.ca.gov/rwqcb3/sep/index.htm. If staff agrees with your SEP proposal(s), we will submit a final order incorporating the proposal(s) for Board adoption on December 2, 2005.

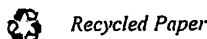
Please review the Complaint carefully and submit your comments and/or your *Waiver of Hearing* form and copy of payment, or an SEP proposal by **October 12, 2005**. If you have any questions, you may contact **Matt Thompson** at (805) 549-3159, or **Harvey Packard** at (805) 542-4639.

Sincerely,


for Roger W. Briggs
Executive Officer

Enclosure: Administrative Civil Liability Complaint No. R3-2005-0130

California Environmental Protection Agency



Item No. 18 Attachment No. 2
December 1-2, 2005 Meeting
City of San Luis Obispo

cc:

Rich Lichtenfels
County Environmental Health Dept.
P.O. Box 1489
San Luis Obispo, CA 93406

Lori Okun
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

David Sneed
San Luis Obispo County Tribune
3825 South Higuera St.
San Luis Obispo, CA 93406

S:\NPDES\NPDES Facilities\San Luis Obispo Co\San Luis
Obispo\ACL Order No. R3-2005-0130\Complaint\Complaint
Transmittal Letter .doc



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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2005-0130

IN THE MATTER OF:

**CITY OF SAN LUIS OBISPO
San Luis Obispo County**

THE CITY OF SAN LUIS OBISPO IS HEREBY GIVEN NOTICE THAT:

The City of San Luis Obispo (hereafter "Discharger") is alleged to have violated provisions of California State law and an Order of the Regional Water Quality Control Board, Central Coast Region (hereafter "Central Coast Water Board"), for which the Central Coast Water Board may impose civil liability pursuant to California Water Code Section 13385.

Unless the Discharger waives its right to a hearing and pays the recommended civil liability, a public hearing on this matter will be held before the Central Coast Water Board on December 2, 2005, at the Central Coast Water Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. The Discharger and its authorized representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Central Coast Water Board.

An agenda will be mailed to the Discharger separately, not less than ten days before the public hearing date. At the public hearing, the Central Coast Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the State Attorney General for recovery of judicial civil liability.

ALLEGATIONS

1. The Discharger operates wastewater collection, treatment, and disposal facilities that are subject to *Waste Discharge Requirements Order No. R3-2002-0043, NPDES Permit No. CA0049224, for City of San Luis Obispo Water Reclamation Facility, San Luis Obispo County* (hereinafter "Order No. R3-2002-0043"), adopted by the Central Coast Water Board on May 31, 2002, and modified on March 25, 2005.
2. Order No. R3-2002-0043, Provision No. I.3 requires the Discharger to comply with *Standard Provisions and Reporting Requirements for National Pollutant Discharge Elimination System Permits* (Standard Provisions). The Standard Provisions include the following:

"A. GENERAL PERMIT CONDITIONS

4. "Bypass" and "overflow" of untreated and partially treated waste is prohibited.
8. Collection, treatment, and discharge of waste shall not create a nuisance or pollution, as defined by Section 13050 of the California Water Code."

The Standard Provisions define "overflow" as "the intentional or unintentional diversion of flow from the collection and transport systems, including pumping facilities."

3. On August 2, 2005, a failed wastewater pumping station and alarming system caused approximately 40,000 gallons of raw sewage to overflow into San Luis Obispo Creek. The Discharger thereby violated Order No. R3-2002-0043, Standard Provisions Nos. A.4 and A.8.

MAXIMUM CIVIL LIABILITY

Water Code Section 13385(c) authorizes the Central Coast Water Board to administratively impose civil liability in an amount not to exceed the sum of \$10,000 per day for each day a violation occurs and \$10 per gallon for each gallon in excess of 1,000 that is not susceptible to cleanup or is not cleaned up. Therefore, the maximum civil liability that may be imposed by the Central Coast Water Board in this case is \$400,000.

MINIMUM CIVIL LIABILITY

Water Code Section 13385(e) provides that, at a minimum, civil liability shall be assessed at a level that recovers the economic benefit or savings, if any, derived from the acts that constitute the violations. As discussed below, the Discharger did not derive any economic benefit or savings from these violations.

FACTORS TO CONSIDER IN ASSESSMENT OF CIVIL LIABILITY

Pursuant to Water Code Section 13385(e), in determining the amount of liability, the Water Board shall:

...take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

These factors are considered as follows:

a. The Nature, Circumstances, Extent, and Gravity of the Violations

In the early morning hours of August 2, 2005, the Discharger experienced a 40,000-gallon sewage spill into San Luis Obispo Creek. The spill was caused by failure of the Discharger's Laguna Lift Station, located just south of its Water Reclamation Facility (WRF). The Laguna Lift Station is equipped with redundant pumps and a computerized remote alarming system, but all pumps stopped and the alarming system failed due to a reported computer programming error.

The chlorine contact chamber at the WRF is equipped with a skimming system that drains into a 6" diameter line leading to the Laguna Lift Station. When the Laguna Lift Station filled up, it backed up into this drain line and into the chlorine contact chamber. This mixture of sewage and treated wastewater then flowed into the WRF outfall directly to San Luis Obispo Creek, which flows approximately 7.5 miles before reaching the Pacific Ocean at Avila Beach.

At around 6:00 a.m., a WRF operator discovered sewage in the chlorine contact chamber and quickly eliminated the discharge to San Luis Obispo Creek by diverting the flow into ponds that were formerly a part of the treatment process. The operator increased chlorine dosage in the contact chamber in an attempt to disinfect the sewage. The operator also contacted those who are responsible for the wastewater collection system, who then restarted the pumps in the Laguna Lift station at around 7:00 a.m. Had the WRF operator not quickly taken these actions, the volume of sewage that reached San Luis Obispo Creek would likely have been much greater than 40,000 gallons.

The Discharger contacted Central Coast Water Board staff to report the spill at around 9:00 a.m. Central Coast Water Board staff requested the Discharger report the spill directly to San Luis Obispo County

Environmental Health Department. The Discharger did, and requested that Environmental Health post warning signs in Avila Beach, a popular water contact recreation area. Environmental Health posted warning signs on Avila Beach. Environmental Health also sampled Avila Beach water quality that morning at 9:30 a.m., around the time when the sewage would have impacted the beach. Environmental Health also took follow-up samples later that day at 2:30 p.m. As shown in the following table, the sample results met water contact recreation standards. Environmental Health removed the warning signs from Avila Beach the next morning, on August 3, 2005.

Sample Date , Time	Parameter, Water Contact Recreation Standard		
	Total Coliform, 10,000 MPN/100 mL	E.Coli/Fecal Coliform, 400 MPN/100mL	Enterococcus, 104 MPN/100mL
Aug. 2, 2005, 9:30 a.m.	393	20	42
Aug. 2, 2005, 2:30 p.m.	63	10	NA

The root cause of this spill was an apparent computer programming error in the lift station alarm system. Certain lift station conditions such as failed pumps or high water are reported to a central computer in the Discharger’s Collections Department shop. The alarm in the computer then triggers an auto-dialer that notifies an operator by pager to respond to the problem. This system has a limited number of data ports, so that new alarms reported to the computer do not trigger the auto-dialer until an operator clears the previous alarm from the computer.

On August 1, 2005, Collections Department operators replaced the No. 3 pump in the Laguna Lift Station. The Nos. 1 and 2 pumps were manually shut down to test pump No. 3, which sent a series of alarms to the computer system. An operator cleared the alarms from the auto dialer system, but not all the alarms were properly cleared from the computer system. When operators left the Laguna Lift Station on August 1, 2005, pumps No. 1 and No. 2 were restarted and operational. According to the Dischargers written report, operators “checked the computer for any problems before leaving for the night. The computer screen did not show any alarms however in the background alarms had been received.” According to the Dischargers report, “this prevented any further alarms from Laguna Lift Station from being sent to the auto-dialer for notification of the stand-by person.” The pumps in the Laguna Lift Station stopped for an unknown reason sometime after operators left the lift station, but the lift station alarms did not reach stand-by operators to correct the problem.

Consideration of this factor supports assessment of liability that is less than the maximum.

b. Degree of Culpability

The Discharger’s degree of culpability is low to moderate. The spill was caused by a complex computer programming error in the lift station alarm system. The spill apparently was not caused by Discharger negligence. Consideration of this factor supports assessment of liability that is less than the maximum.

c. Voluntary Cleanup Efforts Undertaken by the Violator

In response to the spill, WRF operators drained and cleaned out the chlorine contact chamber. They also pumped out the outfall line to prevent any residual sewage from being flushed into San Luis Obispo Creek. Consideration of this factor supports assessment of liability that is less than the maximum.

d. Susceptibility to Cleanup or Abatement

The sewage that reached San Luis Obispo Creek was not susceptible to cleanup. As discussed above, the sewage mixed with treated wastewater and immediately flowed into the WRF outfall directly to San Luis Obispo Creek. After reaching the creek, the sewage and treated wastewater mixed with creek flow and flowed downstream. Operators focused on diverting the sewage spill away from the creek, which likely prevented

several thousand more gallons from reaching the creek. Consideration of this factor supports assessment of liability that is slightly less than the maximum.

e. Degree of Toxicity of the Discharge

Staff presumes the subject sewage spill was not toxic. The sewage originated from the service area of the Laguna Lift Station, which contains some industrial facilities, but at a time of night when very few industrial inputs are expected. The sewage was diluted by treated wastewater before reaching San Luis Obispo Creek, and was further diluted by creek flow. No dead fish or other indications of toxicity were observed downstream of the spill. Consideration of this factor supports assessment of liability that is less than the maximum.

f. Prior History of Violations

According to Central Coast Water Board records, the Discharger is responsible for 50 sewage spills from January 1, 2000 to June 15, 2005. This amounts to 11 spills per year, which is moderate to high for a collection system of this size. The sewage spills range in volume from 20 to 15,000 gallons. The average spill volume is 935 gallons. Eight of the 50 spills were 1,000 gallons or greater. The majority of these spills were caused by root blockage. Other causes include grease blockage, debris blockage, broken sewer lines, excessive inflow and infiltration, and failed lift stations. The largest spill, 15,000 gallons on April 13, 2004, was caused by a contractor that ruptured a sewage force main. Those spills that were caused by a failed lift station include 1,500 gallons on August 14, 2001, 5,000 gallons on August 21, 2001, and 1,800 gallons on March 18, 2002. It is unclear whether these three spills occurred at the Laguna Lift Station.

The total volume of sewage spilled from January 1, 2000 through June 15, 2005 was 46,745 gallons. This volume may initially seem large, but is actually very small compared to the volume of wastewater safely collected and effectively treated by the Discharger in that same period (over 5 billion gallons).

Consideration of this factor does not support assessment of liability that is less than the maximum.

g. Economic Benefit or Savings Resulting from the Violation

The Discharger apparently did not derive any economic benefit or savings as a result of this violation. The Discharger had no apparent economic incentive to cause the spill. The Discharger has expended several thousand dollars on an aggressive collection system maintenance program and state-of-the-art lift station to prevent sewage spills. Consideration of this factor supports assessment of liability of less than maximum.

h. Discharger's Ability to Pay Civil Liability and Ability to Stay in Business

The Discharger has not provided any information that would indicate an inability to pay the proposed civil liability.

i. Other Matters that Justice May Require

Responding to these violations and preparing this Administrative Civil Liability Complaint required approximately 40 hours of staff time. Estimated staff costs are \$3,000 (40 hours staff time x \$75/hour).

PROPOSED CIVIL LIABILITY

1. Upon consideration of all factors required by California Water Code Section 13385, the Executive Officer recommends the Discharger be assessed civil liability in the amount of **twenty thousand dollars (\$20,000)**.
2. The Central Coast Water Board will hold a public hearing on this matter on **December 2, 2005**, unless the Discharger agrees to waive its right to a public hearing by filling out, signing, and submitting the enclosed "Waiver of Hearing." If the Discharger chooses not to waive its right to a public hearing, the Central Coast Water Board may proceed with the scheduled public hearing and consider testimony received from interested persons during the public hearing and decide whether to affirm, reject, or modify the amount of administrative civil liability proposed by the Executive Officer. The Central Coast Water Board may also decide to continue the matter to a future hearing or refer the matter to the State Attorney General. The public hearing is scheduled at the regularly scheduled Central Coast Water Board meeting on December 2, 2005, at the Central Coast Water Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. The meeting is scheduled to begin at 8:30 a.m.; however, no specific time has been set for consideration of this item.

If you have questions regarding this matter, please direct them to Central Coast Water Board staff, **Matt Thompson**, at (805) 549-3159, or Harvey Packard at (805) 542-4639.

Michael Thomas

for _____
Roger W. Briggs
Executive Officer

9-19-05

Date

**PROCEDURAL INFORMATION
FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
PUBLIC HEARING AND PAYMENT**

WAIVER OF PUBLIC HEARING

You may waive your right to a public hearing. If you wish to waive your right to a public hearing, a duly authorized person¹ must check, sign, and submit the following *Waiver of the Right to a Public Hearing* form and pay the administrative civil liability amount specified in the Complaint **no later than October 12, 2005**. Please follow the payment instructions below.

If you choose to waive your right to a public hearing, and if full payment and a signed Waiver of the Right to a Public Hearing form are received before the hearing, the hearing will not be held, and the violation will be settled. If full payment and a signed Waiver of the Right to a Public Hearing form are not received, the matter will be placed on the Central Coast Water Board's agenda for a hearing as stated below.

If you do not waive your right to a public hearing, the Executive Officer will present an Order to the Central Coast Water Board for the amount proposed in this Complaint at the Central Coast Water Board meeting on **December 2, 2005**, at the Central Coast Water Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. The Central Coast Water Board will proceed with the scheduled hearing, consider testimony received from interested persons during the hearing, and decide whether to affirm, reject, or modify the amount of the administrative civil liability proposed by the Executive Officer. If the proposed Order is adopted, payment of the administrative civil liability to the State Water Resources Control Board will be due and payable no later than January 1, 2006, in accordance with the Order. If the proposed Order is rejected, the Central Coast Water Board may direct the Executive Officer to issue a new complaint and schedule another public hearing. The Central Coast Water Board may also decide to continue the matter to a future hearing or refer it to the State Attorney General. The meeting is scheduled to begin at 8:30 A.M.; however, no specific time has been set for consideration of the Order.

PAYMENT OF ADMINISTRATIVE CIVIL LIABILITY

No later than October 12, 2005, please make your check payable to State Water Resources Control Board, and note "ACL Complaint No. R3-2005-0130" on the check. Please mail the check and signed waiver form to:

**SWRCB Accounting
Attn: Enforcement
P.O. Box 100
Sacramento, CA 95812-0100**

Please also mail copies of the check and signed waiver form to:

**Regional Water Quality Control Board
Attn: Matt Thompson
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401**

¹ A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership or sole proprietorship, a principal executive officer or ranking elected official in a public agency, or a duly authorized representative.

WAIVER OF THE RIGHT TO A PUBLIC HEARING

- [] By checking this box, I agree to waive the City of San Luis Obispo's right to a public hearing before the Central Coast Water Board with regard to the violations alleged in Administrative Civil Liability Complaint No. R3-2005-0130. I agree to provide payment of the liability for the amount proposed in Administrative Civil Liability Complaint No. R3-2005-0130. I understand that I am giving up the City of San Luis Obispo's right to be heard, and its right to argue against the allegations made by the Executive Officer in Administrative Civil Liability Complaint No. R3-2005-0130, and against the imposition of, or the amount of, the administrative civil liability proposed.

Signature

Printed Name

Title/Position

Date