

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401**

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R3-2005-0090

IN THE MATTER OF:

**MONARCH GROVE HOMEOWNERS ASSOCIATION,
MONARCH GROVE WASTEWATER RECLAMATION FACILITY,
San Luis Obispo County**

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

1. Monarch Grove Homeowners Association (hereafter Discharger) operates wastewater collection, treatment, and disposal facilities to provide sewerage service to the Monarch Grove Residential Development and Sea Pines Hotel and Golf Course. Treated wastewater is discharged to an irrigation supply pond located on Sea Pines Golf Course in Los Osos (Section 13, T30S, R10E, MD B&M of Morro Bay South Quadrangle). Effluent is used to irrigate the Sea Pines Golf Course.
2. The discharge is subject to Water Reclamation Requirements Order No. R3-2002-0061, adopted by the Central Coast Water Board on May 31, 2002. Order No. R3-2002-0061 implements state regulations and specifies in part:

“B. RECLAMATION SPECIFICATIONS

- “2. Reclaimed water discharged from the treatment facility shall at all times be adequately oxidized, coagulated, clarified, filtered, disinfected^A and not exceed the following limitations:

<u>Parameter</u>	<u>Units</u>	<u>Monthly</u>	
		<u>Mean</u>	<u>Max.</u>
BOD ₅	mg/l	30	90
Suspended Solids	mg/l	30	90
Settleable Solids	ml/l	0.1	0.3
Turbidity ^A	NTU	2*	5**
Total Nitrogen (as N)	mg/l	22	
Dissolved Oxygen	mg/l	Minimum of 1.0	
pH ^B	units	Within range 6.5 - 8.4	

*24-hr mean value.^A

**Turbidity must not exceed 5 NTU more than 5% of the time within a 24-hr period and must not exceed 10 NTU.^A

- “5. Delivery of reclaimed water for irrigation purposes shall cease and all wastewater shall be contained within the effluent holding pond if:
 - a. Disinfection of wastewater ceases at any time; or,
 - b. Reclamation specifications are violated or threaten to be violated.”

Item No. 21, Attachment 1
December 1-2, 2005 Meeting
Monarch Grove WWTP

“D. PROVISIONS

“1. The Discharger shall comply with “Monitoring and Reporting Program No. R3-2002-0061”, as specified by the Executive Officer.

“4. The Discharger has developed an Engineering Report on the Production, Distribution and Use of Reclaimed Water in conformance with Title 22. Revisions to the engineering report shall be subject to review and approval of the Executive Officer after consultation with State and local Health Departments.^A”

3. Monitoring and Reporting Program No. R3-2002-0061 referenced in Provision D.1 above specifies in part:

”Monthly reports shall be submitted by the 30th day of the month following sampling and shall include all data collected or calculated over the previous month including:

1. Results of reclaimed water monitoring;
2. Summary of operational problems, plant and equipment malfunctions, and any diversion of reclaimed water which does not meet the requirements specified in this Order; and
3. A record of equipment or process failures, as well as any corrective and preventative measures taken.

Annual reports shall be submitted by January 30 of each year in accordance with Standard Provisions and Reporting Requirements C.16.

4. The Discharger has reported ongoing discharge violations of Reclamation Specifications B.2 and B.5, above. The Discharger has also failed to submit monitoring reports in a timely manner, which violates Provision D.1 and Monitoring and Reporting Program No. R3-2002-0061, described above.

5. From January 1, 2004, to March 31, 2005, the Discharger has reported the following discharge violations and submitted late reports in violation of Monitoring and Reporting Program No. R3-2002-0061:

January 2004	Nine (9) Turbidity
February 2004	Eighteen (18) Turbidity, two (2) chlorine contact time
March 2004	Eight (8) Turbidity, one (1) Total Nitrogen
April 2004	Fourteen (14) Turbidity
May 2004	Five (5) Turbidity, one (1) chlorine contact time
June 2004	Ten (10) Turbidity
July 2004	Sixteen (16) Turbidity
August 2004	Eight (8) Turbidity, one (1) Total Nitrogen
September 2004	Eight (8) Turbidity, one (1) Total Nitrogen
October 2004	Twenty-one (21) Turbidity, one (1) Total Nitrogen, monitoring report ninety-eight (98) days late
November 2004	Twenty-five (25) Turbidity, one (1) Total Nitrogen, monitoring report sixty-eight (68) days late
December 2004	Ten (10) Turbidity, one (1) Total Nitrogen, monitoring report thirty-eight (38) days late
January 2005	Five (5) Turbidity, annual monitoring report forty-three (43) days late
February 2005	Five (5) Turbidity

6. In April 2004, the Discharger modified its treatment facility described in the approved Title 22 Engineering Report by installing an experimental treatment unit without notifying or obtaining prior authorization from the Central Coast Water Board Executive Officer, as required in Provision D.4, described above.

7. Section 13350 of the California Water Code states:

“(a) Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).”

“(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.”

“(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.”

“(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.”

“(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.”

“(2) The civil liability on a per gallon basis, may not exceed ten dollars (\$10) for each gallon of waste discharged.”

“(f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.”

8. Water Code Section 13268 provides:

“(a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).”

“(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”

9. Water Code Section 13327 provides:

“In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall take into consideration the nature, circumstance, 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 ability to

continue in 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 as justice may require.”

10. Pursuant to the California Water Code (provisions described in Finding Nos. 7, 8 and 9) and the violations described in Finding No. 5, the Central Coast Water Board may impose a maximum civil liability of thirty two million eight hundred eighteen thousand forty dollars (\$32,818,040).
11. After consideration of the factors listed in Finding No. 9, the Executive Officer issued a Complaint in the amount of seventy-five thousand dollars (\$75,000), including staff costs of eight thousand two hundred fifty dollars (\$8,250). The Central Coast Water Board has considered the analysis of these factors as set forth in the Complaint, and all comments and testimony and other evidence received, and agrees with and adopts that analysis as findings of the Central Coast Water Board, with the following modifications:
 - a. Under 2. Degree of Culpability, revise the last sentence on page 2 to read:

“There was a high level of culpability due to the Discharger’s failure to implement corrective actions and submit required reports in a timely manner, *despite having received Notices of Violation dated August 30, 2002, June 29, 2004 and September 28, 2004 and a Failure to Submit notice dated February 18, 2005, and despite having met with Water Board staff regarding prior violations.*”
 - b. Under 8. Ability to Pay, revise the first sentence to read:

“The Discharger has not provided any information that would indicate an inability to pay the proposed civil liability, *except to state that many of its residents are retired and would have difficulty paying the penalty.*”
12. This enforcement action is taken for the protection of the environment and as such is exempt from provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with California Code of Regulations, Title 14, Sections 15307 and 15308.
13. On October 6, 2005, a panel of the Central Coast Water Board held a hearing on the Complaint pursuant to California Water Code Sections 13228.14 and 13323. The panel members were Chair Young and Board Members Shallcross and Hayashi. The panel resolved to recommend an order for adoption by the Central Coast Water Board. The recommended order is set forth in the proposed order dated November 15, 2005, for the December 2, 2005 Board meeting. The panel also suggested that if the Discharger timely proposed supplemental environmental projects (SEP), the Central Coast Water Board would consider them at its December 2, 2005 hearing. The Discharger indicated that it would timely submit SEP proposals after the October 6, 2005 hearing.
14. The November 15, 2005 proposed order for the December 2, 2005 Central Coast Water Board meeting constitutes the report of the panel regarding its proposed decision. Central Coast Water Board staff provided a copy of the proposed order to all interested parties, including all persons who requested a copy of the report at the panel hearing.
15. The Central Coast Water Board made an independent review of the record and took additional evidence as necessary.

IT IS HEREBY ORDERED, pursuant to California Water Code Sections 13350 and 13268, Monarch Grove Homeowners Association is assessed a total civil liability of seventy-five thousand dollars (\$75,000), as follows:

1. \$35,000, to be delivered to the Central Coast Water Board at the letterhead address by January 1, 2006. The check is to be made payable to the State Water Resources Control Board.
2. \$40,000, which is hereby suspended on the following conditions:
 - a. \$10,000 shall be suspended, provided that the Discharger has no more than three violations of Water Reclamation Requirements Order No. R3-2002-0061, other than Provision D.1 (monitoring and reporting requirements), during any calendar month between January 1 and June 30, 2006.
 - b. \$10,000 shall be suspended, provided that the Discharger has no more than three violations of Water Reclamation Requirements Order No. R3-2002-0061, other than Provision D.1 (monitoring and reporting requirements), during any calendar month between July 1 and December 31, 2006.
 - c. \$10,000 shall be suspended, provided that the Discharger has no more than three violations of Water Reclamation Requirements Order No. R3-2002-0061, other than Provision D.1 (monitoring and reporting requirements), during any calendar month between January 1 and June 30, 2007.
 - d. \$10,000 shall be suspended, provided that the Discharger has no more than three violations of Water Reclamation Requirements Order No. R3-2002-0061, other than Provision D.1 (monitoring and reporting requirements), during any calendar month between July 1 and December 31, 2007.
3. If the Discharger has more than three violations in any calendar month, the suspended amount for that six-month period shall be due and payable. The due date for payment shall be thirty days after the due date for the monthly report for the last month of the six-month period (i.e., sixty days after the close of the six-month period). If the last report for a six-month period is late, the Discharger shall be deemed to have failed to comply with the condition of suspension for that period and the Discharger shall deliver a check for \$10,000 to the Central Coast Water Board at the letterhead address. The check shall be payable to the State Water Resources Control Board.
4. Nothing in this Order relieves the Discharger from liability for enforcement actions for any violation after October 1, 2005 of any provision of Water Reclamation Requirements Order No. R3-2002-0061.

Any person affected by this action of the Regional 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 January 1, 2006. Copies of the law and regulations applicable to filing petitions will be provided upon request.

I, Roger W. Briggs, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an order adopted by the Central Coast Water Board on December 2, 2005.

Roger W. Briggs, Executive Officer

Date