

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

STAFF REPORT FOR REGULAR MEETING OF MARCH 24-25, 2005

Prepared March 3, 2005

ITEM: 4

SUBJECT: MANDATORY MINIMUM PENALTY ORDER NO. R3-2005-0052; SAN SIMEON COMMUNITY SERVICES DISTRICT WASTEWATER TREATMENT PLANT

KEY INFORMATION

Location: Balboa Avenue, San Simeon, San Luis Obispo County
Discharge Type: Effluent from community WWTP
Current Flow Rate: Approximately 100,000 gallons per day (gpd)
Design Capacity: 200,000 gpd
Disposal: Via outfall and diffuser to Pacific Ocean
Recycling: None
Existing Order: WDR Order No. R3-2002-0046 (NPDES Permit No. CA0047961)

SUMMARY

San Simeon Community Services District (hereafter Discharger) committed several NPDES Permit effluent violations and a late monitoring report violation in the period March 4, 2004 through December 31, 2004. Proposed Order No. R3-2005-0052 (Attachment No. 1) assesses mandatory minimum penalties of \$144,000, in accordance with California Water Code Section 13385. The Order allows \$79,500 of the mandatory penalty amount to be directed to a Supplemental Environmental Project to construct tertiary treatment facilities to produce recycled water and eliminate portion of the subject discharge to the Pacific Ocean. The Order stipulates that if the Discharger does not complete construction of tertiary treatment facilities within 5 years, they must submit the entire suspended liability amount plus interest.

DISCUSSION

Facility Description

The Discharger's Wastewater Treatment Plant processes approximately 100,000 gpd of domestic wastewater from the small community of San Simeon and the Hearst Castle Visitor Center. The wastewater treatment system consists of comminution, activated sludge, sedimentation, disinfection, and dechlorination. Effluent is discharged to the Pacific Ocean via a 900-foot long outfall and diffuser system, to a water depth of approximately 20 feet. The minimum initial dilution of the discharge is 115:1 (seawater:effluent). This discharge is regulated by Waste Discharge Requirements Order No. R3-2002-0046, NPDES Permit No. CA0047961 (hereafter Permit).

The Discharger contracts operations of the Wastewater Treatment Plant to private companies. ECO Resources of Pleasanton, California began operating the wastewater treatment plant on June 1, 2004.

Violations

According to monitoring reports submitted by the Discharger, the Discharger committed the following violations of Permit effluent limitations in the period March 4, 2004 through December 31, 2004:

#	Violation Date	Constituent	Permitted Limit	Reported Value	Violation Type
1	3/4/04	Total Coliform	230 MPN/100 mL Daily Maximum	1600 MPN/100 mL	Chronic*
2	6/18/04	Total Coliform	230 MPN/100 mL Daily Maximum	>1600 MPN/100 mL	Chronic*
3	6/22/04	Total Coliform	230 MPN/100 mL Daily Maximum	300 MPN/100 mL	Chronic*
4	6/24/04	Total Coliform	230 MPN/100 mL Daily Maximum	500 MPN/100 mL	Chronic
5	7/9/04	Total Coliform	230 MPN/100 mL Daily Maximum	1600 MPN/100 mL	Chronic
6	7/15/04	Total Coliform	230 MPN/100 mL Daily Maximum	900 MPN/100 mL	Chronic
7	7/15/04	Settleable Solids	3.0 mL/L Daily Maximum	5.0 mL/L	Serious
8	7/20/04	Total Coliform	230 MPN/100 mL Daily Maximum	300 MPN/100 mL	Chronic
9	9/2/04	Settleable Solids	3.0 mL/L Daily Maximum	23.00 mL/L	Serious
10	9/5/04	Settleable Solids	3.0 mL/L Daily Maximum	8.10 mL/L	Serious
11	9/7/04	Settleable Solids	1.5 mL/L 7-Day Average	5.1 mL/L	Serious
12	9/10/04	Settleable Solids	3.0 mL/L Daily Maximum	16.00 mL/L	Serious
13	9/14/04	Settleable Solids	3.0 mL/L Daily Maximum	5.00 mL/L	Serious
14	9/14/04	Settleable Solids	1.5 mL/L 7-Day Average	3.7 mL/L	Serious
15	9/15/04	Settleable Solids	3.0 mL/L Daily Maximum	24.00 mL/L	Serious
16	9/16/04	Settleable Solids	3.0 mL/L Daily Maximum	20.10 mL/L	Serious
17	9/17/04	Total Coliform	230 MPN/100 mL Daily Maximum	500 MPN/100 mL	Chronic
18	9/21/04	Settleable Solids	1.5 mL/L 7-Day Average	6.7 mL/L	Serious
19	9/29/04	Settleable Solids	3.0 mL/L Daily Maximum	15.00 mL/L	Serious
20	9/30/04	Settleable Solids	1.0 mL/L 30-Day Average	4.16 mL/L	Serious
21	10/1/04	Settleable Solids	3.0 mL/L Daily Maximum	5.00 mL/L	Serious
22	10/2/04	Settleable Solids	3.0 mL/L Daily Maximum	5.50 mL/L	Serious
23	10/3/04	Settleable Solids	3.0 mL/L Daily Maximum	5.00 mL/L	Serious
24	10/4/04	Settleable Solids	3.0 mL/L Daily Maximum	5.50 mL/L	Serious
25	10/7/04	Settleable Solids	1.5 mg/L 7-Day Average	3.0 mL/L	Serious
26	10/21/04	Total Coliform	230 MPN/100 mL Daily Maximum	280 MPN/100 mL	Chronic
27	10/30/04	Settleable Solids	3.0 mL/L Daily Maximum	5.00 mL/L	Serious
28	10/31/04	Settleable Solids	3.0 mL/L Daily Maximum	10.00 mL/L	Serious
29	10/31/04	Settleable Solids	1.0 mL/L 30-Day Average	1.3 mL/L	Chronic
30	11/8/04	Settleable Solids	3.0 mL/L Daily Maximum	10.10 mL/L	Serious
31	11/9/04	Total Chlorine Residual	0.93 mg/L Daily Maximum	1.0 mg/L	Chronic
32	11/9/04	Settleable Solids	3.0 mL/L Daily Maximum	10.10 mL/L	Chronic
33	11/14/04	Settleable Solids	1.5 mL/L 7-Day Average	2.9 mL/L	Serious
34	11/19/04	Settleable Solids	3.0 mL/L Daily Maximum	14.00 mL/L	Serious
35	11/22/04	Total Coliform	230 MPN/100 mL Daily Maximum	240 MPN/100 mL	Chronic
36	11/23/04	Settleable Solids	3.0 mL/L Daily Maximum	5.00 mL/L	Serious
37	11/24/04	Settleable Solids	3.0 mL/L Daily Maximum	4.00 mL/L	Chronic
38	11/24/04	Total Coliform	230 MPN/100 mL Daily Maximum	>1600 MPN/100 mL	Chronic
39	11/28/04	Settleable Solids	1.5 mL/L 7-Day Average	1.9 mL/L	Chronic
40	11/29/04	Settleable Solids	3.0 mL/L Daily Maximum	20.00 mL/L	Serious
41	11/30/04	Settleable Solids	3.0 mL/L Daily Maximum	12.00 mL/L	Serious
42	11/30/04	Total Coliform	230 MPN/100 mL Daily Maximum	900 MPN/100 mL	Chronic
43	11/30/04	Settleable Solids	1.0 mL/L 30-Day Average	3.22 mL/L	Serious

#	Violation Date	Constituent	Permitted Limit	Reported Value	Violation Type
44	12/1/04	Settleable Solids	3.0 mL/L Daily Maximum	12.00 mL/L	Serious
45	12/2/04	Settleable Solids	3.0 mL/L Daily Maximum	9.00 mL/L	Serious
46	12/3/04	Total Coliform	230 MPN/100 mL Daily Maximum	>1600 MPN/100 mL	Chronic
47	12/7/04	Settleable Solids	1.5 mL/L 7-Day Average	3.2 mL/L	Serious
48	12/18/04	Total Coliform	230 MPN/100 mL Daily Maximum	500 MPN/100 mL	Chronic
49	12/23/04	Total Coliform	230 MPN/100 mL Daily Maximum	500 MPN/100 mL	Chronic
50	12/29/04	Total Coliform	230 MPN/100 mL Daily Maximum	1600 MPN/100 mL	Chronic

* Denotes chronic violations that are not subject to mandatory penalties.

The Discharger committed an additional serious violation by failing to submit a discharge monitoring report within a period of 30 days following the deadline for submitting the report. The May 2004 discharge monitoring report was due by June 30, 2004, but was not submitted until August 9, 2004 (40 days past the deadline).

These effluent violations may be attributed to both operator error/inattention and minor treatment system deficiencies. Nearly all violations occurred after June 18, 2004, which coincides with the time period when ECO Resources reconfigured the treatment process. Prior to June 2004, two of the treatment plant's three activated sludge basins were utilized for biological treatment, and the third basin was utilized as a polishing clarifier (to remove residual Settleable Solids from clarifier effluent). ECO Resources reconfigured the treatment process such that all three activated sludge basins were utilized for biological treatment (as originally designed), with no polishing clarifier. Staff believes this overloaded the small clarifiers at the end of each activated sludge basin, which sent excessive Settleable Solids through the chlorine contact chamber to final effluent. Excessive Settleable Solids in the chlorine contact chamber likely disrupted the disinfection process, which led to the multiple Total Coliform violations.

Staff notified the Discharger and ECO Resources to correct these and other treatment system deficiencies through a Notice of Violation dated September 9, 2004, a letter dated October 6, 2004, a facility inspection on November 12, 2004, a Notice of Violation dated November 29, 2004, a facility inspection on December 17, 2004, and several discussions with ECO Resources operators and management. Monitoring records indicate that discharge quality has improved slightly since a

new treatment plant operator took over in late December 2004.

Staff believes that the small clarifiers at the end of each activated sludge basin are undersized and must be improved in order for the treatment plant to accommodate future increases in wastewater flow.

Mandatory Penalties

The Discharger committed 30 serious violations in the period March 4, 2004 through December 31, 2004. The amount of the mandatory penalty for the serious violations (30 x \$3,000) is \$90,000.

The Discharger committed 21 chronic violations in the period March 4, 2004 through December 31, 2004. California Water Code section 13385(i) requires the Regional Board to assess a mandatory minimum penalty of \$3,000 for each chronic violation, not counting the first three, occurring in a consecutive six-month period. The amount of mandatory penalty for the chronic violations (21 - 3 = 18 x \$3,000) is \$54,000.

The total amount of the mandatory penalty for violations occurring in the period March 4, 2004 through December 31, 2004 (\$90,000 + \$54,000) is \$144,000.

Complaint No. R3-2005-0032

The Executive Officer issued Mandatory Penalty Complaint No. R3-2005-0032 (Attachment No. 2) on January 26, 2005, pursuant to California Water Code Section 13385. The Complaint proposed imposing a mandatory penalty in the amount of \$144,000. The Discharger was invited to submit written comments by February 26, 2005.

Compliance Project

California Water Code section 13385(k) provides that if a discharger qualifies for a “Small Community Exception,” then all or a portion of the mandatory penalty amount may be directed to a Compliance Project, which is intended to address the source of noncompliance. In order to qualify for a Small Community Exception, the community’s population must be less than 10,000 (San Simeon’s population is about 450), and its median annual income must be less than 80% of California’s median annual household income – or \$39,183 compared to \$48,979, the three-year-average median household income in California for 2001 through 2003, according to the U.S. Census Bureau. When staff surveyed the Central Coast Region a year ago for communities that might meet both of these criteria, only one community met the criteria – the City of Guadalupe in Santa Barbara County.

In a letter dated February 25, 2005 (Attachment No. 3), the Discharger claims that the community of San Simeon meets the economic criteria for a Small Community Exception, and requests that the entire mandatory penalty amount be directed to a Compliance Project – to install new wastewater clarification facilities and upgrade existing disinfection facilities. The Discharger states:

“Because [San Simeon] is a small, unincorporated community, accurate income data is less readily available. Two readily observable segments in the District indicate that the “80% of the California median income” criteria can be achieved, since the population consists largely of: [a] fixed-income residents over 55 years of age and [b] a substantial number of service workers employed in the Coastal Region’s hospitality and tourism industry”

The State Water Resources Control Board (State Board or SWRCB)’s Enforcement Policy, Resolution No. 2002-0040, states in Section V.D,

“It is the policy of the SWRCB that “financial hardship” means that the median annual household income for the community is less than 80% of the California median annual household income. It is the policy of the SWRCB that “median annual household

income” means the median annual household income of the community based on the most recent census data or a local survey approved by the SWRCB. If a community believes that the census data does not represent the community, and the community is not a Census Designated Place, a City or a Town, the community may apply to the SWRCB for designation as a “small community with a financial hardship.” The application must include a map of community boundaries, a list of properties, the number of households and the number of people in the community. Additional information including information regarding income and/or property values of the community may be submitted in support of the application. If the application does not provide an adequate basis for the calculation of median household income, the SWRCB may require an independent income survey conducted in accordance with a pre-approved methodology. ...”

The Discharger has not provided actual economic data to demonstrate that San Simeon’s median annual household income is less than \$39,183.

Staff disagrees that San Simeon meets the economic criteria for a Small Community Exception for several reasons. First, although the U.S. Census Bureau may not provide income statistics for the small community of San Simeon, its statistics indicate that the median annual household income in San Luis Obispo County in 2002 was \$43,456. San Simeon is one of the most expensive housing markets in San Luis Obispo County. Median annual household income there is likely greater than \$39,183.

Secondly, the Discharger does not account for income of commercial properties in San Simeon, which are a major source of revenue for the Discharger (San Simeon has more hotel units than permanent residences). Although commercial properties are not included in determining median household income, the Regional Board has discretion whether or not to allow a compliance project.

Lastly, application of the Small Community Exception to San Simeon would not meet the simple intent of the exception, which is to alleviate the burden of mandatory penalties on communities

without the ability to pay for necessary improvements. The Discharger currently has a healthy annual operating budget of over \$550,000, and another \$1.5 million in reserve for long-term projects and emergencies.

Staff discussed this with Steve Richardson, Vice-President of ECO Resources, on March 1, 2005. He suggested the he may submit additional information to attempt to demonstrate that San Simeon meets the economic criteria for a Small Community Exception.

Supplemental Environmental Project

California Water Code section 13385(l) states:

“(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 (SEP) may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).”

In this case, the portion of the penalty amount that may be directed to an SEP may not exceed \$79,500.

In its February 25, 2005 letter, the Discharger also requested that mandatory penalties be directed towards a SEP to install tertiary treatment facilities, with the purpose of producing recycled water and eliminating a portion of its discharge to the Pacific Ocean. Caltrans has already installed purple distribution piping near San Simeon and would like to use the recycled water to irrigate the median of Highway 1. The project will cost approximately \$200,000. Further details of the proposed SEP are provided in the Discharger's letter, attached.

Installation of tertiary treatment facilities qualifies as an SEP in accordance with the State Board Enforcement Policy. The project goes above and

beyond the obligations of the Discharger 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 Regional Board functions or staff.

The California Water Code encourages water recycling, especially in water-short areas of the coastal zone such as San Simeon. Staff strongly supports installation of tertiary treatment facilities as an SEP.

Order No. R3-2005-0032

Proposed Order No. R3-2005-0052 assesses San Simeon Community Services District a Mandatory Penalty of \$144,000.

The Discharger must submit written proof of payment to its Tertiary Treatment Facilities Construction Account, in the amount of \$79,500 by May 25, 2005. The Tertiary Treatment Facilities Construction Account must 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 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 May 25, 2005, the suspended liability is immediately due and payable to the State Water Resources Control Board.

The Discharger must complete construction of tertiary treatment facilities as soon as possible, but no later than March 25, 2010 (5 years from issuance of this Order). The Discharger must 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 April 25, 2010. If the final total cost of the project is less than \$79,500, the Discharger must remit the difference to State Water Resources Control Board no later than 30 days after completion of the project.

The Discharger must submit semiannual reports on the progress of construction of tertiary treatment facilities construction to the Executive Officer. The Progress Reports must denote the current

balance of the Tertiary Treatment Facilities Construction Account.

The Discharger must also submit a check payable to State Water Resources Control Board in the amount of \$64,500 by May 25, 2005.

ADDITIONAL COMMENTS

Monterey Bay National Marine Sanctuary (MBNMS) submitted comments on March 3, 2005. Their comment letter (Attachment No. 4) states:

“Our priority for allocation of these funds, provided it meets the State’s legal mandate, is that these monies be used to complete the upgrades to this facility. Should the RWQCB determine that the full penalty amount not be allocated towards facility upgrades...we respectfully suggest that some of the programs developed under the [MBNMS’] Water Quality Protection Program [including technical training, volunteer water quality monitoring, and education and outreach] would be a good use of SEP funds. We ask that you consider making these funds available to the Monterey Bay Sanctuary Foundation...”

Staff Response: The Discharger does not meet the criteria for a Small Community Exception; therefore, the mandatory penalty may not be directed to a Compliance Project. The Discharger’s proposal to install tertiary treatment facilities meets the State Board Enforcement Policy criteria for an SEP better than the project proposed by MBNMS. Staff recommends no changes to the proposed Order as a result of this comment.

RECOMMENDATION

Staff recommends adoption of Order No. R3-2005-0032

ATTACHMENTS

1. Order No. R3-2005-0032
2. Complaint No. R3-2005-0032
3. Discharger comment letter dated February 25, 2005
4. MBNMS comment letter dated March 1, 2005

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