

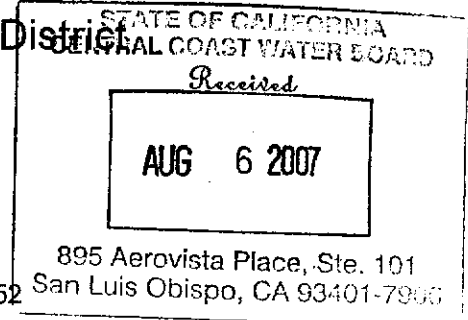
San Simeon Community Services District



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Board of Directors

John Russell, Ralph McAdams, Allan Fields, Dee Dee Ricci, Terry Lambeth



August 3, 2007

Mr. Roger Briggs, Executive Officer
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Re: Proposed Mandatory Minimum Penalty Order no. R3-2006-0102 San Simeon Community Services District, San Luis Obispo County

Dear Mr. Briggs:

This correspondence shall serve as an additional response to your correspondence dated May 18, 2007 with regard to the Regional Water Quality Control Board's (RWQCB) proposed Mandatory Minimum Penalty (MMP) Order R3-2006-0102. As you are aware, the Board of Directors of the San Simeon Community Services District (SSCSD), in a letter to you dated February 27, 2007, authorized its General Manager to propose a Compliance Project (CP) pursuant to Water Code Section 13385(k) with regard to the proposed MMP Order R3-2006-0102. In addition, on June 6, 2007, SSCSD sent you a letter setting forth in detail our position that SSCSD indeed qualifies for a Compliance Project under Water Code Section 13385(k).

The SSCSD still strongly disagrees with your assessment that the SSCSD does not qualify for a Compliance Project (CP) under Water Code Section 13385(k). Your analysis seems to indicate you are unaware that the legislature recently amended the definition of "small community" under Water Code 13385(k) to include communities like SSCSD. The SSCSD urges you to look closely at the recent amendments to the law.

On July 26, 2007, the Board of Directors of the SSCSD unanimously decided that it is in the community's best interest to work in a cooperative and positive manner with the RWQCB instead of entering into a protracted legal battle over whether SSCSD qualifies as a "small community" under Water Code Section 13385(k). Therefore, this correspondence shall serve as formal written notice that SSCSD has decided to no longer pursue the proposed Compliance Project (CP) pursuant to Water Code Section 13385(k). Instead, SSCSD proposes that the maximum amount of the MMP

allowed by law, be placed into the SSCSD current Supplemental Environmental Project (SEP) for construction of tertiary treatment facilities. SSCSD's proposal to abandon the proposed CP for the current SEP is contingent upon the RWQCB granting an extension of time to complete the construction of tertiary treatment facilities.

As you are aware, the current completion date set forth in Order No. R3-2005-0052 and R3-2005-0120 for the completion of the SSCSD SEP is September 25, 2007. This date was adopted by RWQCB despite Staff's recommendation that SSCSD be given until March 25, 2010 to complete construction of the tertiary treatment facilities. The Orders do allow for an extension of time if the delays are beyond the Dischargers reasonable control.

SSCSD submits that it has been working very diligently towards the construction of the tertiary treatment facilities since Order No. R3-2005-0052 was adopted by the RWQCB on March 25, 2005. Since that time, SSCSD has expended over \$165,000 for necessary improvements in order to keep the WWTP in regulatory compliance and to stabilize plant operation in preparation for tertiary treatment upgrades. In addition, SSCSD has expended over \$150,000 completing the preliminary design for the construction of the tertiary treatment facilities and draft Water and Collection System Master Plan.

In order for the RWQCB to understand the magnitude of the undertaking that SSCSD has made towards upgrading the WWTP and the construction of tertiary treatment facilities, the SSCSD provides the following chronological timeline of actions taken by SSCSD:

1/05 – RWQCB issued SSCSD a Compliant for MMP in the amount of \$144,000. SSCSD receives report from Psomas regarding Grants and Low Interest Loans available for SSCSD projects.

2/05 – SSCSD contracts with Boyle Engineering in the amount of \$22,786 to perform engineering services for the design and implementation of immediate improvements to the WWTP. SSCSD responds to the Compliant for MMP with a request that the fines be used for a Compliance Project under the "small community exception" or in the alternative a Supplemental Environmental Project.

3/05 - RWQCB issued Order No. R3-2005-0052 assessing MMPs of \$144,000. The Order allowed \$79,500 of the MMP to be directed to a Supplemental Environmental Project to construct tertiary treatment facilities. Despite Staff's recommendation to complete the project within 5 years, RWQCB only gave SSCSD 30 months to complete.

4/05 – SSCSD establishes a construction escrow account in the sum of \$79,500, approves payment of the remaining balance of fines in the sum of \$64,500 to RWQCB, and directs Staff to immediately seek proposals for the design and construction of a tertiary project. SSCSD receives a comprehensive document

entitled "Water Distribution Facility Technical Safety/Compliance & Operations Inspection & Evaluation prepared by ECO Resources". The report detailed many deficiencies in SSCSD Water System that need correction. SSCSD directs Staff to move forward with the needed repairs. SSCSD also approved replacement of the fence surrounding the WWTP in the amount of \$30,000 for security purposes.

5/05 – SSCSD is presented with a comprehensive Utility Rate Study Proposal and directs Staff to move forward with a comprehensive rate study for SSCSD.

6/05 – SSCSD resolves its dispute with ECO Resources over the MMPs.

7/05 – SSCSD receives comprehensive spreadsheet from ECO outlining the proposed water and wastewater projects to be undertaken and a timeline for completion. SSCSD approves all projects except for items 26, 41 and 46. A new generator is installed, equalization pump and blower motor are replaced, and extensive electrical work begins at WWTP.

8/05 – SSCSD receives Technical Memorandum 4-05 from Boyle Engineering identifying and prioritizing necessary improvements to the WWTP in order to keep the WWTP in regulatory compliance and to stabilize plant operation in preparation for tertiary treatment upgrades.

9/05 – SSCSD contracts with Boyle in the amount of \$94,848 to perform engineering services for the preliminary design, permitting, final design services and bid package preparation for the upgrade to tertiary treatment. RWQCB issues letter to SSCSD demanding that the "immediate" improvements set forth in Boyle's Memorandum be completed by March 15, 2006 and the "short term" improvements be completed by September 15, 2007. SSCSD receives Technical Memorandum 5-05 from Boyle prioritizing the "immediate improvements and providing conceptual cost opinions for the improvements". SSCSD adopts emergency resolution approving immediate improvements as set forth in Boyle's Technical Memorandum and pursuant to RWQCB's letter.

10/05 - SSCSD contracts with Psomas for Grants and Low Interest Loan Assistance Services for SSCSD projects in the amount of \$15,000.

11/05 – SSCSD approves Notice of Inviting Bids for the construction of the immediate improvements set forth in Boyle's Technical Memorandum.

12/05 - RWQCB issued Order No. R3-2005-0120 assessing MMP of \$24,000. The Order allowed \$19,500 of the MMP to be directed to the already established Supplemental Environmental Project to construct tertiary treatment facilities. Completion of the tertiary treatment project must be made by September 25, 2007.

1/06- SSCSD places \$19,500 in the already established construction escrow account, approves payment of the remaining balance of fines in the sum of \$4,500 to RWQCB, and directs Staff to continue to work as quick as possible with the design and construction of a tertiary treatment facilities. SSCSD contracts with CR Larson Company in the amount of \$107,850 to make the immediate repairs identified by Boyle in its Technical Memorandum.

2/06 – SSCSD contracts with Boyle in the amount of \$14,300 to continue with the permitting of the rip-rap in front of the WWTP.

3/06 - SSCSD approves an amendment of ECO's contract in the amount of \$60,000 per year to allow for the hiring of an additional Grade II operator to help with the daily plant routines while the plant supervisor is overseeing the construction of all special projects at the WWTP. SSCSD contracts with Boyle to develop a Water and Collection System Master Plan. SSCSD approves meter replacement for all residential units.

4/06 – SSCSD continues with “immediate” repairs but there have been some delays due to weather, receiving materials and the additional discovery of needed repairs. Boyle continues with permitting for the rip-rap with Coastal Commission.

5/06 – SSCSD directed Staff to obtain a financial consultant to help the District develop a financial strategy with regard to the numerous projects that must be undertaken by the District.

6/06 – SSCSD finishes upgrades to Aeration and Clarifier 2 and begins upgrades to Aeration 3 with Aeration 4 to follow. SSCSD attends special meetings on Prop 50 funding.

7/06 – SSCSD finishes Aeration and Clarifier 3 and begins 4 upgrade and completes the residential meter replacement program.

8/06 - SSCSD adds another blower to meet oxygen demands of treatment at the WWTP.

10/06 – RWQCB issued a Compliant for MMP in the amount of \$60,000. SSCSD meets with RWQCB staff regarding MMP and requests a continuance to properly evaluate the MMPs. SSCSD completes all “immediate” improvements pursuant to Boyle's Technical Memorandum. Flow Testing completed as part of the Water and Collection System. Boyle issues preliminary Design Report for the SSCSD Tertiary Treatment Upgrade.

11/06 – SSCSD's Staff received draft preliminary design from Boyle for the Tertiary

Treatment Upgrade. Water and Collection System Master Plan was delayed due to scheduling problems with Surveyor.

12/06 – SSCSD’s Water and Collection System Master Plan delayed further due to insurance requirements from subcontractor surveyor. SSCSD presented with the preliminary design for the Tertiary Treatment Plant and scheduled workshop for January for full review, analysis presentation once the Board had reviewed the technical and comprehensive document.

1/07 – SSCSD Staff received draft preliminary Water and Collection System Master Plan for review. Review of Preliminary tertiary treatment upgrade presentation made by Boyle.

2/07 – SSCSD forms a sub-committee to study the technical and comprehensive Water and Collection System and tertiary treatment facility upgrade. Staff meets with RWQCB to discuss the tertiary treatment alternatives and the recent Complaint for MMPs in the amount of \$60,000. SSCSD submits written proposal to RWQCB for a proposed CP for the MMPs

4/07 – SSCSD receives and reviews NPDES permit for the WWTP and submits response. SSCSD approves improvements to the basin chlorine contact chambers in the amount of \$62,000. Sub-committee meets to analyze and discuss the tertiary treatment alternatives and draft Water and Collection System Master Plan.

5/07 - RWQCB informs SSCSD that it will not agree or support SSCSD “small community” CP under Water Code Section 13385(k). Sub-committee meets to analyze and discuss the tertiary treatment alternatives and draft Water and Collection System Master Plan.

6/07 - SSCSD directs Staff to seek a hearing before the RWQCB on the proposed CP project. SSCSD sends letter to RWQCB regarding recent changes to Water Code Section 13588(k) and its position that SSCSD qualifies for a CP as a “small community.”

7/07 – SSCSD adopts subcommittee’s recommendation to move forward with final design of the tertiary treatment facilities using MBR. SSCSD decides that instead of entering into a lengthy legal battle, to abandon the CP and move forward with the current SEP, so long as RWQCB gives SSCSD more time to complete the project.

When analyzing the above timeline, it is important for the RWQCB to realize just how small SSCSD is and must take into consideration the time and financial commitment that SSCSD has undertaken to complete the above tasks. SSCSD has no employees. Therefore, all work performed above had to comply with the California Public Contract Code. Furthermore, SSCSD has only 227 customers.

With so few customers, all projects must go through a higher level of review because any rate increase could easily be defeated by a 50% protest vote under Proposition 218.

Most importantly, SSCSD is currently in a five-year dispute with the Coastal Commission over the rip-rap in front of our WWTP. The Coastal Commission has begun enforcement proceedings against SSCSD alleging that SSCSD never received a CDP for the installation of the rip-rap. It is SSCSD position that the original rip-rap was installed in 1971, prior to the existence of the Coastal Commission and Coastal Act, and that the addition of rip-rap in 1982, was for repair and maintenance and is therefore exempt from the Coastal Act. The SSCSD has spent over \$40,000 in expert fees trying to resolve this issue. The Coastal Commission has stated to SSCSD that it will not approve any projects, including permitting for tertiary treatment facilities, until the rip-rap is either removed or an after the fact CDP is obtained. Because of this ultimatum, SSCSD currently has pending an application for the approval of the extending rip-rap. However, the SSCSD has no idea how long it will take for the Coastal Commission to approve the CDP. Clearly, these circumstances are outside of SSCSD control and SSCSD is diligently trying to resolve the issue with Coastal Commission.

SSCSD estimates that the construction of the tertiary treatment facility can be completed by July 25, 2012. The following is the timeline for completion:

Design

1. Complete Final Design Report June 2008

Environmental Review and Permitting

1. Complete and Circulate Draft CEQA Document December 2008
2. Certification of Final CEQA Document October 2009
3. Obtain all necessary permits December 2010

Financing:

1. Complete Final Plan for Project Financing April 2009
2. All necessary financing has been secured, including compliance with Proposition 218 December, 2010

Construction:

1. Issue Notice to Proceed with Construction January 2011
2. Complete Construction July 2012

Based upon the foregoing, the San Simeon Community Services District hereby requests that the RWQCB allow SSCSD to place in the current SEP escrow account the maximum amount allowed by law and that RWQCB extend the time to complete the tertiary treatment facilities to July 25, 2012.

In conclusion, The SSCSD's Board wishes to continue to make clear its desire to address this issue in a positive and aggressive manner. We intend to work cooperatively with the RWQCB to affect