

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

**STAFF REPORT FOR REGULAR MEETING OF SEPTEMBER 7, 2007
Prepared August 7, 2007**

ITEM NUMBER: 9

**SUBJECT: Mandatory Minimum Penalty Order No. R3-2006-0102; 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 90,000 gallons per day (gpd)
Design Capacity: 200,000 gpd
Disposal: Via outfall and diffuser to Pacific Ocean
Recycling: None
Existing Order: WDR Order No. R3-2007-0024 (NPDES Permit No. CA0047961)
This Action: **Adopt Mandatory Penalty Order No. R3-2006-0102**

SUMMARY

San Simeon Community Services District (hereafter San Simeon CSD) committed twenty NPDES Permit effluent violations in the period July 1, 2005, through August 31, 2006. Proposed Mandatory Minimum Penalty Order No. R3-2006-0102 assesses mandatory minimum penalties of \$60,000. The Order directs \$37,500 of the mandatory penalty to San Simeon CSD's previously approved supplemental environmental project, which is to construct tertiary treatment facilities, to eventually produce recycled water and eliminate a portion of the waste discharge to the ocean. The Order extends the deadline for completing the project until July 25, 2012.

DISCUSSION

Facility Description. San Simeon CSD Wastewater Treatment Plant processes approximately 90,000 gpd of domestic wastewater from the small community of San Simeon and the Hearst Castle Visitor Center. The wastewater treatment system includes comminution, activated sludge, sedimentation, disinfection by chlorination, 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 subject to Waste Discharge Requirements Order No. R3-2007-0024, NPDES Permit No. CA0047961 (hereafter Permit).

San Simeon CSD contracts management of the district and operations of the Wastewater Treatment Plant to ECO Resources of Pleasanton, California. ECO Resources began operating the Wastewater Treatment Plant on June 1, 2004.

Mandatory Minimum Penalty Complaint. On October 13, 2006, the Executive Officer issued Mandatory Minimum Penalty Complaint No. R3-2006-0102 (Complaint) to San Simeon CSD. The Complaint proposed mandatory penalties of \$60,000 for multiple effluent violations at the Wastewater Treatment Plant that occurred between July 1, 2005, and August 31, 2006. The violations are listed here:

No.	Violation Date	Constituent	Permitted Limit	Reported Value	Violation Type
1	7/9/05	Total Coliform	230 MPN/100 mL Daily Maximum	900 MPN/100 mL	Chronic
2	7/29/05	Total Coliform	230 MPN/100 mL Daily Maximum	500 MPN/100 mL	Chronic
3	8/24/05	Total Coliform	230 MPN/100 mL Daily Maximum	>1600 MPN/100 mL	Chronic
4	8/30/05	Total Chlorine Residual	0.93 mg/L Daily Maximum	2.2 mg/L	Serious
5	9/2/05	Total Chlorine Residual	0.93 mg/L Daily Maximum	2.2 mg/L	Serious
6	9/6/05	Total Chlorine Residual	0.93 mg/L Daily Maximum	1.5 mg/L	Serious
7	9/7/05	Total Coliform	230 MPN/100 mL Daily Maximum	>1600 MPN/100 mL	Chronic
8	9/30/05	Total Chlorine Residual	0.93 mg/L Daily Maximum	25 mg/L	Serious
9	11/3/05	Total Coliform	230 MPN/100 mL Daily Maximum	300 MPN/100 mL	Chronic
10	12/22/05	Total Coliform	230 MPN/100 mL Daily Maximum	240 MPN/100 mL	Chronic
11	1/4/06	Total Coliform	230 MPN/100 mL Daily Maximum	240 MPN/100 mL	Chronic
12	1/19/06	Total Coliform	230 MPN/100 mL Daily Maximum	500 MPN/100 mL	Chronic
13	2/9/06	Total Coliform	230 MPN/100 mL Daily Maximum	500 MPN/100 mL	Chronic
14	4/11/06	Total Coliform	230 MPN/100 mL Daily Maximum	900 MPN/100 mL	Chronic
15	5/3/06	Total Coliform	230 MPN/100 mL Daily Maximum	300 MPN/100 mL	Chronic
16	5/8/06	Total Coliform	230 MPN/100 mL Daily Maximum	1600 MPN/100 mL	Chronic
17	5/19/06	Total Coliform	230 MPN/100 mL Daily Maximum	350 MPN/100 mL	Chronic
18	5/24/06	Total Chlorine Residual	0.93 mg/L Daily Maximum	7.10 mg/L	Serious
19	6/20/06	Total Chlorine Residual	0.93 mg/L Daily Maximum	52.0 mg/L	Serious
20	8/7/06	Total Coliform	230 MPN/100 mL Daily Maximum	240 MPN/100 mL	Chronic

Previous Mandatory Penalty Orders. This \$60,000 Complaint follows two other mandatory penalty orders recently issued to San Simeon CSD. The Water Board issued Mandatory Minimum Penalty Order No. R3-2005-0032, in the amount of \$144,000, on March 24, 2005. The Water Board also issued Stipulated Mandatory Minimum Penalty Order No. R3-2005-0120, in the amount of \$24,000, on December 2, 2005.

In both of these previous orders, the Water Board allowed the maximum amount permitted (\$99,000 total so far) to be directed to a supplemental environmental project of constructing tertiary treatment facilities at the wastewater treatment plant. The orders require San Simeon CSD to complete construction of tertiary treatment facilities by September 25, 2007, or forfeit the suspended penalty to the State's Cleanup and Abatement Account. San Simeon CSD has not begun constructing the tertiary treatment facilities thus far (discussed further below).

Recent Improvements. Staff has been working closely with San Simeon CSD to improve their wastewater treatment plant and come back into compliance with its discharge requirements. San Simeon CSD hired Boyle Engineering to identify several immediate, short-term, and long-term improvements to the wastewater treatment plant. These improvements were needed to

bring the wastewater treatment plant back into compliance, prior to construction of tertiary treatment facilities. Boyle recommended the following immediate improvements:

1. Retrofit clarifier launders with V-notch weirs;
2. Replace flights and baffling in clarifiers;
3. Replace skimmers;
4. Reconfigure return activated sludge (RAS) pump piping;
5. Add inlet manifolds on RAS pump inlets;
6. Repair or replace valves/gates in aeration basins;
7. Improve screening in the chlorine contact chamber;
8. Improve headworks to provide baseline flow to treatment process;
9. Install influent flow metering;
10. Improve site drainage; and
11. Install mechanisms to transfer sludge and supernatant from digester.

San Simeon CSD completed all of these improvements, except items 5, 8, and 9 (they were later deemed unnecessary), in early 2006. San Simeon CSD also drained and cleaned all aeration basins, replaced all fine air diffuser elements in the aeration basins, replaced some air valves, and made some improvements to the chlorine contact chamber. These improvements improved effluent quality, but San Simeon CSD continued having problems with their disinfection process, as evidenced by the several Total Coliform and Total Chlorine Residual violations in the latter half of 2006.

Proposed Compliance Project. In a January 31, 2007 response to the Complaint, San Simeon CSD proposed the penalty be directed to a compliance project pursuant to California Water Code Section 13385(k). San Simeon CSD states that it "qualifies under the new definition of "small community" criteria – most notably, the "low population density in the service area of the publicly owned treatment works." In a February 27, 2007 letter (**Attachment 1**), San Simeon CSD describes its proposed compliance project as:

1. Installation of flow meter on gravity line to the equalization basin, \$7,500;
2. Installation of new flow meter to measure flow into aeration basins, \$7,500;
3. Installation of measuring weirs on outlet of each clarifier, \$4,000;
4. Installation of flow meter at outlet of chlorine contact chamber, \$11,000;
5. Level sensor for equalization basin, \$7,000;
6. Replacement of flow gates into each aeration basin, \$8,400;
7. New variable frequency drive controlled pumps for return activated sludge, \$20,000;
8. Processed plant effluent water reuse system, \$15,000;
9. Influent screening installation, \$61,000.

For the purposes of considering whether these projects qualify as compliance projects, note that only items 4, 6, and 9 are designed to directly address problems with the disinfection process. Items 1, 2, 5, and 8 are not designed to directly address problems with the disinfection process. For example, item 8 is to install pumps and piping to allow operators to reuse plant effluent within the plant. It is not related to improving the disinfection process.

San Simeon CSD's February 27, 2007 letter also states, "If a [compliance project] is not approved by the RWQCB, then in the alternative the SSCSD proposes a Supplemental Environmental Project (SEP) pursuant to Water Code Section 13385(l)."

What is a Compliance Project and how does a community qualify? The State's Water Quality Enforcement Policy defines a compliance project as "a project that is designed to

address problems related to the violation and bring the discharger back into compliance in a timely manner." Prior to July 1, 2007, Water Code Section 13385(k) stated, "In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a POTW serving a small community, as defined by subdivision (b) of Section 79084, the state board or the regional board may elect to require the POTW to spend an equivalent amount towards the completion of a compliance project proposed by the POTW, if the state or regional board finds all of the following:

- (1) The compliance project is designed to correct the violations within five years.
- (2) The compliance project is in accordance with the enforcement policy of the state board.
- (3) The POTW has demonstrated that it has sufficient funding to complete the compliance project."

Water Code section 79084 defines "small community" as one with a population of 10,000 persons or less, with a financial hardship as determined by State Board. State Board's longstanding policy is that "financial hardship" means that the median annual household income for the community is 80% or less of the California median annual household income -- or less than \$39,183. (According to the U.S. Census Bureau, the three-year-average median household income in California for 2001 through 2003 was \$48,979.)

In a February 25, 2005 response to MMP Complaint No. R3-2005-0032, San Simeon CSD claimed that San Simeon met this economic criterion. Staff argued that San Simeon did not meet the economic criterion. The Water Board ultimately decided that San Simeon CSD did not qualify for a compliance project, and instead directed a major portion of the penalty to a supplemental environmental project.

Changes to California Water Code Section 13385. San Simeon CSD asked the Water Board to consider changes to the definition of small community that became effective on July 1, 2007. Senate Bill 1733, authored by Senator Sam Aanestad of Grass Valley, redefines "small community" to mean:

"a publicly owned treatment works serving a population of 10,000 persons or less or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works."

The purpose of this change is to give the Water Boards more flexibility when determining whether to allow penalties to be directed to a compliance project. In an October 1, 2006 news release regarding passing of SB 1733, Senator Aanestad says "the goal of SB 1733 is not to exempt rural communities from state clean water mandates, but rather help them pay for the expensive upgrades that many older wastewater facilities in rural California need." This news release is included as **Attachment 2**. It should give you a good idea of Senator Aanestad's perspective and intent with SB 1733.

It is still unclear whether this new language applies to penalties for violations which occurred prior to July 1, 2007. Even if this change does apply to violations which occurred prior to July 1, 2007, staff has considered all of these new factors and finds that San Simeon still does not qualify. San Simeon's median household income is normal, the rate of unemployment is normal, and population density in the service area of the San Simeon CSD is normal. Average household sewer rates in San Simeon are approximately \$10 less per month than the statewide average. San Simeon CSD is financially healthy and is capable of funding necessary improvements to its wastewater treatment plant. Staff therefore concludes that San Simeon is

not a small community with financial hardship and does not qualify for its penalty to be directed to a compliance project. This small community exception should only be applied where the community is so financially disadvantaged that it would otherwise have to decide between upgrading the facility to come into compliance or pay the penalty. Granting an exception in this case would essentially reward San Simeon CSD for poor compliance. This would send a poor message to the greater discharger community.

Proposed Mandatory Penalty Order. Staff proposed Mandatory Minimum Penalty Order No. R3-2006-0102 (Order) in a May 18, 2007 letter to San Simeon CSD (**Attachment 3**). The proposed Order directed the maximum allowable amount, \$37,500, to San Simeon CSD's previously approved supplemental environmental project of tertiary treatment facilities construction. The proposed Order was consistent with previous mandatory penalty orders in that it required completion of tertiary treatment facilities construction by September 25, 2007, or the suspended penalty amounts must be forfeited to the State's Cleanup and Abatement Account.

COMMENTS AND RESPONSE

Staff sent the May 18, 2007 letter with the proposed Order to San Simeon CSD and all parties known to be interested in the San Simeon CSD waste discharge. On June 6, 2007, San Simeon CSD's attorney, Rob Schultz, submitted a letter response, which is included as **Attachment 4**. In short, he strongly disagreed with staff's determination that San Simeon CSD does not qualify for the penalty to be directed to its proposed compliance project. He requested a continuance of the hearing scheduled for July 6, 2007, and further requested a hearing in regard San Simeon CSD's two previous mandatory penalty orders, "since the above amendment to Water Code 13385(k) applies to the imposition of penalties after January 1, 2003."

Staff's reasoning for determining that San Simeon CSD does not qualify for the small community exception is discussed above. The January 1, 2003 date Mr. Schultz is referring to comes from paragraph 3 of subdivision (l), which concerns supplemental environmental projects, not compliance projects. 13385(l)(3) states, "This subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs." This paragraph clearly applies only to subdivision (l), not subdivision (k), where the new small community definition will reside. The author of SB 1733 could not have intended the new small community definition to apply to violations extending back over four years, which have long been resolved through previous Water Board enforcement orders.

On June 13, 2007, Water Board counsel Lori Okun continued the hearing of this matter until the Water Board's regularly scheduled meeting in San Luis Obispo on September 7, 2007. The notice of continuance provided Water Board staff and San Simeon CSD one more opportunity to submit written evidence, legal argument, or other written submissions prior to the hearing.

Water Board staff met with San Simeon CSD on July 12, 2007. San Simeon CSD explained the financial and timing difficulties of completing their proposed SEP by September 25, 2007. Water Board staff reiterated its position that San Simeon CSD does not qualify for a small community exception, and said that it would entertain a reasonable request for extension of the September 25, 2007 deadline to complete the SEP.

On August 6, 2007, San Simeon CSD submitted another letter, which is included here as **Attachment 5**. In short, San Simeon CSD is no longer pursuing a small community exception,

and instead proposes that the maximum amount possible be directed to its existing SEP. The letter includes a chronology of efforts San Simeon CSD has made to come into compliance with its discharge requirements, and explains the delays that will make completion of its SEP by September 25, 2007, unlikely. San Simeon CSD requests that the SEP completion deadline be extended until July 25, 2012.

Staff appreciates that San Simeon CSD has chosen not to continue pursuing the small community exception and instead complete its SEP. Staff agrees that some of the reasons delaying completion of the SEP are beyond the reasonable control of San Simeon CSD, and that an extension of the SEP completion deadline is appropriate. Staff understands that in order for San Simeon CSD to afford the SEP, it cannot complete the SEP at the same time it is upgrading its existing plant to come into compliance with its discharge requirements. Completion of the SEP should greatly benefit water quality. The consequences for not completing an SEP by a specified deadline are forfeiture of the suspended penalty to State Board. Considering this, staff finds that San Simeon CSD's proposal to complete tertiary treatment facilities by July 25, 2012, is acceptable.

Staff therefore proposes a revised Mandatory Minimum Penalty Order No. R3-2006-0102. The revised Order is included as **Attachment 6**. The revised Order is essentially the same as that described above except that it requires completion of tertiary treatment facilities construction by July 25, 2012. The revised proposed Order also extends the deadlines contained in the previously adopted mandatory minimum penalty orders to be consistent with this order.

RECOMMENDATION

Staff recommends adoption of Mandatory Penalty Order No. R3-2006-0102.

ATTACHMENTS

1. San Simeon CSD letter dated February 27, 2007
2. News release from State Senator Sam Aanestad re: SB 1733
3. Proposed Mandatory Minimum Penalty Order No. R3-2006-0102
4. San Simeon CSD letter dated June 6, 2007
5. San Simeon CSD letter dated August 3, 2007
6. Revised Proposed Mandatory Minimum Penalty Order No. R3-2006-0102