

**DANIEL R. ALLEMEIER, Secretary and General Counsel**

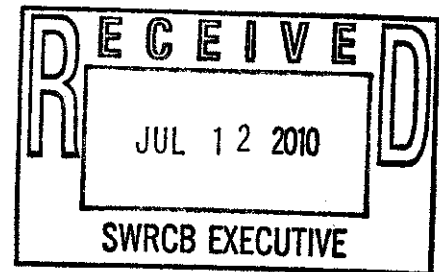


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**By E-mail**

July 12, 2010

Jeanine Townsend, Clerk to the Board  
California State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814



**RE: Comment Letter – Malibu Septic Prohibition**

Dear Ms. Townsend:

This letter presents comments by HRL Laboratories, LLC ("HRL") to the proposed Amendment to the Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area, Resolution No. R4-2009-007 (the "Regional Resolution"). In the Public Notice issued by the State Water Resources Control Board, the Draft Resolution of the SWRCB is to accept the Regional Resolution. The Regional Resolution, which would amend the applicable Basin Plan, is aimed at prohibiting, within a specific boundary, on-site wastewater disposal systems ("OWDSs") that discharge wastewater directly into the subsurface. The Regional Resolution purports to prohibit discharges from "individual/group septic/disposal systems in the Civic Center area."

We ask that HRL be excluded from the prohibition boundary, much like our geographic neighbor Pepperdine University, as the underlying reasons for the Regional Resolution do not apply to HRL. In short, as outlined in the following, the revision to the prohibition boundary would meet the intent of the Regional Resolution while enabling the City of Malibu to focus resources on the areas that require attention.

In addition, to the above request, HRL supports the City of Malibu's request that the State Water Resources Control Board remand the proposed amendment back to the Regional Board for further consideration and evaluation of the City's plan.

## **A. HRL Facility Should be Excluded from Prohibition Boundary**

The area north of Pacific Coast Highway and west of Malibu Canyon Road, including the HRL Facility, should be excluded from the prohibition boundary. This boundary revision is consistent with the previous boundary revision for Pepperdine University. The following restates SWRCB conclusions supporting the Regional Resolution and provides contextual reference to the HRL Facility.

The Regional Resolution stated that "Dischargers in the Civic Center area subject to Orders from the Regional Board that specify waste discharge requirements (WDRs) for OWDSs have poor records of compliance." HRL has a long history of sustainable environmental practices. HRL's WDR permit applies to both industrial and sanitary processes, with the industrial process stream accounting for the majority of the water managed under the permit. Virtually the entire industrial process stream is used as recycled water for landscape irrigation purposes on the HRL facility. The sanitary stream includes tertiary treatment prior to on-site infiltration. HRL's treatment processes meet WDR requirements with a reliability that is similar to publicly owned treatment works (POTWs). HRL's operations under the existing WDR permit provide an effective and enforceable means of maintaining basin water quality goals. In addition, the use of recycled water for irrigation reduces burden on potable water supplies which is consistent with the State of California's recycled water policies.

The Regional Resolution stated that "Discharges of wastewaters released from OWDSs in the Civic Center area to groundwater contain elevated levels of pathogens and nitrogen that impair underlying groundwater as a potential source of drinking water." This may be true for some portions of the Prohibition Area; however, this does not appear to be applicable to the HRL facility based on geographic and treatment process considerations. The geographic considerations include lot size and thickness of unsaturated zone. During the October 1, 2009, Public Meeting, Ms. Wendy Phillips indicated that the apparent failure of septic systems in the Malibu Civic Center Area is related to small lot sizes. In addition, many of the septic systems within the area defined in the Regional Resolution are located in low lying areas where the thickness of the unsaturated zone may not be adequate to effectively treat sewer discharges. As previously described, the HRL industrial process stream is recycled for on-site irrigation to meet water quality requirements established in the WDR permit, and the sanitary portion includes tertiary treatment prior to infiltration. The relatively much higher elevation (roughly 300 to 800 feet above sea level), large size of HRL property (roughly 75 acres), the relatively thick unsaturated zone (on the order of about 100 feet and greater), and the existing treatment and recycling of process waters effectively control pathogens and nitrogen loading to groundwater in the basin from the HRL facility. The location, geographic setting, and use of

recycled water for irrigation at HRL is similar to Pepperdine University, which has been excluded from the prohibition boundary.

The Regional Resolution stated that "Discharges of wastewaters released from OWDSs in the Civic Center area to groundwater that are in hydraulic connection with beaches along the mouths of unsewered watersheds transport pathogens that elevate risks of infectious disease for water contact recreation." As previously discussed, there are two process streams that HRL manages under the existing WDR permit, industrial and sanitary, with the industrial process stream accounting for the majority of the water managed under the permit. Pathogens are not associated with the industrial process and the lesser sanitary process includes tertiary treatment prior to infiltration. The HRL facility process streams are managed in a way to minimize pathogens. Assuming there were pathogens in the process waters, the depth to groundwater and distance to beaches would effectively control pathogen migration in the subsurface. Again, the geographic location of HRL is similar the neighboring Pepperdine University property, which has been excluded from the prohibition area.

The Regional Resolution stated that "Discharges of wastewaters released from OWDSs in the Civic Center Area to groundwater that are in hydraulic connection with Malibu Lagoon transport a nitrogen load significantly in excess of the wasteload allocation in the nutrient TMDL established to restore water quality to a level sufficient to protect aquatic life and prevent nuisance resulting from eutrophication." As stated previously, the industrial process stream accounts for the majority of the water managed under the HRL WDR permit. Nitrate is monitored as part of the WDR permit for the treated industrial process stream to ensure that nitrate concentrations do not exceed permit conditions.

The Regional Resolution stated that "Wastewater flows from OWDSs in the Civic Center area have been increasing. On many sites, hydrogeologic conditions are unsuitable for high flows of wastewater, and many dischargers generate wastewater flows at rates that exceed their capacity to discharge on-site. These dischargers rely on pumping significant flows into tanker trucks that haul liquid sewage and sludge via public roadways to communities that have sewer and wastewater treatment facilities." The quantity of process waters managed under HRL's WDR has remained relatively constant over the past 12 years and, through HRL's commitment to environmental sustainability, is likely to decrease over time. As previously stated, the size of the HRL property and depth to groundwater are sufficient to support recycled irrigation watering and sanitary process water infiltration.

The area north of Pacific Coast Highway and west of Malibu Canyon Road, including the HRL Facility, should be excluded from the prohibition boundary. This boundary revision is consistent with the previous boundary revision for Pepperdine University, would meet intent of the Regional Resolution and would enable the City of Malibu to focus resources on the areas that require attention.

## **B. HRL Supports the City of Malibu's Plan**

The City of Malibu contends that a centralized wastewater treatment system for the proposed Basin Area is not feasible, primarily due to the inability to discharge sufficient amounts of treated water without pumping it great distances or utilizing an ocean outfall, neither of which are considered viable options due to cost and public/environmental opposition. The City has proposed an alternative plan focusing on connecting the core commercial properties in the Malibu Creek/Malibu Lagoon area to a centralized wastewater treatment system and requiring tertiary treatment (disinfection) for residential OWDS and businesses outside of the core area (including HRL). The City's plan was not properly considered by the Regional Board prior to issuing their amendment for technical/procedural reasons.

Moreover, the timeframe established by the Regional Board did not permit the completion of the City's scientific studies and thus was not based on all relevant scientific data, and that the failure to weigh the cost/benefit of the City's alternative plan (or any plan to comply with the OWDS prohibition) was a violation of the Porter-Cologne Water Control Act's requirement for reasonableness in establishing policy. (The "waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.")

The original Regional Resolution provided an exemption for zero-discharge systems. As a consequence, there was no need for the affected community to suggest this as a viable alternative. By including such systems in the original Resolution, the Regional Board had already indicated that a zero-discharge system was an appropriate alternative. Indeed, a proposed shopping and office center, known as the La Paz project, obtained a wastewater disposal system permit, which was unanimously approved by the Regional Board on July 8, 2010. The La Paz project is to be constructed in the Civic Center south of the Malibu Library, which is in the heart of the prohibition zone and it includes a "no discharge" system. Thus, the Regional Board is aware of and approves of such a system.

However, after the comment period for the Regional Resolution was closed, the Regional Board inexplicably modified the Regional Resolution to eliminate the zero-discharge system as a viable alternative. As a consequence, the Resolution now before the State Board is not the one on which the affected community made comments. Yet, as noted above, the Regional Board unanimously approved such a system as recently as July 8, 2010. More importantly, the blanket prohibition on zero-discharge systems does not provide a reasonable alternative for an environmentally friendly approach that does not

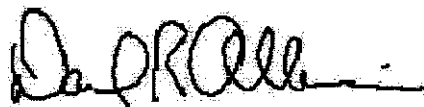
impact water in the impaired area and maximize recycling opportunities. Thus, a remand of the Regional Resolution to the Regional Board is appropriate to permit public comment on and reconsideration of the proposed elimination of zero-discharge systems.

**C. Conclusion.**

Based on the above, HRL respectfully requests that its property be excluded from the boundary affected by the Regional Resolution. HRL supports the proposed City of Malibu's Plan and joins the City in requesting that the State Board remand the Regional Resolution back to the Regional Board.

Thank you for your attention and we look forward to working with you to resolve our concerns. If warranted, we would appreciate the opportunity to meet with the Board for further discussion prior to its adopting the amendment.

Very truly yours,

A handwritten signature in black ink, appearing to read "David R. Allen". The signature is written in a cursive style with a long horizontal flourish extending to the right.