



California Regional Water Quality Control Board

Central Coast Region



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Secretary for
Environmental
Protection

Arnold Schwarzenegger
Governor

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May 21, 2004

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Mr. Rick Mullikin
Pajaro Valley Unified School District
294 Green Valley Road
Watsonville, CA 95076

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT – LANDMARK ELEMENTARY SCHOOL, OHLONE PARKWAY & HARKINS SLOUGH ROAD, WATSONVILLE, SANTA CRUZ COUNTY; WDID# 3 44C322331

Mr. Mullikin:

Enclosed is an Administrative Civil Liability Complaint (Complaint No. R3-2004-0073) issued by the Executive Officer of the Regional Water Quality Control Board for violations of the General Construction Storm Water Permit.

Should Pajaro Valley Unified School District choose to waive the right to a public hearing, an authorized agent must sign the enclosed waiver form and submit it to the Regional Board no later than July 8, 2004. Should a hearing be necessary, it will occur on July 8 or 9, 2004, in the City of Watsonville. At that time the Regional Board will hear public testimony and decide whether to affirm the Executive Officer's recommended liability of fifteen thousand dollars (\$15,000), increase or decrease the amount, or refer the matter for judicial civil action.

If you have questions regarding this matter, please call Kimberly Gonzalez at (805) 549-3150.

Sincerely,

Roger W. Briggs
Executive Officer

Enclosures: Complaint No. R3-2004-0073, Waiver of Hearing, Attachment 1–Applicable Permit Requirements

cc with attachments: Ms. Lori Okun, State Water Resources Control Board, Office of Chief Counsel
cc w/out attachments: Mr. Wayne Edgin, Robert A. Bothman, Inc., 650 Quinn Avenue, San Jose, CA 95002
Mr. Chris Luffman, Don Chapin Co., 440 Crazy Horse Canyon Road, Salinas, CA 93907
Mr. Steve Palmisano, City of Watsonville, P.O. Box 50000, Watsonville, CA 95077

File: Storm Water: WDID# 3 44C322331
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Task: Enforcement

California Environmental Protection Agency



Item No. 16, Attachment No. 2
July 9, 2004 Meeting
Landmark Elementary ACL

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2004-0073

In the Matter of:

**Pajaro Valley Unified School District
Landmark Elementary School, Watsonville
Santa Cruz County**

PAJARO VALLEY UNIFIED SCHOOL DISTRICT IS HEREBY GIVEN NOTICE:

Pajaro Valley Unified School District (hereby Discharger) is alleged to have violated provisions of law and an Order of the State Water Resources Control Board (State Board), for which the Regional Water Quality Control Board (Regional Board) may impose civil liability pursuant to California Water Code Section 13385.

Unless the Discharger waives its right to a hearing, a hearing on this matter will be held before the Regional Board within 90 days of receipt of this administrative civil liability complaint (Complaint). The Discharger and/or the Discharger's representative(s) will have the opportunity to be heard, and to contest the allegations in the Complaint and the imposition of civil liability by the Regional Board. A hearing is tentatively scheduled for July 8 or 9, 2004 in Watsonville, Santa Cruz County, California.

An agenda will be mailed to you separately, not less than ten days before the hearing date. At the hearing, the Regional Board will consider whether to affirm, reject, increase or decrease the proposed administrative civil liability, or whether to refer the matter to the State Attorney General for recovery of judicial civil liability.

ALLEGATIONS

1. The Discharger is the owner of an 8.2-acre construction project known as Landmark Elementary School (Site), at Ohlone Parkway and Harkins Slough Road in Watsonville, Santa Cruz County.
2. On August 19, 1999, the State Board adopted *Order No. 99-08-DWQ National Pollutant Discharge Elimination system (NPDES) General Permit No. CAS000002* (Permit). The Permit, as amended, serves as waste discharge requirements regulating storm water discharges associated with construction activity for sites disturbing one acre or more in accordance with the Clean Water Act (United States Code, Title 33, Chapter 26) and the Porter-Cologne Water Quality Control Act (California Water Code Sections 13000 et seq.).

3. On June 10, 2003, the Discharger signed a Notice of Intent (NOI) to comply with the Permit. The NOI indicated construction commenced on June 1, 2003, and the site SWPPP was dated May 2003.
4. The NOI identifies Pajaro Valley Unified School District as the owner, and Don Chapin Co. as the developer/contractor. The NOI does not specify a Site contact person. The NOI also does not specify qualified persons to prepare annual compliance evaluations, eliminate unauthorized discharges, and inspect the site. From conversations with the Site representative during inspections, Regional Board staff understands Don Chapin Co. is no longer involved with Permit compliance issues at the Site.
5. The majority of Site storm water runoff flows into storm drains and drainageways that discharge to a constructed unpaved basin. No basin design documents were available. From interviews with a Site representative, Regional Board staff understands the basin is for post-construction storm water retention, and the basin discharges to a second (off-site) post-construction storm water basin before discharge to Struve Slough in Watsonville.
6. At the time of inspection, there were steep slopes on approximately fifty percent of the Site perimeter.
7. Below is a list of Permit requirements and alleged violations. The first part of each item below identifies the subject and relevant Permit section(s), and provides a summary of the permit requirements. (Please see Attachment 1, Applicable Permit Requirements, for actual Permit text.) Subsequently, "February" and "March" paragraphs are presented, which contain inspection evidence corresponding to Regional Board staff's February 23, 2004 and March 19, 2004 Site inspections, respectively.
 - a. **Discharging Without Appropriate BMPs.** (*Permit items A.2 and C.3; C.2 and 'Section A' item 1.c*) – The Discharger is prohibited from discharging material other than storm water unless the discharge is controlled and occurs through implementation of appropriate best management practices (BMPs) to eliminate or reduce pollutants. The Discharger is required to identify, construct, implement in accordance with a time schedule, and maintain BMPs to reduce or eliminate pollutants in storm water discharges and authorized nonstorm water discharges from the construction site during construction.

February - Violation of *Permit items C.2 and 'Section A' item 1.c*: Regional Board staff observed evidence of dewatering without appropriate BMPs. Dewatering appeared to have occurred through a hose discharging onto a narrow plywood board set on an erodible slope. The discharge flowed from the hose onto the plywood and bare slope, and over a paved area. The paved area had significant

amounts of sediment tracking. The paved area appeared to drain to onsite storm drains and/or offsite to Ohlone Parkway.

March - Violation of *Permit items A.2 and C.3; and C.2 and 'Section A' item 1.c:* Concrete washout water (a non-stormwater discharge) was discharged from the site without BMPs or treatment. Regional Board staff saw several unconfined concrete washout areas and observed someone wash out his concrete truck on the Site with no BMPs to address the discharge. The discharge flowed off the Site and to a nearby drainageway. The dewatering noted in the February inspection appeared to have been discontinued.

- b. **Storm Water Pollution Prevention Plan** (*Permit item C.2*) – The Discharger must develop and implement a Storm Water Pollution Prevention Plan (SWPPP) in accordance with Permit 'Section A.'

February - Violation of *Permit item C.2:* Regional Board staff requested the SWPPP, but the SWPPP was not available at the site ("SWPPP Availability" violations are addressed on page 4 of this document). However, during the March 2004 inspection, the SWPPP (dated May 2003) was available, and was in violation of Permit item C.2 (see below). Since there were no documented revisions or updates in the SWPPP, it is assumed the SWPPP was inadequate from construction commencement on June 1, 2003 through March 19, 2004, including the February 23, 2004 inspection. For purposes of calculating the maximum penalty in this Complaint, the violation period extends only from staff's first inspection in February through staff's second inspection in March.

March - Violation of *Permit item C.2:* A SWPPP was available at the Site, but was not developed in accordance with Permit 'Section A,' and was not fully implemented. Some deficiencies identified during staff's review of the SWPPP during the inspection include:

- The SWPPP did not contain descriptions or illustrations of proper BMP implementation,
- The SWPPP listed soil compaction as an erosion control BMP (soil compaction actually reduces soil permeability and increases runoff volume and velocity, thereby increasing potential for erosion, and is therefore not considered a BMP),
- The SWPPP prescribed erosion control blankets for sediment tracking (erosion control blankets are to be used to prevent erosion on slopes, not to prevent tracking by construction traffic),
- The SWPPP did not document storm water training for personnel responsible for SWPPP implementation.

- The SWPPP identified use of retention, detention, and/or desilting basins in both erosion and sediment control sections. Basins are a means of *sediment* control, not erosion control. Additionally, the SWPPP was deficient for not including basin design calculations.

Additionally, the SWPPP was not fully implemented:

- The SWPPP prescribed hydroseeding as an erosion control BMP, but there was no hydroseeding implemented on the Site,
 - The SWPPP required appropriate disposal of wastes, but an area of the Site was littered with trash.
- c. **SWPPP Availability** (*Permit item C.2 and 'Section A' item 3*) – The Discharger must retain the SWPPP at the Site during working hours.

February - Violation of *Permit item C.2 and 'Section A' item 3*: Regional Board staff asked to see the Site's SWPPP, but was told there was no SWPPP at the Site.

March - Compliance with *Permit item C.2 and 'Section A' item 3*: The Site's SWPPP was available at the Site.

- d. **Erosion Control** (*Permit item C.2 and 'Section A' item 6*) – The Discharger must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season (October – May).

February - Violation of *Permit item C.2 and 'Section A' item 6*: The Discharger did not implement an effective combination of erosion and sediment control on all disturbed areas. Regional Board staff saw evidence of erosion on steep slopes and stockpiles, and inadequate, ineffective erosion controls. (Such as plastic sheeting that did not reach the toe of slope, was not properly anchored, and contained gaps where sediment was exposed.) Staff recommended repairing eroded areas and considering an alternative to the plastic sheets, such as erosion control blankets, tackifier, etc. Hydroseeding was specified in the Site's Erosion Control Plan (City-required document), however, no hydroseeding had occurred. Final plans include retaining walls for some of the Site slopes.

March - Violation of *Permit item C.2 and 'Section A' item 6*: The Discharger did not implement an effective combination of erosion and sediment control on all disturbed areas. Again, Regional Board staff saw evidence of erosion on steep slopes and stockpiles, and inadequate, ineffective erosion controls (described above). It appeared that some of the plastic sheeting had been readjusted, but it still did not cover slopes from top to toe. Hydroseeding, which would likely be more effective and less maintenance-intensive than plastic sheeting, was specified in the SWPPP as an erosion control BMP, but was not implemented before the

rainy season. Regional Board staff recommended the Discharger consider other alternatives, such as erosion control blankets.

- e. **Sediment Control** (*Permit item C.2 and 'Section A' item 8*) – Sediment controls are required at all operational storm drain inlets receiving runoff from the construction project. These sediment controls are required at all times during the rainy season. If a basin is to be considered as a construction sediment control BMP, it must be designed and constructed in accordance with the Permit. The SWPPP must include a description or illustration of sediment control BMPs.

February - Violation of *Permit item C.2 and 'Section A' item 8*: Regional Board staff observed functional storm drain inlets (onsite and offsite in the project vicinity) that were not protected with sediment control BMPs. Additionally, there was no SWPPP on site, so Regional Board staff could not see BMP descriptions/illustrations to determine the purpose of an onsite basin receiving runoff from the Site. Regional Board staff could not determine the basin's intended use, and whether or not it was designed in accordance with Permit requirements. The Site representative first indicated the basin was designed by the Division of State Architects to meet regulations, then said the basin was likely for post construction.

March - Violation of *Permit item C.2 and 'Section A' item 8*: The SWPPP did not contain description or illustration of sediment control BMPs; specifically of interest to Regional Board staff was the basin design. The SWPPP was available during the March inspection, and in several places the SWPPP specified use of retention, detention, and/or desilting basins on site; however, no basin design information was available to determine if the onsite basin was designed and constructed to Permit standards. The basin appeared to receive a majority of onsite drainage and was collecting sediment. The basin had not been cleaned since the last storm event and the last inspection. Onsite and offsite storm drain inlets were protected, but BMPs were in need of repair/maintenance as described in violations for *Permit 'Section A' item 11*.

- f. **BMP Maintenance, Inspections, and Repair** (*Permit item C.2 and 'Section A' item 11*) – BMP inspection, maintenance, and repair are required as soon as possible (with respect to worker safety) after conclusion of each storm and after a problem is noted.

February - Violation of *Permit item C.2 and 'Section A' item 11*: BMPs were in need of maintenance and repair. Silt fences were in need of repair and/or replacement. Construction entries/exits were not adequately stabilized. Sediment was tracked on paved areas onsite and offsite on Ohlone Parkway.

March - Violation of *Permit item C.2 and 'Section A' item 11*: BMPs were in need of maintenance and repair, and weather conditions allowed sufficient time to make the repairs prior to Regional Board staff's March inspection. Silt fences

were still in need of repair and/or replacement. Tracking on onsite paved areas was still occurring, despite closing one of the construction entrances/exits. A street sweeper swept paved areas during the inspection, but there was so much sediment, that sediment remained after the sweeper finished. Drain inlet BMPs were in need of repair. Sand/gravel bags were torn and filter fabric in one storm drain inlet had a hole about three inches in diameter.

- g. **Training** (*Permit item C.2 and 'Section A' item 12*) – Site BMP installation, inspection, maintenance, and repair are the responsibility of trained Site personnel. Training must be documented in the SWPPP.

February - Violation of *Permit item C.2 and 'Section A' item 12*: There were no trained personnel to conduct storm water inspections and oversee BMP installation and maintenance.

March - Violation of *Permit item C.2 and 'Section A' item 12*: There were no trained personnel to conduct storm water inspections and oversee BMP installation and maintenance. Storm water training was not documented in the SWPPP.

- h. **Site Inspections and Monitoring Records** (*Permit item C.4 and 'Section B' items 3 & 6*) – Qualified Site personnel must inspect the Site prior to anticipated storm events, during extended storm events, and after actual storm events to identify storm water discharge areas and to ensure BMPs are properly installed and maintained. Records of all Site inspections must be kept for at least three years.

February - Violation of *Permit item C.4 and 'Section B' items 3 & 6*: There was no evidence of trained Site personnel conducting storm water inspections prior to anticipated storm events, during extended storm events, and after actual storm events to identify storm water discharge areas and to ensure BMPs are properly installed and maintained. There were no records of site storm water inspections.

March - Violation of *Permit item C.4 and 'Section B' items 3 & 6*: There was no evidence of trained Site personnel conducting storm water inspections prior to anticipated storm events, during extended storm events, and after storm events to identify storm water discharge areas and to ensure BMPs are properly installed and maintained. There were no records of site storm water inspections.

- i. **Compliance with Local Requirements** (*Permit item C.5*) – The Discharger must comply with municipal, county, drainage district, and other local agency requirements.

February - Violation of *Permit item C.5*: The Site was not in compliance with the City of Watsonville's erosion control ordinance. Regional Board staff inspected the Site with a City erosion control inspector, and after the inspection, the City

issued a citation to the Discharger for ongoing violations of the City's erosion control ordinance. The City had previously issued a citation on February 2, 2004 for the same violations. Three weeks later (during Regional Board staff's first inspection) the Discharger had not yet addressed erosion control ordinance violations identified by the City.

March - Violation of *Permit item C.5*: The Site was not in compliance with the City of Watsonville's erosion control ordinance (as evidenced by a March 31, 2004 City citation). Regional Board staff did not meet with the City inspector during the March inspection. However, on March 31, 2004, the City issued a third citation to the Discharger for ongoing violations of the City's Erosion Control Ordinance.

8. Overall, the Discharger remained in violation of Permit requirements regarding appropriate discharge BMPs, SWPPP adequacy, erosion control, sediment control, BMP maintenance/inspections/repair, personnel training, site inspection/monitoring records, and compliance with local regulations. Although there were some changes in Site conditions with respect to these violations, the Discharger did not bring the Site into compliance. The Discharger showed improvement by having the Site's SWPPP on Site during the second Regional Board staff inspection.
9. Regional Board staff discussed violations with Site personnel during the February 23, 2004 and March 19, 2004 inspections, and issued Notice of Violation letters on March 5, 2004 and March 24, 2004 for violations noted during the inspections, respectively. In the first Notice of Violation, the Discharger was informed of the exact date when Regional Board staff would return to the Site for a follow-up inspection. Both Notices of Violation were mailed to the Discharger, and mailed and faxed to Site personnel.
10. Rainfall data for February and March 2004 (which includes the period of violation) is presented in the table below. Regional Board staff first inspected the site prior to an anticipated rain event. After the rain event, sufficient time elapsed to perform BMP maintenance and repairs before Regional Board staff's second inspection.

Watsonville Precipitation Data

Feb 2004	Rain (inches)	Feb 2004	Rain (inches)	Mar 2004	Rain (inches)	Mar 2004	Rain (inches)
1	0	17	0.89	1	0.14	17	0
2	0.65	18	0.29	2	0	18	0
3	0.06	19	0	3	0	19	0
4	0	20	0	4	0	20	0
5	0	21	0.01	5	0	21	0
6	0	22	0.01	6	0	22	0
7	0	23	0	7	0	23	0
8	0	24	0.17	8	0	24	0
9	0	25	1.68	9	0	25	0.36
10	0	26	0.34	10	0	26	0
11	0	27	0.03	11	0	27	0
12	0	28	0	12	0	28	0
13	0	29	0	13	0	29	0
14	0			14	0	30	0
15	0			15	0	31	0
16	0.24			16	0		

Shaded items represent Regional Board staff inspections.

11. The minimum period of violation extends from February 23, 2004 to March 19, 2004, a total of twenty-six days. This is a conservative estimate since Regional Board staff has evidence documenting the Discharger was in violation with City requirements (which is a violation of *Permit item C.5*) from February 2, 2004 through March 31, 2004, a total of fifty-nine days. Additionally, evidence indicates the Discharger had an inadequate SWPPP (which is a violation of *Permit item C.2*) from construction commencement on June 1, 2003, to Regional Board staff's second inspection on March 19, 2004, a total of two hundred eighty-eight days.

PROPOSED CIVIL LIABILITY

In determining any liability to be imposed, California Water Code Section 13385 requires the Regional Board to consider the following factors and any other factors as justice may require:

- a. **Nature, circumstances, extent, and gravity of the violation:** This Complaint is issued to address the Discharger's failure to comply with permit requirements despite sufficient discussion with and notification from Regional Board staff.

The Discharger violated Permit requirements, the Federal Clean Water Act, and the California Water Code by not having an adequate SWPPP on site, not implementing BMPs in accordance with the SWPPP, not maintaining BMPs, not hiring qualified personnel to conduct Site storm water inspections, and not complying with local regulations.

Self-monitoring and voluntary compliance with Permit requirements is an important aspect of the Storm Water Program. The gravity of the violations lies in the Discharger's continued defiance of local, state, and federal storm water regulations, and continued non-compliance despite inspections, citations and violation letters from the City of Watsonville, and inspections and a violation letter from Regional Board staff.

The violations alleged in this complaint are limited to non-compliance with Permit requirements. This Complaint does not address actual impacts to water quality resulting from the Discharger's non-compliance with Permit requirements.

The Discharger had sufficient notification, dry weather, and time to come into compliance before Regional Board staff's second inspection. Regional Board staff discussed violations in detail during the February inspection and followed up with a Notice of Violation dated March 5, 2004. Regional Board staff specified the exact date of the follow-up inspection. It did not rain for seventeen days before staff's second inspection, allowing sufficient time for Site personnel implement appropriate BMPs and maintain existing BMPs.

Although non-compliance with Permit requirements is a serious violation, this consideration warrants liability that is less than the maximum because the extent of allegations is limited to potential water quality impacts from Permit non-compliance, not actual impacts to water quality.

- b. **Discharge susceptibility to cleanup or abatement:** In general, storm water discharge is not susceptible to complete cleanup because contaminated storm water often moves rapidly, and disperses over extensive areas. In this case, the City of Watsonville's storm drain system may need cleaning due to discharges of sediment from the Site.
- c. **Discharge toxicity:** The major component in the Site's storm water discharge was likely sediment. Sediment may carry substances toxic to humans and aquatic life (such as metals, petroleum products, pesticides, etc.). Regional Board staff is not aware of any historic soil or groundwater contamination at the Site. There is evidence of sediment-laden storm water runoff discharged to Ohlone Parkway and City storm drains.

A non-storm water discharge of concrete wash water was observed during staff's March 19, 2004 inspection. Concrete wash water has a high pH and can be toxic to aquatic life in surface waters. During the March 19, 2004, Regional Board staff observed untreated concrete wash water being discharged off site.

- d. **Ability to pay and effect on ability to continue business:** The Regional Board has no specific information regarding the Discharger's financial status.

- e. **Violation history:** There have been no previous Regional Board enforcement actions against the Discharger for this project.
- f. **Voluntary cleanup efforts:** Regional Board staff does not have evidence of voluntary cleanup efforts undertaken by the Discharger. Public storm drains on Ohlone Parkway received sediment-laden storm water runoff and may need to be cleaned out. A small drainageway near the construction site may have received sediment-laden storm water runoff from the steep, partially-covered slopes on about fifty percent of the Site perimeter; however, cleanup may not be necessary in this drainageway since sediment was likely deposited in the downstream man-made, unlined basin. During Regional Board staff's inspections, the basin (which is not considered a construction sediment-control BMP since there are no design documents available that define it as such and demonstrate it was designed in accordance with Permit requirements) contained a significant amount of sediment that had not been cleaned out before Regional Board staff's second inspection. Information available to Regional Board staff indicates the Discharger did not undertake any voluntary cleanup efforts from February 23, 2004 through March 19, 2004.
- g. **Degree of culpability:** As the permitted party and owner of the Site, the Discharger is responsible for permit compliance. In Regional Board staff's March 5, 2004 Notice of Violation, the Discharger was informed of Site violations, Permit requirements, maximum liability that could be assessed for Permit violations, and the exact date on which Regional Board staff would return for a second compliance inspection. During the inspections, Regional Board staff walked the Site with Site personnel, pointed out violations, and discussed potential means of achieving compliance.
- Although there were some modifications to the Site in response to the first inspection and Notice of Violation, many of the initial violations remained, and there were new violations (including an unauthorized non-storm water discharge) during the second Regional Board staff inspection.
- h. **Economic benefit or savings:** Although the Discharger may have enjoyed economic benefit or savings by not having an adequate SWPPP, not implementing adequate BMPs, not maintaining BMPs, not implementing the SWPPP, and not hiring qualified personnel to conduct Site storm water inspections, Regional Board staff does not have sufficient information to calculate economic benefit or savings realized by the Discharger.
- i. **Other matters as justice may require:** Regional Board staff spent time responding to the City's complaint, traveling to and inspecting the Site, and preparing and reviewing enforcement documents. Estimated staff costs (including Regional Board technical staff, administrative staff, supervisors, and legal council) are five thousand five hundred fifty dollars (\$5,550).

$$\text{\$75/hour} * 74 \text{ hours} = \text{\$5,550}$$

RECOMMENDATION

Upon consideration of factors as required by California Water Code Section 13385, the Executive Officer recommends civil liability in the amount of **fifteen thousand dollars (\$15,000)** for the Discharger's violations of the Permit from February 23 through March 19, 2004.

Maximum Liability – Pursuant to California Water Code Section 13385, the Regional Board can impose civil liability up to ten thousand dollars (\$10,000) per day of violation of waste discharge requirements. Waste discharge requirements include NPDES permits (California Water Code Section 13374). The Discharger was in violation of the Permit for at least twenty-six days. Maximum liability that may be imposed is two hundred sixty thousand dollars (\$260,000). The Discharger violated multiple provisions of the Permit during this period. The \$260,000 maximum liability is a conservative estimate because it counts only one violation per day.

Minimum Liability – In accordance with California Water Code Section 13385, the minimum liability that may be imposed is recovery of economic benefit or savings (if any) derived from the violations. Although the discharger likely realized some cost savings from noncompliance (having an inadequate SWPPP, not implementing the SWPPP, not implementing appropriate BMPs, not maintaining BMPs, and not hiring qualified personnel to conduct Site storm water inspections), Regional Board staff does not have sufficient information to determine the actual economic benefit derived by not complying with the Permit. The proposed liability of fifteen thousand dollars (\$15,000) (or a daily average of five hundred seventy-seven dollars (\$577)) is likely greater than economic savings realized by the Discharger during the period of violation, and would therefore meet California Water Code Section 13385 specifications for assessing at least the minimum liability.



Roger W. Briggs, Executive Officer

5-20-04

Date