

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION  
895 Aerovista Lane, Suite 101  
San Luis Obispo, California 93401**

**COMPLAINT NO. R3-2004-0038**

**MANDATORY PENALTY  
IN THE MATTER OF THE  
CITY OF SANTA BARBARA  
WASTEWATER TREATMENT PLANT  
SANTA BARBARA COUNTY**

This complaint to assess Mandatory Minimum Penalties pursuant to California Water Code section 13385(h) and (i) is issued to the City of Santa Barbara (Discharger) based on a finding of violations of Waste Discharge Requirements Order No. 99-40 (National Pollutant Discharge Elimination System (NPDES) Permit No. CA0048143).

The Executive Officer finds the following:

1. On September 8, 1999, the Regional Water Quality Control Board, Central Coast Region (Regional Board), adopted *Waste Discharge Requirements Order No. 99-40, NPDES Permit No. CA00481431, for the City of Santa Barbara, Santa Barbara County* (Order No. 99-40).
2. California Water Code section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation.
3. California Water Code section 13385(i) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in a consecutive six-month period:
  - a) Exceeds a waste discharge requirement effluent limitation;
  - b) Fails to file a report pursuant to Section 13260;
  - c) Files an incomplete report pursuant to Section 13260; or
  - d) Exceeds a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
4. 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 may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000)."
5. California Water Code section 13385(h)(2) provides a serious violation occurs if the discharge exceeds the effluent limitations for a Group II pollutant, as specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations, by 40 percent or more.

6. California Water Code section 13385(f)(2)(A) states: For the purposes of subdivision (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in a violation of more than one effluent limitation and the violation continues for more than one day, if all the following apply:
- (i) The discharger demonstrates all of the following:
    - (I) The upset was not caused by wastewater treatment plant operator error and was not due to discharger negligence;
    - (II) But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day;
    - (III) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.
  - (ii) The discharger is implementing an approved pretreatment program, if so required by federal or state law.
7. The Discharger is implementing an approved pretreatment program.
8. California Water Code section 13385(f)(2)(B) states: Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.
9. If the State or Regional Board determines that a single operational upset event has occurred, all exceedances on any single day that are attributable to that event will be counted as only one exceedance for the purposes of calculating mandatory penalties. If the exceedances attributable to the same event continue for two days, two exceedances will be counted, and so on, in accordance with U.S. EPA's Guidance. (State Board Q&A) California Water Code (CWC) section 13385(f) was later amended to change this result but only for violations occurring after 1/1/03, per CWC section 13385(p). Therefore, the 2002 violations must be counted one-per-day.
10. Settleable Solids and Total Suspended Solids are Group I Pollutants.
11. Order No. 99-40 includes the following:

Effluent Limitations B.2:

Constituent	Units	Monthly (30-Day) Average	Weekly (7-Day) Average	Daily Maximum
Settleable solids	mL/L	1.0	1.5	3.0
Total Suspended Solids	mg/L	30	45	90

12. **Serious Thresholds** – Effluent containing constituent concentrations that are greater than or equal to the following values (limit + 40% for Group I pollutants, limit + 20% for Group II pollutants) are serious violations:

Constituent	Units	Monthly (30-Day) Average	Weekly (7-Day) Average	Daily Maximum
Settleable Solids	mL/L	1.4	2.1	4.2
Total Suspended Solids	mg/L	42	63	126

13. Effluent containing constituent concentrations that are less than the serious threshold but greater than the permit limits, are chronic violations when they occur four or more times in a consecutive six-month period, not counting the first three.
14. According to monitoring reports submitted by the Discharger from January 1, 2001 to December 31, 2003, the discharge violated the following effluent limitations in Order No. 99-40:

#	Violation Date	Constituent	Permitted Limit	Reported Value	Violation Type
1	2/14/01	Total Suspended Solids (TSS)	45 mg/L 7-day Average	47.2 mg/L	Chronic
2	2/14/01	Settleable solids	1.5 mL/L 7-day Average	1.7 mL/L	Chronic
3	3/21/01	TSS	30 mg/L 30-day Average	34.4 mg/L	Chronic
4	3/31/01	Settleable solids	3.0 mL/L Daily Maximum	9.0 mL/L	Serious
5	3/17/02	Settleable solids	3.0 mL/L Daily Maximum	11 mL/L	Serious
6	3/18/02	Settleable solids	3.0 mL/L Daily Maximum	18 mL/L	Serious
7	3/19/02	Settleable solids	3.0 mL/L Daily Maximum	3.5 mL/L	Chronic
8	3/21/02	TSS	45 mg/L 7-day Average	46.5 mg/L	*Chronic
9	3/21/02	Settleable solids	1.5 mL/L 7-day Average	5.3 mL/L	Serious
10	3/31/02	Settleable solids	1.0 mL/L 30-day average	1.3 mL/L	*Chronic
11	4/21/02	Settleable solids	3.0 mL/L Daily Maximum	4 mL/L	*Chronic
12	1/8/03	Settleable solids	3.0 mL/L Daily Maximum	7.5 mL/L	+Serious
13	1/9/03	Settleable solids	3.0 mL/L Daily Maximum	4.5 mL/L	+Serious
14	1/11/03	Settleable solids	3.0 mL/L Daily Maximum	5.2 mL/L	+Serious
15	1/14/03	Settleable solids	1.5 mL/L 7-day Average	2.9 mL/L	+Serious
16	3/15/03	Settleable solids	3.0 mL/L Daily Maximum	9.7 mL/L	Serious
17	5/21/03	Settleable solids	3.0 mL/L Daily Maximum	3.5 mL/L	Chronic
18	6/18/03	Settleable solids	3.0 mL/L Daily Maximum	3.3 mL/L	*Chronic
19	10/21/03	Settleable solids	1.5 mL/L 7-day Average	2.3 mL/L	Serious
20	10/22/03	Settleable solids	3.0 mL/L Daily Maximum	7.2 mL/L	Serious
21	10/23/03	Settleable solids	3.0 mL/L Daily Maximum	3.7 mL/L	Serious
22	10/24/03	Settleable solids	3.0 mL/L Daily Maximum	12 mL/L	Serious
23	10/28/03	Settleable solids	1.5 mL/L 7-day Average	3.6 mL/L	Serious
24	10/30/03	Settleable solids	1.0 mL/L 30-day average	1.8 mL/L	Serious

+ Denotes Single Operational Upset serious violations

\*Denotes Chronic violations subject to Mandatory Minimum Penalties

15. According to Finding No. 14, Lines 12, 13, 14, and 15, on January 8, 9, 11 and 14 of 2003 four serious violations were reported one violation for each day. These violations occurred due to a second case of influent toxicity likely also caused by a suspected illegal single discharge of portable toilet waste to the sewer. The Discharger has demonstrated operator error or negligence did not cause the upset, the violations would not have occurred nor continued for more than one day but for the upset, and the discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations. The Discharger is in the process of modifying the treatment plant's aeration tanks to eliminate the filamentous bacteria, which caused the exceedances. Therefore, in accordance with California Water Code section 13385(f)(2)(A), the violations shall be considered a single serious violation, thereby incurring a mandatory penalty of \$3,000.

16. According to Finding No. 14, the Discharger committed twelve (12) serious violations in the period specified above. The amount of the mandatory penalty for the violations (12 x \$3,000) is thirty-six thousand dollars (\$36,000).
17. According to Finding No. 14, the Discharger committed three (3) chronic violations for the period of February 1, 2001 to July 31, 2001. In accordance with California Water Code Section 13385(i) each chronic violation of four or more in a consecutive six-month period requires that the Regional Board assess a mandatory penalty of three thousand dollars (\$3,000), not counting the first three, occurring in a consecutive six-month period. In the Discharger's case the fourth violation on March 31, 2001 was a serious violation, and a three thousand dollar penalty (\$3,000) is already being assessed under the serious violation category. Therefore, no chronic violations and no penalty are assessed for this six-month period for these violations.
18. According to Finding No. 14, the Discharger committed four (4) chronic violations for the period of March 1, 2002 to August 31, 2001. In accordance with California Water Code Section 13385(i) each chronic violation of four or more in a consecutive six-month period requires that the Regional Board assess a mandatory penalty of three thousand dollars (\$3,000), not counting the first three, occurring in a consecutive six-month period. In this case the Discharger committed three serious violations on March 18<sup>th</sup> and March 21, 2002, that also count as chronic violations. Therefore a total of three (3) chronic violations and nine thousand dollar penalty (\$9,000) are assessed for this six month period.
19. According to Finding No. 14, the Discharger committed two chronic violations for the period of January 1, 2003 to October 31, 2003. In accordance with California Water Code Section 13385(i) each chronic violation of four or more in a consecutive six-month period requires that the Regional Board assess a mandatory penalty of three thousand dollars (\$3,000), not counting the first three, occurring in a consecutive six-month period. In this case the Discharger committed two serious violations on March 15, 2003, and the period of January 8, 9, 11 and 14, 2003 (See Finding No. 15 above) that also count as chronic violations. Therefore a single chronic violation and three thousand dollar (\$3,000) penalty are assessed for this six-month period.
20. According to Findings No. 14, 17, 18 and 19 a total of (\$3,000 x 4) twelve thousand dollars (\$12,000) are assessed for chronic violations.
21. The total amount of the mandatory minimum penalty from January 1, 2001 to December 31, 2003 is (\$36,000 + \$12,000) = \$48,000.

**THE CITY OF SANTA BARBARA IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed a Mandatory Minimum Penalty in the amount of forty-eight thousand dollars (\$48,000)
2. The Regional Board shall hold a public hearing on May 14, 2004, unless the Discharger agrees to waive its right to a public hearing by filling out, signing, and submitting the enclosed "Waiver of Hearing". If the Discharger chooses not to waive its right to a public hearing, the Regional Board may proceed with the scheduled public hearing and consider testimony received from interested persons during the public hearing and decide whether to accept the amount of Mandatory Penalty proposed by the Executive Officer or increase the liability. The Regional Board may also decide to continue the matter to a future hearing or refer it to the State Attorney General. The public hearing is scheduled at the regularly scheduled Regional Board meeting on May 14, 2004 at Regional Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. The meeting is scheduled to begin at 8:30 a.m.; however, no specific time has been set for consideration of this item.

If you have questions regarding this matter, please direct them to Michael Higgins at (805) 542-4649, or Regional Board Counsel, Lori Okun, at (916) 341-5165.

*for* Bradley E. Hageman  
Roger W. Briggs  
Executive Officer  
4/2/04  
Date

**PROCEDURAL INFORMATION  
FOR  
MANDATORY MINIMUM PENALTY COMPLAINT  
PUBLIC HEARING AND PAYMENT**

**WAIVER OF PUBLIC HEARING**

You may waive your right to a public hearing. If you wish to waive your right to a public hearing, a duly authorized person<sup>1</sup> must check, sign, and submit the following *Waiver of the Right to a Public Hearing* form and pay the mandatory minimum penalty amount specified in the Complaint **no later than May 3, 2004, 5:00 P.M.** Please follow the payment instructions below.

If you choose to waive your right to a public hearing, and if full payment and a signed *Waiver of the Right to a Public Hearing* form are received before the hearing, the hearing will not be held, and the violation will be settled. If full payment and a signed *Waiver of the Right to a Public Hearing* form are not received, the matter will be placed on the Regional Board's agenda for a hearing as stated below.

If you do not waive your right to a public hearing, the Executive Officer will present an Order to the Regional Board for the amount proposed in this Complaint at the Regional Board meeting on May 14, 2004, at the Regional Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. The Regional Board will proceed with the scheduled hearing, consider testimony received from interested persons during the hearing, and decide whether to accept the amount of the mandatory minimum penalty proposed by the Executive Officer, or increase the liability pursuant to Water Code Section 13385(c) and (e). If the proposed Order is adopted, payment of the mandatory minimum penalty to the State Water Resources Control Board will be due and payable no later than June 14, 2004, in accordance with the Order. If the proposed Order is rejected, the Regional Board may direct the Executive Officer to issue a new complaint and schedule another public hearing. The Regional Board may also decide to continue the matter to a future hearing or refer it to the State Attorney General. The meeting is scheduled to begin at 8:30 A.M.; however, no specific time has been set for consideration of the Order.

**PAYMENT OF MANDATORY MINIMUM PENALTY**

**No later than May 3, 2004**, please make your check payable to State Water Resources Control Board, and note "MMP Complaint No. R3-2004-0038" on the check. Please mail the check and signed waiver form to:

**SWRCB ACCOUNTING  
ATTN: ENFORCEMENT  
P.O. BOX 100  
SACRAMENTO, CA 95812-0100**

At the same time, please also mail copies of the check and signed waiver form to:

**Regional Water Quality Control Board  
Attn: Mike Higgins  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401**

---

<sup>1</sup> A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership or sole proprietorship, a principal executive officer or ranking elected official in a public agency, or a duly authorized representative.

**WAIVER OF THE RIGHT TO A PUBLIC HEARING**

- [ ] By checking this box, I agree to waive the City of Santa Barbara's right to a public hearing before the Regional Board with regard to the violations alleged in Complaint for Mandatory Minimum Penalty No. R3-2004-0038. I agree to provide payment of the mandatory minimum penalty for the amount proposed in Complaint for Mandatory Minimum Penalty No. R3-2004-0038. I understand that I am giving up the City of Santa Barbara's right to be heard, and its right to argue against the allegations made by the Executive Officer in Complaint for Mandatory Minimum Penalty No. R3-2004-0038, and against the imposition of, or the amount of, the mandatory minimum penalty proposed.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title/Position

\_\_\_\_\_  
Date