

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

ORDER NO. R3-2004-0038

**STIPULATED 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	2/1/01	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 a total of 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. For the period of February 1, 2001 to March 31, 2001, the Discharger reported three (3) chronic violations and one serious violation. 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 penalties are assessed for this six-month period for these violations.
18. For the period of March 17, 2002 to April 21, 2002, the Discharger committed four (4) chronic violations. 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 a serious violation on March 21, 2002, that also counts 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, since Finding No. 16 accounts for the penalty for the serious violation.
19. The Discharger reported two chronic violations and 11 serious violations for the period of January 8, 2003 to October 30, 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. Finding No. 16 accounts for the penalties assessed for the serious 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 $(\$36,000 + \$12,000) = \$48,000$.
22. In an April 16, 2004 letter, the Discharger requested mandatory penalties be directed to the following Supplemental Environmental Project (SEP): Contract with the United States Geological Survey (USGS) to evaluate sources and transport of bacteria in surface and subsurface waters, and to evaluate associated hydrologic conditions.
23. The project described in Finding No. 22 qualifies as an SEP in accordance with the State Water Resources Control Board's Enforcement Policy, Resolution No. 2002-0040. The SEP goes above and beyond the obligations of the Discharger and is not an action required of the Discharger by any rule or regulation of any entity. The SEP will benefit water quality. The SEP will not directly benefit Regional Board functions or staff.
12. The *Water Quality Enforcement Policy* specifies criteria each proposed project must satisfy to be a legal SEP. These criteria include water quality focus, geographic nexus, type of violation, beneficial use protection, regionwide use/benefit, leveraged funding, and institutional stability and capacity. The USGS project meets each of these criteria.

24. The Executive Officer of the Regional Board issued Mandatory Penalty Complaint No. R3-2004-0038 on April 2, 2004, pursuant to California Water Code section 13385. The Complaint proposed imposing a mandatory penalty in the amount of \$48,000.
25. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000, et seq.) in accordance with California Code of Regulations, Title 14, Chapter 3, section 15321.

IT IS HEREBY ORDERED, pursuant to California Water code section 13385, the City of Santa Barbara is assessed a Mandatory Penalty in the amount of forty eight thousand dollars (\$48,000).

No later than June 14, 2004, the City of Santa Barbara shall submit payment in the amount of \$48,000 to:

SWRCB Accounting
Attention: Enforcement
Post Office Box 100
Sacramento, CA 95812-0100.
The City shall send a copy of the payment to:

Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Any person affected by this action of the regional Board may petition the State water Resources control Board to review the action in accordance with California water Code section 13320, and Title 23, California Code of Regulations, Section 2050. The State Water Resources Control Board, Office of Chief Counsel, P.O. Box100, Sacramento, CA 95812 must receive the petition by June 14, 2004. Copies of the law and regulations applicable to filing petitions will be provided upon request.

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a true, full, and correct copy of an Order adopted by the California Regional water Quality Control Board, Central Coast Region, on May 14, 2004.

Roger W. Briggs
Executive Officer

Date