

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-5411**

**REVISED WORKSHEET FOR ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO. R3-2005-0137**

FOR

**LOS OSOS COMMUNITY SERVICES DISTRICT
LOS OSOS WASTEWATER PROJECT
San Luis Obispo County**

The Los Osos Community Services District (CSD) has failed to comply with the compliance dates specified in Order No. 00-131, a time schedule order concerning Los Osos Community Services District in San Luis Obispo County. Order No. 00-131 includes the following compliance schedule.

“IT IS HEREBY ORDERED, pursuant to Section 13308 of the California Water Code, Los Osos Community Services District, shall comply with the following time schedule for implementation of a wastewater management plan for the Basin Plan prohibition area in Los Osos which will result in compliance with the Cease and Desist Orders.

<u>Task</u>	<u>Completion Date</u>
Submit proof of circulation of draft Environmental Impact Report	December 15, 2000
Submit final California Environmental Quality Act (CEQA) document	April 1, 2001
Submit proof of voter approval of assessment district or comparable means of financing community wastewater system	July 29, 2001
Submit approved complete construction design plans	July 15, 2002
Submit County Use and Coastal Development permits	July 15, 2002
Commence construction of the community sewer system	September 6, 2002
Complete construction of the community sewer system	August 30, 2004
Report on compliance (per California Water Code Section 13267)	Two weeks after each above date, as well as quarterly reports beginning January 15, 2001.”

Failure to comply with the above schedule subjects the Los Osos CSD to monetary liability in the amount of \$10,000 per day of violation.

Los Osos CSD has also discharged waste in violation of a prohibition contained in the Water Quality Control Plan, Central Coast Basin (Basin Plan). Los Osos CSD is liable for \$15,000 per day since October 1, 1999, for these discharges.

I. MAXIMUM ALLOWABLE CIVIL LIABILITY

Water Code Section 13308 authorizes the Central Coast Water Board to administratively impose civil liability in an amount not to exceed \$10,000 per day for each day of violation of compliance dates specified

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in a time schedule order. In 2000, the Central Coast Water Board adopted Order No. 00-131 with the compliance dates specified above.

Water Code Section 13350(e)(1) authorizes the Central Coast Water Board to administratively impose civil liability in an amount not to exceed \$5,000 per day for each day the CSD has discharged waste in violation of the Basin Plan prohibition.

Water Code Section 13350(e)(2) authorizes the Central Coast Water Board to administratively impose liability in an amount not to exceed \$10 per gallon of waste discharged in violation of the prohibition. The latter amount is not included in the chart below, but the maximum liability under Section 13350(e)(2) through September 30, 2005 is \$830,220,000. The Bayview Heights and Vista de Oro systems, discharging at 38,000 gallons per day, have discharged 83,220,000 gallons of waste in violation of the prohibition (38,000 per day for 2,190 days).

Water Code Section 13308(f) provides: "Civil liability may be imposed pursuant to [Section 13308] only if civil liability is not imposed pursuant to Section 13261, 13265, 13268, 13350, or 13385." For purposes of calculating the maximum liability, Water Board staff conservatively assumes that the Water Board can impose liability for violation of the Order No. 00-131 under Section 13308, or for violation of the prohibition under Section 13350, but not both.

The maximum civil liability that may be imposed by the Central Coast Water Board is therefore \$44,04032,850,000, as shown in the following table:

Assessment Basis	Days of Violation	Total
a) Commenced construction of the community sewer system on August 22, 2005	1,080 days past compliance date	\$10,800,000.
b) Complete construction of the community sewer system (incomplete as of September 30, 2005)	396 days past compliance date	\$3,960,000.
c) Single violation assessed during time of more than one violation	357 days overlap of a and b above	<\$3,570,000>
d) Discharged wastewater from three facilities from October 1, 1999, to October 1, 2005.	2190 days x 3 facilities	\$32,850,000
Maximum Allowable Civil Liability for TSO Violations	(a plus b minus c)	\$11,190,000
Maximum Allowable Civil Liability	(a plus b minus c plus d)	\$44,040<u>32,850,000</u>

II. MINIMUM CIVIL LIABILITY

Water Code Section 13308 provides that the Central Coast Water Board may impose a penalty in an amount less than \$10,000 per day (the amount prescribed in Order No. 00-131) only if the Water Board makes express findings setting forth the reasons for its actions based on the specific factors required to be considered pursuant to Section 13327. These factors are described below in Section III. The same factors apply in determining the amount of civil liability under Section 13350 for violations of the prohibition. This is discussed in Section IV.

III. FACTORS TO CONSIDER IN ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY FOR VIOLATION OF TIME SCHEDULE ORDER 00-131

Pursuant to Water Code Section 13327, in determining the amount of liability, the Central Coast Water Board shall:

...take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.

These factors apply as follows:

1. **The Nature, Circumstances, Extent, and Gravity of the Violations**

Discharge of inadequately treated waste in Los Osos has degraded and continues to degrade groundwater, which is the area's sole source of municipal supply, and surface waters in Morro Bay National Estuary. The Baywood Park/Los Osos area of San Luis Obispo County is located on the southern edge of Morro Bay National Estuary, approximately ten miles west of the city of San Luis Obispo. The community has a population of approximately 15,000 people and contains about 5,000 individual septic systems. Throughout the community, on-site septic systems are used for treatment and disposal of wastewater. Because many of the lots are too small for conventional leachfields, deeper seepage pits are often used. In wet weather cycles, ponded water accumulates -in some areas that is a combination of surfacing effluent from septic tanks, groundwater, and stormwater. Surfacing effluent can be a health hazard and detrimental to Morro Bay National Estuary. Samples of groundwater seeps to the estuary contained fecal coliform of human origin.

In 1983, the Regional Board adopted Resolution No. 83-13, which amends the Basin Plan and prohibits, effective November 1, 1988, all discharges of waste from individual and community sewage systems within portions of the Baywood Park/Los Osos area of San Luis Obispo County (Basin Plan prohibition area).

In November 1998, Los Osos voters formed a community services district specifically to build a wastewater treatment project to remedy the ongoing violations of the prohibition. The Los Osos CSD chose not to proceed with a proposed wastewater project that the County had already designed, began anew the process for project development, and developed a revised project for wastewater collection, treatment and disposal.

Since its formation in 1998, the Los Osos CSD has operated an on-site disposal system at its Fire Station. The CSD also operates on-site community disposal systems serving Bayridge Estates and Vista de Oro subdivisions. The CSD previously operated an on-site system at the Water Division. In 1999, the Water Board issued Cease and Desist Orders Nos. 99-53, 99-54, 99-55 and 99-56 to the CSD for discharges from Bayridge Estates, Water Division, Fire Department and Vista de Oro respectively. The cease and desist orders imposed a schedule for the Los Osos CSD to achieve compliance with the prohibition at the four facilities it operated. The schedule was based on a list of specific tasks and due dates that the Los Osos CSD proposed pursuant to Water Code Section 13300. In 2000, the Water Board issued Time Schedule Order No. 00-131, which specifies compliance dates for completion of critical project components. The time schedule order was necessary because the Los Osos CSD was already in violation of the four cease and desist orders, and again was based on milestones and due dates that the Los Osos

CSD proposed. To date, the Los Osos CSD has completed the environmental permitting and design of the wastewater project and began construction in August 2005.

Approximately one million gallons of waste are discharged daily in Los Osos in violation of the prohibition; such discharges will continue until the community sewer is complete. Unless the community's method of complying with the prohibition will consist of individual solutions such as the use of holding tanks rather than leachfields, failure of the CSD to comply with the time schedule will cause the continuation of not only the CSD's own discharges, but those of the entire community. These discharges have degraded shallow groundwater to the extent that most shallow wells have been abandoned. Drinking water supply is limited primarily to deeper groundwater zones, and in turn this reliance upon deeper groundwater is contributing to increasing threat of seawater intrusion. The three facilities that the Los Osos CSD operates discharge in excess of -38,000 gallons per day in violation of the prohibition.

In assessing a penalty for violation of the time schedule order, a penalty of less than \$10,000 per day is justified only if the factors listed in Water Code Section 13327 justify a lesser penalty. This factor does not justify a penalty of less than the \$10,000 per day imposed by the time schedule order, i.e., \$11,190,000.

2. Degree of Culpability

The Los Osos CSD is directly responsible for compliance with Time Schedule Order No. 00-131. The community wastewater project is designed, permitted, funded and under construction. The Los Osos CSD has repeatedly promised to proceed with the project. However, the CSD issued temporary stop-work notices to its contractors. Terminating the project will result in continuing the water-quality impacts described above (groundwater degradation, impacts to Morro Bay, and increased seawater intrusion). Even a temporary stop-work order is a clear violation of the time schedule order since the CSD is already in violation of the completion due date. Since the project is fully permitted and under way, any further -delay in complying with the time schedule order is avoidable and intentional.

With respect to the Fire Station and Bayridge Estates and Vista de Oro subdivisions, the Los Osos CSD is directly responsible for the discharges of wastewater from the on-site disposal systems.

The Los Osos CSD has also failed to pursue its challenge of Measure B, an ordinance which, if valid, may interfere with construction of a treatment plant.

Accordingly, consideration of this factor does not support assessment of liability that is less than \$11,190,000.

3. Susceptibility to Cleanup or Abatement

Inadequately treated wastewater discharged within the Los Osos Basin, and resulting water quality impacts, are not susceptible to cleanup until such time as the waste discharges cease. Even after completion of a community-wide sewer, many years will be needed before groundwater quality is restored to drinking water quality. Cleanup or abatement of the water quality problems in Los Osos will not even begin to occur until the community-wide sewer is constructed. Consideration of this factor does not support assessment of liability that is less than \$11,190,000.

4. Voluntary Cleanup Efforts Undertaken by the Violator

Although the Los Osos CSD has previously taken steps to complete the wastewater project, the October 2007 completion date in its State Revolving Fund Loan agreement is more than three years behind the schedule in Time Schedule Order No. 00-131. The CSD issued temporary stop-work notices to the project contractors on October 3, 2005. Although the CSD issued notices to resume work on October 21, 2005, the notices were contingent on the State Water Board releasing funds from the loan. The State Board had already stated that it would not release such funds absent a modification of the loan agreement or a commitment from the CSD to build the project as agreed. Consideration of this factor does not support assessment of liability that is less than \$11,190,000.

5. Degree of Toxicity of the Discharge

Waste discharges in Los Osos have degraded groundwater (indicated by nitrate concentrations) and surface water in Morro Bay (indicated by coliform bacteria). Reliance on deeper groundwater zones has increased seawater intrusion. Halting the current wastewater project to redesign an undefined, alternative project in an unspecified location that the CSD does not even own would result in many years of delay in resolving Los Osos's waste and water quality problems. Although the CSD has not taken action yet to permanently suspend the project, the CSD took seven years from its formation just to start construction. As stated above, water quality impacts will continue until the wastewater project is completed.

Accordingly, consideration of this factor does not support assessment of liability that is less than \$11,190,000.

6. Prior History of Violations

The Los Osos CSD has a long history of violations. The time schedule order was necessary because the CSD was already in violation of the four cease and desist orders. The CSD's predecessor, the County of San Luis Obispo, was in violation of cease and desist orders the Water Board issued to the County.

Consideration of this factor does not support assessment of liability less than \$11,190,000.

7. Economic Benefit or Savings Resulting from the Violations

Staff estimates that economic benefit realized by the Los Osos CSD by failing to implement its wastewater project exceeds \$125 million. This benefit is based upon the project cost (approximately \$150 million) less the amount already spent by the CSD (\$25 million, estimated). Although a precise dollar value is not currently available, staff estimates that the amount of economic benefit or savings resulting from the violations is significantly greater than the maximum assessment amount. On the other hand, if it builds the project, the CSD will have a revenue stream to offset the costs. Consideration of this factor does not support assessment of liability less than \$11,190,000.

In addition, the Los Osos CSD has realized economic benefit or savings from not taking interim measures to prevent the ongoing violations, such as converting the systems to above-ground holding tanks or building "package plants" for the subdivisions. At this time, staff does not have information on the amount of economic benefit or savings from failing to take interim measures.

8. Discharger's Ability to Pay Civil Liability and Ability to Stay in Business

The Los Osos CSD has not provided any information that would indicate ability or inability to pay the proposed civil liability. The Los Osos CSD does have a wastewater treatment facility for which it can collect fees, and therefore has a limited revenue stream. If the CSD does not resume the project, it may not have the ability to pay for costs associated with terminating the project, including past construction costs and loan and grant repayments, or for developing a new project, and therefore may be unable to pay fines. On the other hand, these additional costs all relate to the same violations that are the subject of the Complaint, and would all be based on the intentional actions of the CSD.

The CSD does not operate a business so its ability to stay in business is not a factor.

Consideration of this factor does not support liability less than \$11,190,000.

9. Other Matters that Justice May Require

Central Coast Water Board staff time was used in responding to waste and water quality problems in Los Osos, violations of the Time Schedule Order, assistance in preventing such violations, and associated enforcement actions (hundreds of hours preparing letters and staff reports, participation in public and agency meetings, responding to public and agency inquires, etc.) Estimated staff costs for preparation of this complaint are \$3,120,100, as shown in the following table:

ESTIMATE OF STAFF COSTS FOR DRAFTING THE ACL			
Staff Classification	Hours	Rate (\$/hr)	Amount (\$)
Technical Staff	20160	75	1,50012,000
Senior Staff	1260	75	9004,500
Staff Counsel	840	90	7203,600
		Total Staff Cost	\$ 3,120,100

In addition, Water Board staff has expended many, many hours since 1983 attempting to obtain compliance with the prohibition.

The proposed liability exceeds the amount of staff costs associated with this action but is significantly less than the amount of economic benefit or savings created by the violations.

In terms of consistency with other enforcement actions in the Central Coast Region, a lesser amount than the maximum liability may be appropriate. Comparisons with some recent enforcement actions follow:

Pismo Beach – combined penalties in the last few years of \$375,000 for effluent violations. The Los Osos violations are much more egregious because the CSD is deliberately stopping the compliance project. The Water Board penalized Pismo Beach even though the City was proceeding as fast as possible with its compliance project. The Los Osos water quality problems stem from illegal discharges and are much more significant in terms of overall environmental effect than the ocean outfall effluent violations in Pismo Beach.

California Men's Colony – combined penalties in the last few years of \$650,000 for effluent violations and collection system overflows. CMC is proceeding as fast as possible with treatment

system and collection system improvements, while the CSD deliberately delays compliance. CMC's illegal discharges have had short term surface water impacts, while Los Osos's discharges are continually in violation, have caused long term groundwater degradation, and apparently have on-going impacts on surface waters (bacteria seeping to the estuary).

Pearson and Kelegian - \$125,000 and \$100,000, respectively, for discharges of sediment in violation of a Basin Plan prohibition. Environmental damages were relatively short term, as opposed to the long term nature of Los Osos degradation discussed above. These were single property owners, as opposed to a public entity such as the CSD.

Cambria School - \$300,000 for stormwater/sediment violations. The school cleaned up much of its sediment discharge, leaving little lasting impact (the opposite of Los Osos). The discharge was relatively short term (unlike Los Osos), and the violations were not deliberate (unlike Los Osos).

PG&E - \$14.2M settlement for alleged withholding of data (reporting violations). This case was egregious in that data were deliberately withheld (allegedly), and that is comparable to Los Osos. With PG&E, there were no direct water quality impacts (but the potential for increased larval intake due to the data not being available for analysis), while the water quality problems with Los Osos are known to be significant, as discussed above.

Unocal Guadalupe - About \$43M settlement for oil field leaks. Problems are long term, similar to Los Osos. Unocal allegedly withheld information and intentionally delayed cleanup, while the CSD's recent actions also delay any solution intentionally.

City of Hollister - \$1.2M for spilling 15 million gallons of treated water to a dry river bed. Violation was one time (Los Osos is on-going), impacts were short lived (Los Osos is on-going and much more severe), and unintentional (Los Osos is intentional).

The cases listed above indicate there should be some reduction from the maximum civil liability of \$44,040,000, to be reasonably consistent with the level of enforcement for violations elsewhere in the Central Coast Region.

IV. FACTORS TO CONSIDER IN ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY (ACL) FOR VIOLATION OF PROHIBITION

The considerations in Section III apply equally to the violations of the Prohibition, which give rise to liability under Water Code Section 13350. For the reasons discussed above, the Section 13227 factors do not support liability that is less than the statutory maximum. On the other hand, when the Board issued Time Schedule Order No. 00-131, it determined that \$10,000 per day was an appropriate amount necessary to achieve compliance. Although this amount does not include any amount intended to punish or redress violations that occurred before Time Schedule Order No. 00-131 was issued, and does not address violations of the prohibition (as opposed to violations of the time schedule order), the Water Board found in 2000 that \$10,000 per day was necessary to achieve compliance in light of the project cost, estimated to be \$70 million dollars (in 2000). Although \$11,190,000 represents only about one-quarter-third of the maximum available civil liability based on Section 11350(e)(1) and less than two percent of the maximum civil liability based on Section 13350(e)(2), it is a very large amount and will ultimately be borne by the owners and residents that the District serves. It is unlikely that a larger liability amount would increase the likelihood of achieving compliance or deterrence in this case.

7. **Economic Benefit or Savings Resulting from the Violations**

Staff does not have information at this time of the economic benefit or savings resulting from these specific violations. Staff estimates that more frequent pumping of the three systems could cost up to \$6,000 per month (based on containing waste in the tanks and pumping every four days to prevent discharge of waste to the leachfields). The proposed liability may be more than the economic benefit or savings from not implementing interim or alternative solutions at these three facilities.

V. RECOMMENDATION

The factors considered in Section IV of this worksheet support the assessment of liability under Water Code Section 13350 in an amount less than the maximum for the reasons stated in Section IV.

The factors considered in Section III do not support the assessment of civil liability under Water Code Section 13308 in an amount less than the maximum civil liability stated in Section I of this worksheet (\$11,190,000). In recognition of the nature and history of violations, the Los Osos CSD's culpability, and its intentional action to cause and continue violations, staff proposes liability in the amount of \$11,190,000.

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Task: 126-01