



# California Regional Water Quality Control Board

## Central Coast Region



Terry Tamminen  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb3>  
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401  
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Arnold Schwarzenegger  
Governor

January 11, 2004

Steven Goschke  
Duke Energy Morro Bay, LLC  
1290 Embarcadero Road  
Morro Bay, CA

7004 BY CERTIFIED MAIL 1350 0002 2290 6891

Mr. Goschke:

### COMPLAINT FOR MANDATORY MINIMUM PENALTY, DUKE ENERGY MORRO BAY, LLC, MORRO BAY POWER PLANT, SAN LUIS OBISPO COUNTY

Attached is *Complaint for Mandatory Minimum Penalty No. R3-2005-0030* (Complaint). The Complaint is based on violations of effluent limitations in Waste Discharge Requirements Order No. 95-28, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0003743, that occurred between January 31 and March 31, 2002, and between March 2 and June 6, 2003. The Complaint specifies the occurrence dates and nature of the violations.

We will present an Order to the Regional Water Quality Control Board, Central Coast Region (Regional Board) for the amount proposed in the Complaint (\$12,000) at the Regional Board meeting on March 25, 2005, at the 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.

In this case, California Water Code Section 13385(1) allows the entire penalty amount (\$12,000) to be expended on a supplemental environmental project (SEP) in accordance with the State Water Resources Control Board (SWRCB)'s Enforcement Policy. You may submit a proposal for one or more SEPs. If you do choose to submit a proposal, please submit it for consideration no later than **February 10, 2005**. The State Water Resources Control Board's February 19, 2002 *Water Quality Enforcement Policy* specifies the criteria a SEP must meet to qualify for funding at [www.swrcb.ca.gov/plnspols/wqep.doc](http://www.swrcb.ca.gov/plnspols/wqep.doc). You may find a number of SEPs listed, as well as other useful information, on our website at: [www.swrcb.ca.gov/rwqcb3/sep/index.htm](http://www.swrcb.ca.gov/rwqcb3/sep/index.htm).

Please review the Complaint carefully and submit your comments and/or your *Waiver of Hearing* form and copy of payment, or an SEP proposal by **February 10, 2005**. If you have questions, please contact Michael Thomas at (805) 542-4623 or Regional Board Counsel, Lori Okun, at (916) 341-5165.

Sincerely,

Roger W. Briggs  
Executive Officer

Attachment: Mandatory Minimum Penalty Complaint No. R3-2005-0030

cc:

Duke Energy Morro Bay Power Plant Interested Parties List

S:\NPDES\NPDES Facilities\San Luis Obispo Co\Duke Energy Morro Bay Power Plant\MBPP MMPs\Complaint Transmittal.doc

**California Environmental Protection Agency**



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Item No. 17 Attachment No. 1  
March 24-25, 2005 Meeting  
Duke Energy  
Morro Bay Power Plant

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

**COMPLAINT NO. R3-2005-0030**

**MANDATORY PENALTY  
IN THE MATTER OF  
DUKE ENERGY'S MORRO BAY POWER PLANT  
SAN LUIS OBISPO COUNTY**

This complaint to assess Mandatory Minimum Penalties pursuant to Water Code section 13385(h) and (i) is issued to Duke Energy Morro Bay, LLC, located at 1290 Embarcadero Road, Morro Bay, CA, 93442, based on a finding of violations of Waste Discharge Requirements Order No. 95-28, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0003743.

The Executive Officer finds the following:

1. On March 10, 1995, the Regional Water Quality Control Board, Central Coast Region (Regional Board), adopted *Waste Discharge Requirements Order No. 95-28, NPDES Permit No. CA0003743, for PG&E's Morro Bay Power Plant, San Luis Obispo County* (Order No. 95-28). Duke Energy purchased the Morro Bay Power Plant from PG&E in 1998. Order No. 95-28 remains in effect with Duke Energy Morro Bay, LLC, as the discharger (hereafter Discharger).
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. California Water Code section 13385(h)(2) provides a serious violation occurs if the discharge exceeds the effluent limitations for a Group I pollutant by 40% percent or more, or for a Group II pollutant, by 20% or more. Group I and Group II pollutants are specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations.
3. California Water Code section 13385(i) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each chronic violation, not counting the first three chronic violations. Chronic violations occur when 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 effluent 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 that "(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. Waste Discharge Requirements Order No. 95-28 states that Discharges 001C, 001E, and 001F shall not contain constituents in excess of the following:

Constituent	Units	Monthly (30-Day) Average	Daily Maximum
Suspended Solids	mg/l	30.0	100.0
Oil and Grease	mg/l	15.0	20.0

6. "Suspended Solids" and "Oil and Grease" are categorized as Group I Pollutants under Appendix A to section 123.45 of Title 40 Code of Federal Regulations. "Serious" violations occur when Group One parameters exceed their effluent limits by 40% or more. Chronic violations occur when Group One parameters exceed permit limits by less than 40%.
7. According to monitoring reports submitted by the Discharger, four effluent limit violations occurred between January 21, 2002 and March 31, 2002. Mandatory minimum penalties are triggered when four or more permit violations occur within a six-month period (Finding No. 3), or whenever a "serious" violation occurs (Finding No. 2). Mandatory minimum penalties do not apply toward the first three chronic effluent limit violations in a sixth month period. The violations are listed in Tables 1 and 2, below:

**Table 1: Violations between January 21st and March 31, 2002.**

#	Violation Date	Constituent	Permitted Limit	Reported Value	Violation Type
1	1/21/02	Oil and Grease	20.0 mg/l (daily maximum)	22.3 mg/l	Chronic (exceeds limit by <40%)
2	3/11/02	Oil and Grease	20.0 mg/l (daily maximum)	44.3 mg/l	*Serious (exceeds limit by >40%)
3	3/22/02	Oil and Grease	20.0 mg/l (daily maximum)	45.2 mg/l	*Serious (exceeds limit by >40%)
4	3/31/02	Oil and Grease	15.0 mg/l (30-day average)	17.0 mg/l	*Chronic (exceeds limit by <40%)

\*Denotes violation where minimum mandatory penalty applies.

**Table 2: Violations between March 2nd and June 6, 2003.**

#	Violation Date	Constituent	Permitted Limit	Reported Value	Violation Type
1	3/02/03	Suspended Solids	100 mg/l (daily maximum)	112.8 mg/l	Chronic (exceeds limit by <40%)
2	6/02/03	Suspended Solids	30 mg/l (30-day average)	45.4 mg/l	*Serious (exceeds limit by >40%)

\*Denotes violation where minimum mandatory penalty applies.

8. According to Finding No. 7, the Discharger committed two serious violations between January 31 and March 31, 2002, and one serious violation between March 2 and June 6, 2003. The amount of the mandatory penalty for the serious violations is  $3 \times \$3,000 = \$9,000$  (nine thousand dollars).
9. According to Finding No. 7, the Discharger committed two chronic violations between January 21, 2002 and March 31, 2002. In addition, the Discharger committed two serious violations during this time period that also count as chronic violations. California Water Code section 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each chronic violation, not counting the first three violations occurring in a consecutive six-month period. Therefore, the mandatory


minimum penalty for the above chronic violations is (2 Chronic + 2 Serious - 3) = one (1) violation x \$3,000 = \$3,000 (three thousand dollars).

10. The total amount of the mandatory penalty for violations occurring between January 31 and March 31, 2002, and between March 2 and June 6, 2003, is \$9,000 + \$3,000 = \$12,000 (twelve thousand dollars).

**DUKE ENERGY, MORRO BAY, LLC, IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed a Mandatory Penalty in the amount of \$12,000 (twelve thousand dollars).
2. The Regional Board shall hold a public hearing on **March 25, 2005**, 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 **March 25, 2005**, at the 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 Regional Board staff, **Michael Thomas**, at (805) 542-4623, or Regional Board Counsel, Lori Okun, at (916) 341-5165.

  
\_\_\_\_\_  
Roger W. Briggs  
Executive Officer

1-11-05  
\_\_\_\_\_  
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 February 10, 2005, 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 **March 25, 2005**, 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 direct the Executive Officer to reissue the complaint alleging increased 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 **April 24, 2005**, 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 February 10, 2005**, please make your check payable to *State Water Resources Control Board*, and note "MMP Complaint No. R3-2005-0030" on the check. Please mail the check and signed waiver form to:

**SWRCB Accounting  
Attn: Enforcement  
P.O. Box 100  
Sacramento, CA 95812-0100**

Please also mail copies of the check and signed waiver form to:

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

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<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.