



California Regional Water Quality Control Board

Central Coast Region



n C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb3>
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401
Phone (805) 549-3147 • FAX (805) 543-0397

Arnold Schwarzenegger
Governor

January 26, 2005

BY CERTIFIED MAIL
7004 1350 0002 2200 6938

David Kiech, Chairman
San Simeon CSD
111 Pico Avenue
San Simeon, CA 93452

Dear Mr. Kiech:

COMPLAINT FOR MANDATORY MINIMUM PENALTY, SAN SIMEON COMMUNITY SERVICES DISTRICT, SAN LUIS OBISPO COUNTY

Attached is *Complaint for Mandatory Penalty No. R3-2005-0032* (Complaint). The Complaint is based on violations of Waste Discharge Requirements Order No. R3-2005-0032 (National Pollutant Discharge Elimination System Permit No. CA0047961) from March 4, 2004 through December 31, 2004. The attached 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 (\$144,000) 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. If you waive your right to a public hearing, the Regional Board will have the option to adopt the proposed Order on the consent agenda.

California Water Code Section 13385(l), allows up to \$79,500 of the penalty amount 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 our consideration no later than **February 26, 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. 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.

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 26, 2005**. If you have questions, please contact **Matt Thompson at (805) 549-3159** or Regional Board Counsel, Lori T. Okun, at (916) 341-5165.

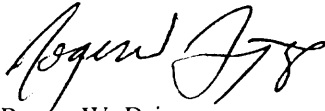
California Environmental Protection Agency



Recycled Paper

Item No. 4 Attachment No. 2
March 24-25, 2005 Meeting
San Simeon CSD

Sincerely,



Roger W. Briggs
Executive Officer

Attachment: Mandatory Minimum Penalty Complaint No. R3-2005-0032

cc:

Steve Richardson
ECO Resources
5820 Stoneridge Mall Road, Suite 204
Pleasanton, CA 94588

Rob Schultz
595 Harbor Street
Morro Bay, California 93442

Lori Okun
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

S:\NPDES\NPDES Facilities\San Luis Obispo Co\San Simeon\MMP No. R3-2005-0032\Complaint No. 05-0032\San Simeon MMP Complaint Transmittal.doc



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

COMPLAINT NO. R3-2005-0032

**MANDATORY PENALTY
IN THE MATTER OF
SAN SIMEON COMMUNITY SERVICES DISTRICT
WASTEWATER TREATMENT PLANT
SAN LUIS OBISPO COUNTY**

This complaint to assess Mandatory Minimum Penalties pursuant to Water Code section 13385(h) and (i) is issued to San Simeon Community Services District (Discharger), based on a finding of violations of Waste Discharge Requirements Order No. R3-2002-0046, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0047961.

The Executive Officer finds the following:

1. On May 31, 2002, the Regional Water Quality Control Board, Central Coast Region (Regional Board), adopted *Waste Discharge Requirements Order No. R3-2002-0046, NPDES Permit No. CA0047961, for San Simeon Community Services District and Local Sewering Entity of Hearst San Simeon State Historical Monument, San Luis Obispo County* (Order No. R3-2002-0046).
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(h)(2) provides a serious violation occurs if the discharge exceeds the effluent limitations for a Group II pollutant by 20 percent or a Group I pollutant by 40 percent or more. Group I and II pollutants are specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations.
4. California Water Code Section 13385.1(a)(1) states that "a serious violation also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations."
5. California Water Code Section 13385.1(c) states that for the purposes of section 13385.1(a)(1), section 13385(f)(2), (h), (i) and (j), "effluent limitation" means a numeric or numerically expressed narrative restriction on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants authorized to be discharged from a location that is specified in waste discharge requirements. An effluent limitation may be final or interim, and may be expressed as a prohibition. An effluent limitation, for those purposes, does not include a receiving water limitation, a compliance schedule, or a best management practice."
6. 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 effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
7. 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)."
8. Order No. R3-2002-0046 includes in part the following:

Effluent Limitation No. 2:

"Effluent shall not exceed the following limits:

Constituent	Units	30-Day Average	7-Day Average	Daily Maximum
Settleable Solids	mL/L	1.0	1.5	3.0

Effluent Limitation No. 4:

"Effluent shall not exceed the following limits..."

Constituent	Units	6-Month Median	Daily Maximum	Instantaneous Maximum
Total Chlorine Residual	mg/L	0.23	0.93	6.96
Total Coliform Bacteria	MPN/100 mL	--	230	2400

Monitoring and Reporting Program No. R3-2002-0046, page 7:

"Monthly monitoring reports shall be submitted for all monitoring and sampling herein by the last day of the month following the sampling or monitoring event."

9. Settleable Solids is a Group I Pollutant. Total Chlorine Residual is a Group II Pollutant. Effluent containing constituent values that are greater than serious thresholds (limit + 40% for Group I pollutants, limit + 20% for Group II pollutants) are serious violations. Total Coliform Bacteria is neither a Group I nor Group II Pollutant; therefore serious violations do not apply to Total Coliform Bacteria.
10. Effluent containing constituent concentrations that are less than the serious threshold but greater than the permit limits, are chronic violations.
11. According to monitoring reports submitted by the Discharger, the Discharger committed the following violations of effluent limitations of Order No. R3-2002-0046 in the period March 4, 2004 through December 31, 2004:

#	Violation Date	Constituent	Permitted Limit	Reported Value	Violation Type
1	3/4/04	Total Coliform	230 MPN/100 mL Daily Maximum	1600 MPN/100 mL	Chronic*
2	6/18/04	Total Coliform	230 MPN/100 mL Daily Maximum	>1600 MPN/100 mL	Chronic*
3	6/22/04	Total Coliform	230 MPN/100 mL Daily Maximum	300 MPN/100 mL	Chronic*

#	Violation Date	Constituent	Permitted Limit	Reported Value	Violation Type
4	6/24/04	Total Coliform	230 MPN/100 mL Daily Maximum	500 MPN/100 mL	Chronic
5	7/9/04	Total Coliform	230 MPN/100 mL Daily Maximum	1600 MPN/100 mL	Chronic
6	7/15/04	Total Coliform	230 MPN/100 mL Daily Maximum	900 MPN/100 mL	Chronic
7	7/15/04	Settleable Solids	3.0 mL/L Daily Maximum	5.0 mL/L	Serious
8	7/20/04	Total Coliform	230 MPN/100 mL Daily Maximum	300 MPN/100 mL	Chronic
9	9/2/04	Settleable Solids	3.0 mL/L Daily Maximum	23.00 mL/L	Serious
10	9/5/04	Settleable Solids	3.0 mL/L Daily Maximum	8.10 mL/L	Serious
11	9/7/04	Settleable Solids	1.5 mg/L mL/L 7-Day Average	5.1 mL/L	Serious
12	9/10/04	Settleable Solids	3.0 mL/L Daily Maximum	16.00 mL/L	Serious
13	9/14/04	Settleable Solids	3.0 mL/L Daily Maximum	5.00 mL/L	Serious
14	9/14/04	Settleable Solids	1.5 mg/L 7-Day Average	3.7 mL/L	Serious
15	9/15/04	Settleable Solids	3.0 mL/L Daily Maximum	24.00 mL/L	Serious
16	9/16/04	Settleable Solids	3.0 mL/L Daily Maximum	20.10 mL/L	Serious
17	9/17/04	Total Coliform	230 MPN/100 mL Daily Maximum	500 MPN/100 mL	Chronic
18	9/21/04	Settleable Solids	1.5 mg/L mL/L 7-Day Average	6.7 mL/L	Serious
19	9/29/04	Settleable Solids	3.0 mL/L Daily Maximum	15.00 mL/L	Serious
20	9/30/04	Settleable Solids	1.0 mL/L 30-Day Average	4.16 mL/L	Serious
21	10/1/04	Settleable Solids	3.0 mL/L Daily Maximum	5.00 mL/L	Serious
22	10/2/04	Settleable Solids	3.0 mL/L Daily Maximum	5.50 mL/L	Serious
23	10/3/04	Settleable Solids	3.0 mL/L Daily Maximum	5.00 mL/L	Serious
24	10/4/04	Settleable Solids	3.0 mL/L Daily Maximum	5.50 mL/L	Serious
25	10/7/04	Settleable Solids	1.5 mg/L 7-Day Average	3.0 mL/L	Serious
26	10/21/04	Total Coliform	230 MPN/100 mL Daily Maximum	280 MPN/100 mL	Chronic
27	10/30/04	Settleable Solids	3.0 mL/L Daily Maximum	5.00 mL/L	Serious
28	10/31/04	Settleable Solids	3.0 mL/L Daily Maximum	10.00 mL/L	Serious
29	10/31/04	Settleable Solids	1.0 mL/L 30-Day Average	1.3 mL/L	Chronic
30	11/8/04	Settleable Solids	3.0 mL/L Daily Maximum	10.10 mL/L	Serious
31	11/9/04	Total Chlorine Residual	0.93 mg/L Daily Maximum	1.0 mg/L	Chronic
32	11/9/04	Settleable Solids	3.0 mL/L Daily Maximum	10.10 mL/L	Chronic
33	11/14/04	Settleable Solids	1.5 mg/L 7-Day Average	2.9 mL/L	Serious
34	11/19/04	Settleable Solids	3.0 mL/L Daily Maximum	14.00 mL/L	Serious
35	11/22/04	Total Coliform	230 MPN/100 mL Daily Maximum	240 MPN/100 mL	Chronic
36	11/23/04	Settleable Solids	3.0 mL/L Daily Maximum	5.00 mL/L	Serious
37	11/24/04	Settleable Solids	3.0 mL/L Daily Maximum	4.00 mL/L	Chronic
38	11/24/04	Total Coliform	230 MPN/100 mL Daily Maximum	>1600 MPN/100 mL	Chronic
39	11/28/04	Settleable Solids	1.5 mg/L 7-Day Average	1.9 mL/L	Chronic
40	11/29/04	Settleable Solids	3.0 mL/L Daily Maximum	20.00 mL/L	Serious
41	11/30/04	Settleable Solids	3.0 mL/L Daily Maximum	12.00 mL/L	Serious
42	11/30/04	Total Coliform	230 MPN/100 mL Daily Maximum	900 MPN/100 mL	Chronic
43	11/30/04	Settleable Solids	1.0 mL/L 30-Day Average	3.22 mL/L	Serious
44	12/1/04	Settleable Solids	3.0 mL/L Daily Maximum	12.00 mL/L	Serious
45	12/2/04	Settleable Solids	3.0 mL/L Daily Maximum	9.00 mL/L	Serious
46	12/3/04	Total Coliform	230 MPN/100 mL Daily Maximum	>1600 MPN/100 mL	Chronic
47	12/7/04	Settleable Solids	1.5 mg/L 7-Day Average	3.2 mL/L	Serious
48	12/18/04	Total Coliform	230 MPN/100 mL Daily Maximum	500 MPN/100 mL	Chronic
49	12/23/04	Total Coliform	230 MPN/100 mL Daily Maximum	500 MPN/100 mL	Chronic
50	12/29/04	Total Coliform	230 MPN/100 mL Daily Maximum	1600 MPN/100 mL	Chronic

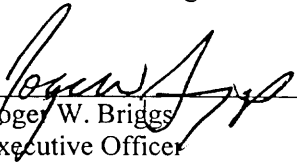
* Denotes chronic violations that are not subject to mandatory penalties.

12. The Discharger committed a serious violation by failing to submit a discharge monitoring report within a period of 30 days following the deadline for submitting the report. The May 2004 discharge monitoring report was due by June 30, 2004, but was not submitted until August 9, 2004 (40 days past the deadline).
13. According to Findings 11 and 12, the Discharger committed thirty (30) serious violations in the period March 4, 2004 through December 31, 2004. The amount of the mandatory penalty for the serious violations (30 x \$3,000) is ninety thousand dollars (\$90,000).
14. According to Finding No. 11, the Discharger committed twenty-one (21) chronic violations in the period March 4, 2004 through December 31, 2004. 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, occurring in a consecutive six-month period. The amount of mandatory penalty for the chronic violations (21 - 3 = 18 x \$3,000) is fifty-four thousand dollars (\$54,000).
15. The total amount of the mandatory penalty for violations occurring in the period March 4, 2004 through December 31, 2004 (\$90,000 + \$54,000) is one hundred forty four thousand dollars (\$144,000).

THE SAN SIMEON COMMUNITY SERVICES DISTRICT 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 one hundred forty four thousand dollars (\$144,000).
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, direct the Executive Officer to reissue the Complaint to propose additional penalties under California Water Code section 13385(c) and (e), or refer the matter 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, **Matt Thompson**, at (805) 549-3159, or Regional Board Counsel, **Lori T. Okun**, at (916) 341-5165.



Roger W. Briggs
Executive Officer

1-26-05
Date

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

WAIVER OF PUBLIC HEARING

You may waive your right to a hearing. If you wish to waive the hearing, an authorized person must check and sign the waiver and return it to the Regional Water Quality Control Board, Central Coast Region, 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906.

If you choose to waive the right to a hearing, the Executive Officer will present an Order for the amount of liability proposed in the Complaint to the Regional Board at the March 25, 2005 Regional Board meeting. The Regional Board may adopt or reject the Order. If the proposed Order is adopted, payment will be due and payable by April 24, 2005 (check payable to State Water Resources Control Board). If the Order is rejected, the Regional Board may direct the Executive Officer to issue a new complaint and schedule another hearing. The Regional Board may adopt the proposed Order on the consent calendar. If an interested member of the public or a Regional Board member removes the item from the consent calendar for any reason, the Regional Board will accept public testimony, consider the administrative record and conduct deliberations before deciding whether to adopt or reject the Order. If the Regional Board rejects the proposed Order, it may direct the Executive Officer to re-issue the Complaint to include discretionary penalties and provide you with an opportunity for a hearing on the reissued complaint.

If you do not waive your right to a hearing, the Regional Board will proceed with the scheduled hearing and consider testimony received from interested persons during the hearing and decide whether to accept the amount proposed by the Executive Officer or increase or decrease the liability. Liability may be increased up to the amount of maximum potential liability stated in this Complaint. The Board may also decide to continue the matter to a future hearing, direct the Executive Officer to reissue the Complaint in a higher amount or refer it to the State Attorney General.

You may submit a check for the proposed amount of liability prior to March 25, 2005. If the Regional Board does not adopt the proposed Order, your check will be returned to you.

If you have questions regarding this matter, please direct them to **Matt Thompson at (805) 549-3159**, or Regional Board Counsel, **Lori T. Okun, at (916) 341-5165**.

WAIVER OF THE RIGHT TO A HEARING

[] By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R3-2005-0032. Also, I agree to remit payment for the civil liability proposed. I understand that I am giving up my right to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition or amount of proposed civil liability.

Signature

Printed Name

Title/Position¹

Date

¹ A duly authorized person must sign the waiver. 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, a principal executive officer or ranking elected official in a public agency, or a representative authorized in writing by a vice president or higher ranking corporate officer, general partner, principal executive officer or ranking elected official.