

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2005-0090

IN THE MATTER OF:

**MONARCH GROVE HOMEOWNERS ASSOCIATION,
MONARCH GROVE WASTEWATER RECLAMATION FACILITY,
San Luis Obispo County**

MONARCH GROVE HOMEOWNERS ASSOCIATION IS HEREBY GIVEN NOTICE THAT:

The Monarch Grove Homeowners Association is alleged to have violated provisions of California State law, and an Order of the Regional Water Quality Control Board (hereafter Central Coast Water Board, or Water Board), for which the Central Coast Water Board may impose civil liability pursuant to Sections 13350 and 13268 of the California Water Code.

Unless waived, a public hearing on this matter will be held before the Central Coast Water Board on September 8 or 9, 2005, at the Water Board Hearing Room, 895 Aerovista Place, Suite 101 in San Luis Obispo. The Monarch Grove Homeowners Association and its authorized representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Water Board.

An agenda will be mailed to you separately, not less than ten days before the public hearing date. At the public hearing, the Water Board will consider whether to affirm, reject or modify the proposed administrative civil liability, or whether to refer the matter to the State Attorney General for recovery of judicial civil liability.

ALLEGATIONS

1. Monarch Grove Homeowners Association (hereafter Discharger) operates wastewater collection, treatment, and disposal facilities to provide sewerage service to the Monarch Grove Development and Sea Pines Hotel and Golf Course. Treated wastewater is discharged to an irrigation supply pond located on Sea Pines Golf Course in Los Osos (Section 13, T30S, R10E, MD B&M of Morro Bay South Quadrangle). Effluent is used to irrigate the Sea Pines Golf Course.
2. The discharge is subject to Water Reclamation Requirements Order No. R3-2002-0061, adopted by the Central Coast Water Board on May 31, 2002. Order No. R3-2002-0061 implements state regulations and specifies in part:

"B. RECLAMATION SPECIFICATIONS

- "2. Reclaimed water discharged from the treatment facility shall at all times be adequately oxidized, coagulated, clarified, filtered, disinfected^A and not exceed the following limitations:

Parameter	Units	Monthly	
		Mean	Max.
BOD ₅	mg/l	30	90
Suspended Solids	mg/l	30	90
Settleable Solids	ml/l	0.1	0.3
Turbidity ^A	NTU	2*	5**
Total Nitrogen (as N)	mg/l	22	
Dissolved Oxygen	mg/l	Minimum of 1.0	
pH ^B	units	Within range 6.5 - 8.4	

*24-hr mean value.^A

**Turbidity must not exceed 5 NTU more than 5% of the time within a 24-hr period and must not exceed 10 NTU.^A

“5. Delivery of reclaimed water for irrigation purposes shall cease and all wastewater shall be contained within the effluent holding pond if:

- a. Disinfection of wastewater ceases at any time; or,
- b. Reclamation specifications are violated or threaten to be violated.”

“D. PROVISIONS

“1. The Discharger shall comply with “Monitoring and Reporting Program No. R3-2002-0061”, as specified by the Executive Officer.

“4. The Discharger has developed an Engineering Report on the Production, Distribution and Use of Reclaimed Water in conformance with Title 22. Revisions to the engineering report shall be subject to review and approval of the Executive Officer after consultation with State and local Health Departments.^A”

3. Monitoring and Reporting Program No. R3-2002-0061 referenced in Provision D.1 above specifies in part:

”Monthly reports shall be submitted by the 30th day of the month following sampling and shall include all data collected or calculated over the previous month including:

1. Results of reclaimed water monitoring;
2. Summary of operational problems, plant and equipment malfunctions, and any diversion of reclaimed water which does not meet the requirements specified in this Order; and
3. A record of equipment or process failures, as well as any corrective and preventative measures taken.

“Annual reports shall be submitted by January 30 of each year in accordance with Standard Provisions and Reporting Requirements C.16.”

4. The Discharger has reported ongoing discharge violations, which violate Reclamation Specifications B.2 and B.5, above. The Discharger has also failed to submit monitoring reports in a timely manner, which violates Provision D.1 and Monitoring and Reporting Program No. R3-2002-0061, described above.
5. From January 1, 2004, to March 31, 2005, the Discharger has reported the following discharge violations and submitted late reports in violation of Monitoring and Reporting Program No. R3-2002-0061:

January 2004	Nine (9) Turbidity
February 2004	Eighteen (18) Turbidity, one (1) Total Nitrogen, two (2) chlorine contact time
March 2004	Eight (8) Turbidity
April 2004	Fourteen (14) Turbidity
May 2004	Five (5) Turbidity
June 2004	Ten (10) Turbidity
July 2004	Sixteen (16) Turbidity
August 2004	Eight (8) Turbidity, one (1) Total Nitrogen
September 2004	Eight (8) Turbidity, one (1) Total Nitrogen
October 2004	Twenty one (21) Turbidity, one (1) Total Nitrogen, monitoring report one hundred fifty eight (158) days late
November 2004	Twenty five (25) Turbidity, one (1) Total Nitrogen, monitoring report sixty eight (68) days late
December 2004	Ten (10) Turbidity, one (1) Total Nitrogen, monitoring report thirty eight (38) days late
January 2005	Five (5) Turbidity, annual monitoring report forty three (43) days late
February 2005	Five (5) Turbidity

6. In April 2004, the Discharger modified its treatment facility described in the approved Title 22 Engineering Report by installing an experimental treatment unit without notifying or obtaining prior authorization from the Central Coast Water Board Executive Officer, as required in Provision D.4, described above.

LEGAL AUTHORITY

Section 13350 of the California Water Code states:

“(a) Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).”

“(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.”

“(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.”

“(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.”

“(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.”

“(2) The civil liability on a per gallon basis, may not exceed ten dollars (\$10) for each gallon of waste discharged.”

"(f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327."

Water Code Section 13268 provides:

"(a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."

"(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."


Water Code Section 13327 provides:

"In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall take into consideration the nature, circumstance, 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 as justice may require."

PROPOSED CIVIL LIABILITY

The maximum civil liability for violations of Reclamation Specifications that can be imposed by the Central Coast Water Board in this matter is as follows: either five thousand dollars (\$5,000) for each day in which the discharge violations occurred, or ten dollars (\$10) per gallon discharged in violation of requirements. The maximum liability under Water Code Section 13267 for failure to submit required reports is \$1,000 per day that the report is late.

The potential maximum civil liability is \$32,878,040. Calculations of maximum and proposed civil liability are provided in the *Work Sheet for Assessment of Administrative Civil Liability for Monarch Grove Homeowners Association*, attached hereto, and incorporated herein by reference. The Executive Officer of the Central Coast Water Board (hereinafter Executive Officer) proposes that administrative civil liability be imposed by the Central Coast Water Board in the amount of \$75,000, based on consideration of statutory factors in Section 13327 of the California Water Code.



Executive Officer

6-29-05

Date

**PROCEDURAL INFORMATION
FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
HEARING AND PAYMENT**

HEARING

Unless you waive your right to a hearing, a hearing on this matter will be held before the Central Coast Water Board within 90 days of receipt of this administrative civil liability (ACL) complaint. You or your representatives will have the opportunity to be heard and to contest the allegations in the ACL complaint and the imposition of civil liability by the Central Coast Water Board. A hearing is tentatively scheduled for:

September 8 or 9, 2005
Central Coast Regional Water Quality Control Board Hearing Room
895 Aerovista, Suite 101
San Luis Obispo, CA

The meeting is scheduled to begin at 8:30 AM; however, no specific time has been set for your hearing. You will receive a notice for the hearing with more specific timing information about two weeks before the hearing. At the hearing, the Central Coast Water Board will consider whether to accept, decrease or increase the amount of the proposed administrative civil liability.

WAIVER OF HEARING

By checking this box, I agree to waive my right for a hearing before the Central Coast Water Board with regard to the violations alleged in Administrative Civil Liability Complaint No. R3-2005-0090. Also, I agree to remit payment for the civil liability proposed. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of the amount of civil liability proposed.

Discharger

Date

Title

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

**WORKSHEET FOR ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO. R3-2005-0090
(Prepared June 27, 2005)**

FOR

**MONARCH GROVE HOMEOWNERS ASSOCIATION
San Luis Obispo County**

The Monarch Grove Homeowners Association (hereafter Discharger) failed to comply with the conditions of *Water Reclamation Requirements Order No. R3-2002-0061, for Monarch Grove Homeowners Association, Monarch Grove Reclamation Facility, San Luis Obispo County* (hereafter Order No. R3-2002-0061). From January 1, 2004, to March 31, 2005, the following violations have occurred:

January 2004	Nine (9) Turbidity
February 2004	Eighteen (18) Turbidity, one (1) Total Nitrogen, two (2) chlorine contact time
March 2004	Eight (8) Turbidity
April 2004	Fourteen (14) Turbidity
May 2004	Five (5) Turbidity
June 2004	Ten (10) Turbidity
July 2004	Sixteen (16) Turbidity
August 2004	Eight (8) Turbidity, one (1) Total Nitrogen
September 2004	Eight (8) Turbidity, one (1) Total Nitrogen
October 2004	Twenty one (21) Turbidity, one (1) Total Nitrogen, monitoring report one hundred fifty eight (158) days late
November 2004	Twenty five (25) Turbidity, one (1) Total Nitrogen, monitoring report sixty eight (68) days late
December 2004	Ten (10) Turbidity, one (1) Total Nitrogen, monitoring report thirty eight (38) days late
January 2005	Five (5) Turbidity, annual monitoring report forty three (43) days late
February 2005	Five (5) Turbidity

Total Violations 170 days of discharge violations, 307 days late monitoring reports

I. MAXIMUM ALLOWABLE CIVIL LIABILITY

Water Code Section 13350 authorizes the Central Coast Water Board to administratively impose civil liability in an amount not to exceed the greater of either \$5,000 per day for each day a discharge violation occurs, or \$10 per gallon for each gallon of waste discharged in violation of waste discharge requirements. Water Code Section 13268 authorizes the Central Coast Water Board to administratively impose civil liability in an amount not to exceed \$1,000 per day for each violation regarding failure to submit required reports. The maximum civil liability that may be imposed by the Central Coast Water Board is therefore \$32,878,040, as shown in the following table:

Assessment Basis	Multiplier	Total
a) \$5,000 per day of discharge violation	170 days	\$850,000.
b) \$10 per gallon	3,257,104 gallons	\$32,571,040.
c) \$1,000 per day of failure to submit report	307 days	\$307,000.
Maximum Allowable Civil Liability	(either a or b, plus c)	\$32,878,040.

II. MINIMUM CIVIL LIABILITY

Water Code Section 13350(1)(A) provides that, at a minimum, civil liability shall not be less than \$500 for each day in which the discharge violates a cleanup and abatement order. In this case, the violations summarized above occurred prior to issuance of Cleanup and Abatement Order No. R3-2005-0083. Accordingly, the Water Code does not specify a minimum civil liability in this case.

III. FACTORS TO CONSIDER IN ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY (ACL)

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 have been considered as follows:

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

During the past two years, the Discharger has discharged inadequately treated wastewater for golf course irrigation. Discharge violations primarily consisted of turbidity limit exceedances, which in themselves are not toxic or hazardous to public health or the environment. However, excess turbidity may impact the ability to adequately and consistently disinfect wastewater discharges, thus contributing to potential pathogen exposure. Turbidity limits reflect California Department of Health Services requirements for protection of public health. No environmental or public health impacts associated with the discharge violation have been reported. Effluent monitoring performed by the Discharger has, for the most part, demonstrated consistent compliance with disinfection requirements. Consideration of this factor supports assessment of liability that is significantly less than the maximum.

2. Degree of Culpability

The Discharger, Monarch Grove Homeowners Association, is directly responsible for compliance with Order No. R3-2002-0061. The Discharger operates the wastewater facility through contractual arrangements, currently with MicroMedia, Inc., and formerly with an individual certified wastewater treatment plant operator. The Discharger repeatedly promised to implement corrective actions to attain compliance, but has yet to do so effectively. There was a high level of culpability due to the Discharger's failure to implement corrective actions and submit required reports in a timely manner.

Accordingly, consideration of this factor does not support assessment of liability that is less than the maximum.

3. **Susceptibility to Cleanup or Abatement**

Inadequately treated wastewater discharged to the effluent storage pond could have been contained in the pond, then hauled for off-site disposal or returned to the treatment facility for re-treatment (as originally intended in facility design). However, due to the long-term and ongoing nature of violations and large volume of effluent mixed with ground water in the pond, it would have been infeasible to retreat all of the water not meeting discharge requirements. Inadequately treated wastewater discharged to the golf course, through its irrigation system, was not susceptible to cleanup. Also, the Discharger failed to haul inadequately treated wastewater for off-site disposal, even after being notified in writing by the Central Coast Water Board to do so. Consideration of this factor does not support assessment of liability that is less than the maximum.

4. **Voluntary Cleanup Efforts Undertaken by the Violator**

The Discharger entered into contractual arrangements with MicroMedia, Inc., designer of an experimental treatment system. Without prior notice to or authorization from the Central Coast Water Board, MicroMedia, Inc. installed experimental treatment units at the Monarch Grove Reclamation Facility. However such treatment units were unsuccessful in reducing discharge violations. In fact, additional discharge violations reportedly resulted from installation of the experimental equipment. During the following eight to ten months, the Discharger pursued authorization from the Central Coast Water Board and California Department of Health Services (DHS) of the experimental system, but did not take actions necessary to resolve ongoing noncompliance. The Discharger ultimately was not able to obtain authorization of the experimental system from the Water Board or DHS because the system's effectiveness at meeting discharge requirements was not demonstrated and information requested by DHS was not provided. The Discharger continues to use the experimental system, which appears to have little if any effect upon effluent quality. Consideration of this factor does not support assessment of liability that is less than the maximum.

5. **Degree of Toxicity of the Discharge**

As indicated above (under Nature of Violations), the discharge violations primarily consisted of turbidity limit exceedances, which in themselves are not toxic or hazardous to public health or the environment. However, excess turbidity may impact the ability to adequately and consistently disinfect wastewater discharges, thus contributing to potential pathogen exposure. Discharge exceeding Nitrogen Limitations are mitigated by the fact that the golf course implements a fertilizer minimization program to assure that fertilizer applied to the golf course is reduced (from that normally used) by an amount corresponding to the amount of nitrogen applied in reclaimed water. This practice is required in Water Reclamation Requirements Order No. 93-82 (Recycled Water User Requirements for Sea Pines Golf Course) in order to assure long-term nitrogen loading, resulting from wastewater discharge/reclamation, does not exceed historical amounts of nitrogen applied as fertilizer. No environmental or public health impacts associated with the discharge violations have been reported. Accordingly, consideration of this factor supports assessment of liability that is significantly less than the maximum.

6. Prior History of Violations

According to the State Board's State Water Information Management System (SWIMS) Facility Violation History Report and staff review of Central Coast Water Board files, the Discharger has experienced a considerable number of discharge violations since it began operating in 1998. Discharge violations during its first year of operation were sporadic and reflected the inherent difficulty in treating very low flows (when only a few homes were connected to the system) and start-up of a small wastewater facility. During the following years (2001 – 2003), nitrogen and turbidity violations persisted on an occasional basis, and were addressed (not always successfully) with minor operational modifications. Due, in part, to the difficulties and expense associated with ongoing treatment facility operation, maintenance and compliance, the Discharger entered into agreement with Los Osos Community Services District to participate in the community wastewater project. Accordingly, the Monarch Grove Reclamation Facility is expected to cease discharge and connect to the community-wide wastewater system, when the community system is available. However, noncompliance continues to plague the Monarch Grove facility. Beginning in 2004, turbidity violations significantly increased to the degree that the discharge violates requirements up to, and sometimes exceeding, 50% of the time. Consideration of this factor does not support assessment of liability that is less than the maximum.

7. Economic Benefit or Savings Resulting from the Violations

Staff estimates that some economic benefit realized by the Discharger would have been derived from savings in personnel time and materials, hauling of inadequately treated wastewater, and implementation of corrective actions (installation of additional treatment equipment). The Discharger is required to estimate such economic benefit or savings in response to Cleanup and Abatement Order No. R3-2005-0083, however such information has not yet been received by the Central Coast Water Board. Although dollar value is not yet available, staff estimates that the amount of economic benefit or savings resulting from the violations is significantly less than the maximum assessment amount. Consideration of this factor supports assessment of liability less than the maximum.

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

The Discharger has not provided any information that would indicate an inability to pay the proposed civil liability. The Discharger consists of 83 residential property owners and a participating hotel and golf resort.

9. Other Matters that Justice May Require

Central Coast Water Board staff time was used in responding to ongoing discharge and reporting violations and preparing enforcement actions (notices of violations, Cleanup and Abatement Order, and Administrative Civil Liability Complaint, Order, and various supporting materials). Estimated staff costs for preparation of this Complaint are \$8,250, as shown in the following table:

ESTIMATE OF STAFF COSTS FOR DEVELOPMENT OF ACL			
Staff Classification	Hours	Rate (\$/hr)	Amount (\$)
Technical Staff	80	75.	6,000.
Senior Staff	20	75.	1,500.
Staff Counsel	10	75.	750.
Total Staff Cost			\$ 8,250.

IV. RECOMMENDATION

The factors considered in Section III of this worksheet support the assessment of civil liability in an amount less than the maximum civil liability stated in Section I of this worksheet (\$32,878,040). In recognition of the nature and history of violations, the Discharger's culpability, and limited voluntary actions taken, staff proposes liability be assessed in the amount of \$75,000. This amount is likely to exceed the amount of any economic benefit or savings (though that is as yet undetermined) and the amount of staff costs.

S:/wdr/wdr facilities/san luis obispo co/Los Osos/Monarch Grove/ACL worksheet

File: Monarch Grove

Task: 126-01