

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF MAY 23, 2014
Prepared April 22, 2014

ITEM NUMBER: 21

SUBJECT: The Inn at Pasatiempo, Administrative Civil Liability Complaint No. R3-2014-0002

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KEY INFORMATION

Discharger:	Pasatiempo Investments, Pasatiempo II Investments, Richard S. Gregersen, and Adventco Holding Corporation
Facility Name:	The Inn at Pasatiempo
Facility Address:	555 Highway 17 Santa Cruz, CA Santa Cruz County
Type of Waste:	Domestic Wastewater
Treatment:	Septic and fixed activated sludge treatment system
Disposal:	Subsurface Disposal
Facility Design Flow:	12,000 gallons per day
Existing Orders:	Waste Discharge Requirements Order No. 99-136
Requested Action:	Modify/Adopt Complaint No. R3-2014-0002

SUMMARY

The Inn at Pasatiempo operates its own wastewater treatment and disposal systems. Pasateimpo Investments, Pasatiempo II Investments, Richard S. Gregerson, and Aventco Holding Corporation (Dischargers) own and operate the Inn at Pasatiempo and collect, treat, and dispose of wastewater at the Inn. The attached Administrative Civil Liability Complaint (Complaint) alleges that Pasatiempo violated Waste Discharge Requirements Order No. 99-136. The alleged violations include the failure to submit Self-Monitoring Reports in a timely manner and on three occasions failing to ever submit Self-Monitoring Reports.

The attached Complaint alleges that the Discharger failed to submit three quarterly Self-Monitoring Reports by the due date required in Waste Discharge Requirements Order No. 99-136. This draft Order (Attachment 1) recommends \$24,700 in administrative civil liability be assessed from the Discharger.

DISCUSSION

Background:

The Dischargers own and operate two wastewater treatment and disposal systems that service a motel, restaurant, bar, swimming pool, and conference rooms. The first system treats wastewater from the restaurant, bar, and two out buildings with a fixed activated sludge treatment (FAST) system that includes two septic tanks, grease interceptors, an effluent pump station, a distribution box, and eleven subsurface

disposal lines. The second system serves a large out building and includes a large septic tank, a holding tank, an effluent pump, a distribution box, ten subsurface disposal lines, and an overflow drain line. Wastewater flows vary seasonally with peak flows of 10,000 gallons per day at full occupancy. The facility averages 5,000 gallons per day. System design capacity is 12,000 gallons per day.

The Water Board issued nine notices of violation for reporting and effluent limit violations to the Dischargers between 2001 and 2012. The Water Board assessed administrative civil liability for late and incomplete monitoring reports to the Dischargers in 1999. The Water Board issued cease and desist orders to the Dischargers, in 1995 and again in 1999. The 1995 cease and desist order established a schedule to connect to the City of Santa Cruz wastewater treatment plant. The 1999 cease and desist order recognized the failure of the Dischargers to hook up to the City's sewer system and established a time schedule to install the enhanced onsite wastewater treatment system. The Dischargers responded to the 1999 cease and desist order by installing the existing FAST system in January 2001. The FAST system has consistently failed to produce effluent in compliance with Waste Discharge Requirements Order No. 99-136.

Summary of Prosecution Brief

The Prosecution Team argues that the Discharger violated Waste Discharge Requirements Order No. 99-136. As detailed in the Complaint (Attachment 2) the alleged violations include:

- The Dischargers failed to submit their third quarter of 2011 Self-Monitoring Report on or before the due date in violation of Waste Discharger Requirements Order No. 99-136.
- The Discharger failed to submit their third quarter 2012 Self-Monitoring Report on or before the due date in violation of Waste Discharge Requirements Order No. 99-136.
- The Discharger failed to submit their fourth quarter 2012 Self-Monitoring Report on or before the due date in violation of Waste Discharger Requirements Order No. 99-136.

The Dischargers failed to submit their third quarter 2011 report on or before the October 15, 2011 due date. Central Coast Water Board staff sent a Notice of Violation to the Dischargers notifying them of their failure to submit this monitoring report. As of November 4, 2013, the Dischargers had not submitted the report, resulting in 752 days of violation. Although the third quarter 2011 report was ultimately submitted on December 28, 2013, the penalty calculation remains as proposed in the November 2013 Complaint.

The Dischargers failed to submit their third quarter 2012 report on or before the October 15, 2012 due date. On February 11 and March 7, 2013, Central Coast Water Board staff sent emails to the Dischargers' representative informing them of this violation. Water Board staff also spoke to the Dischargers' representative by telephone regarding this violation. The report was submitted September 6, 2013 (Prosecution Staff Exhibit 8), resulting in 327 days of violation.

The Dischargers failed to submit their fourth quarter 2012 report on or before the January 15, 2013 due date. On February 11 and March 7, 2013, Central Coast Water Board staff sent emails to the Dischargers' representatives informing them of this violation (Prosecution Staff Exhibit 14). Water Board staff also spoke to the Dischargers' representative by telephone regarding this violation. The report was submitted on September 6, 2013, resulting in 235 days of violation.

The Prosecution Team provided an analysis for determining the penalty amount. The technical report

attached to the Complaint details steps that were followed by the Prosecution Team and are required by the Enforcement Policy to determine a monetary penalty. Those steps include:

1. Potential for harm for discharge violations
2. Assessments for discharge violations
3. Per day assessments for non-discharge violations
4. Adjustment factors
5. Determination of total base liability amount
6. Ability to pay and ability to continue business
7. Other factors as justice may require
8. Economic benefit
9. Maximum and minimum liability amounts
10. Final liability amount

Within the above steps the Prosecution Team considered the Dischargers compliance history, culpability, and Discharger cooperation.

Summary of The Inn at Pasatiempo Brief

The Dischargers chose not to submit a brief.

Penalty Factors and Amount

CWC Section 13327 requires the Central Coast Water Board to consider several factors when determining the amount of civil liability to impose. These factors include the nature, circumstances, extent, and gravity of the violation or violations. With respect to the violator, the Board must consider the discharger's ability to pay, prior history of violations and the violator's degree of culpability. Additionally, the State Water Board adopted a Water Quality Enforcement Policy (Enforcement Policy) in November 2009 (approved by the Office of Administrative Law on May 20, 2010) which outlines a calculation methodology for ACL assessments and the draft Order provides brief discussion of each of the factors in this methodology. All regional boards are required to use this Enforcement Policy when adopting, rejecting or modifying orders. The calculation methodology provides guidance as to how the boards are allowed to exercise their discretion while at the same time providing ranges for penalty factors that can provide consistency in penalties across the various regions. Central Coast Water Board members have been provided copies of the Enforcement Policy.

CONCLUSION

The draft Order attached is included as a starting point in advance of the forthcoming additional testimony as part of the May 23, 2014 hearing. The Prosecution Team's recommended administrative civil liability of \$24,700 includes recovery of Prosecution Team oversight costs through the issuance of the complaint, and such costs have continued, and any Order entered by the Board can be adjusted to account for continuing costs. These costs are proper under the Enforcement Policy (see Pgs. 19-20).

ATTACHMENTS

1. Draft Order No. R3-2014-0002
2. ACL Complaint No. R3-2014-0002, which includes Notice of Public Hearing
3. Prosecution Team Legal and Technical Analysis in Support of the Proposed Administrative Civil Liability Complaint No. R3-2014-0002
4. Prosecution Team Exhibits List with Exhibits
5. Prosecution Team Witness List