

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

ORDER NO. R3-2008-0026

**ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF THE
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
CALIFORNIA MEN'S COLONY
SAN LUIS OBISPO COUNTY**

This Order to assess administrative civil liability pursuant to California Water Code section 13385 is issued to the California Department of Corrections and Rehabilitation, California Men's Colony (Discharger or California Men's Colony) based on findings of violations of Waste Discharge Requirements Order No. R3-2006-0032, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0047856.

The Regional Water Quality Control Board, Central Coast Region finds that:

1. The Discharger's wastewater treatment facility, located on Hwy 1, on Camp San Luis Obispo property, north of San Luis Obispo, is subject to Waste Discharge Requirements Order No. R3-2006-0032, NPDES Permit No. CA47856 ("Order") issued by the Central Coast Water Board. The Order prohibits overflow or bypass of wastewater from the Discharger's collection, treatment, or disposal facilities and the subsequent discharge of untreated wastewater.
2. On January 27, 2008, a power failure and failed backup power generator resulted in a 20,000-gallon overflow of untreated wastewater from the Discharger's wastewater treatment facility into Chorro Creek. The Discharger thereby violated the Order and is subject to penalties pursuant to California Water Code Section 13385.
3. **Maximum Civil Liability.** Per Water Code Section 13385(c), the maximum administrative civil liability in this case is \$200,000 ($[\$10,000 \text{ per day} \times 1 \text{ day}] + [(20,000 \text{ gal.} - 1,000 \text{ gal.}) \times \$10 \text{ per gallon}]$).
4. **Minimum Civil Liability.** Water Code Section 13385(e) provides that, at a minimum, civil liability shall be assessed at a level that recovers the economic benefit or savings, if any, derived from the acts that constitute the violations. The Discharger recently completed a multi-million dollar upgrade of wastewater facilities to prevent such violations. The Discharger did not derive any economic benefit or savings from this violation.

5. **Water Code Section 13385(c) Factors.** Pursuant to Water Code Section 13385(e), in determining the amount of liability, the Central Coast Water Board shall:

...take into account 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 its ability to continue its 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. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

These factors are considered as follows:

- a. The Nature, Circumstances, Extent, and Gravity of the Violations

This was a large sewage spill to an inland surface water tributary to Morro Bay. Both Chorro Creek and Morro Bay are habitat for many sensitive receptors, including endangered species. Morro Bay is a national estuary and a marine protected area. Marine protected areas, as designated by the Marine Life Protection Act, are intended to protect sensitive habitat and the natural diversity and abundance of marine life.

Morro Bay is also an important shellfish growing area. Shellfish operations in Morro Bay rely on clean flows from Chorro Creek. The County Health Department closed sport shellfish harvesting for seven weeks. The County Health Department also closed Morro Bay to water contact recreation for four days.

The spill occurred during wet weather and high creek flows, which likely diluted pollutants contained in the sewage. Facility operators were able to divert about 100,000 to 200,000 gallons of raw sewage into temporary holding facilities, preventing the release of a much larger amount of sewage.

- b. Degree of Culpability

The Discharger is not highly culpable for this spill. The backup power generator is regularly tested and was apparently operational until this incident. Water Board staff's discussions with the company that supplied the backup generator to the Discharger indicate that the supplier knew of the problem that caused the failure. In Water Board staff's estimation, the generator supplier is largely culpable for the spill.

c. Voluntary Cleanup Efforts Undertaken by the Violator

The Discharger did not take any cleanup efforts. However, because of high flows, cleanup was not possible.

d. Susceptibility to Cleanup or Abatement

The spill was not susceptible to cleanup. Spilled sewage was washed downstream by high creek flows.

e. Degree of Toxicity of the Discharge

The toxicity of the spilled sewage was likely low due to high creek flows. Total coliform samples were collected upstream and 0.4 miles downstream of where the spill entered Chorro Creek. Total coliform results at both upstream and downstream locations were 1,300 MPN/100mL.

f. Prior History of Violations

The Discharger has long history of similar violations; however, Discharger has recently made significant facility improvements.

g. Economic Benefit or Savings Resulting from the Violations

The Discharger did not gain an economic benefit or savings resulting from the violations.

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

The Discharger is a state agency. Discharger's payment of previous penalties suggests it is capable of paying the proposed penalty. The Discharger has not provided any information that would indicate an inability to pay the proposed civil liability.

i. Other Matters that Justice May Require

Responding to these violations and preparing the Complaint and this administrative civil liability order required approximately 130 hours of Water Board staff time. Estimated staff costs are \$5,000 (400 hours staff time x \$125/hour).

At a public hearing on September 5, 2008, the Central Coast Water Board considered these factors and all comments and testimony received.

IT IS HEREBY ORDERED, pursuant to California Water Code section 13385, that California Men's Colony is assessed administrative civil liability in the amount of forty thousand dollars (\$40,000).

The Discharger shall submit a check payable to State Water Resources Control Board in the amount of **\$40,000** to *SWRCB Accounting, Attn: Enforcement, P.O. Box 100, Sacramento, California 95812-0100* by **October 5, 2008**. A copy of the check shall also be submitted to *Regional Water Quality Control Board, Attn: Harvey Packard, 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401* by **October 5, 2008**.

Any person aggrieved by this action of the Central Coast Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of the order, except that if the thirtieth day following the date of the order falls on a Saturday, Sunday, or state holiday, the petition must be received by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the internet at http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

I, Roger W. Briggs, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Central Coast Water Board on September 5, 2008.

Roger W. Briggs
Executive Officer

Date

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