

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

STAFF REPORT FOR REGULAR MEETING OF SEPTEMBER 4-5, 2008

Prepared on August 14, 2008

ITEM NUMBER: 24

SUBJECT: Administrative Civil Liability Order No. R3-2008-0026, California Department of Corrections and Rehabilitation, California Men's Colony, San Luis Obispo County

KEY INFORMATION

Discharger: California Department of Corrections and Rehabilitation
Location: Hwy 1, North of San Luis Obispo
Discharge Type: Domestic Wastewater
Existing Order: Waste Discharge Requirements Order No. R3-2006-0032, NPDES Permit No. CA0047856
This Action: Adopt Administrative Civil Liability Order

SUMMARY

On February 21, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R3-2008-0026 (Complaint) to the California Department of Corrections and Rehabilitation (Discharger). The Complaint alleged that the Discharger violated its waste discharge requirements by spilling 20,000 gallons of untreated wastewater to Chorro Creek. The Complaint proposed that the Discharger be assessed civil liability in the amount of \$40,000.

DISCUSSION

Discharger. The Discharger owns and operates a wastewater treatment facility located on Camp San Luis Obispo property northwest of San Luis Obispo. The wastewater treatment facility serves the California Men's Colony, Camp San Luis Obispo, San Luis Obispo County Education Center, El Chorro Regional Park and Dairy Creek Golf Course, and the San Luis Obispo County Operational Facility. The facility treats about 1.2 million gallons per day, with disposal to Chorro Creek. The facility is new, having been completed in May 2007.

The Discharger is subject to Waste Discharge Requirements Order No. R3-2006-0032, NPDES Permit No. CA0047856, which was adopted by the Central Coast Water Board and became effective on August 26, 2006.

Treated wastewater is discharged to Chorro Creek for disposal. During the dry season, effluent from the facility comprises most of Chorro Creek's flow. However, during the wet season, and especially during storm events, facility effluent is a small fraction of the total flow. Chorro Creek is habitat for anadromous fish. It is listed on the 303(d) impaired waters list for nutrients, fecal coliform, and sediment/siltation. Chorro Creek empties into Morro Bay, a federally designated

national estuary, which is also on the 303(d) list for metals, pathogens, and sediment/siltation. Chorro Creek enters Morro Bay in an area recently designated a State Marine Recreational Management Area adjacent to a recently designated State Marine Reserve.

Requirements. Order No. R3-2006-0032 includes, in part, the following requirements:

Discharge Prohibition III.C

"The overflow or bypass of wastewater from the Discharger's collection, treatment, or disposal facilities and the subsequent discharge of untreated wastewater, except as provided for in Attachment D, Standard Provision I. G (Bypass), is prohibited."

Standard Provision A.4

"'Bypass' and 'overflow' of untreated and partially treated waste is prohibited."

Violations. On January 27, 2008, a power failure and failed backup power generator resulted in a 20,000-gallon overflow of untreated wastewater from the facility into Chorro Creek. The Discharger thereby violated Discharge Prohibition III.C and Standard Provisions A.4.

Maximum Civil Liability. The maximum civil liability for the above violations is \$10,000 per day plus \$10 per gallon for every gallon over 1000 gallons spilled, for a total of \$200,000.

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 did not derive any economic benefit or savings from these violations, so there is no minimum penalty.

Factors to Consider when Assessing Civil Liability. Pursuant to Water Code Section 13385(e), in determining the amount of liability for waste discharge requirements violations, the 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."

Also, when determining the amount of liability for Water Code Section 13385 violations, 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 is it 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 \$16,250 (130 hours staff time x \$125/hour).

California Environmental Quality Act. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with section 15321, Title 14, California Code of Regulations.

RECOMMENDATION

Adopt Administrative Civil Liability Order No. R3-2008-0026

ATTACHMENTS

1. Administrative Civil Liability Complaint No. R3-2008-0026
2. Hearing Notice
3. Proposed Administrative Civil Liability Order No. R3-2008-0026

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