



# California Regional Water Quality Control Board

## Central Coast Region



Linda Adams  
Secretary for  
Environmental  
Protection

www.waterboards.ca.gov/centralcoast  
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401  
Phone (805) 549-3147 • FAX (805) 543-0397

Arnold  
Schwarzenegger  
Governor

February 21, 2008

**CERTIFIED MAIL 7006 0100 0000 1777 6068**  
**RETURN RECEIPT REQUESTED**

Warden John Marshall  
California Men's Colony  
P.O. Box 8101  
San Luis Obispo, CA 93409-8101

Dear Mr. Marshall:

### **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT, CALIFORNIA MEN'S COLONY, SAN LUIS OBISPO COUNTY**

Attached is *Administrative Civil Liability Complaint No. R3-2008-0026 in the matter of California Department of Corrections and Rehabilitation, California Men's Colony, San Luis Obispo County*. This Complaint concerns your large sewage spill to Chorro Creek on January 27, 2008.

Unless you waive your right to a public hearing and pay the amount proposed in the Complaint (\$40,000), we plan to present an order to the Regional Water Quality Control Board, Central Coast Region (Water Board) for the amount proposed, at its regularly scheduled meeting on May 9, 2008, at the Water Board hearing room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. At that time, the Water Board will hear public testimony and decide whether to affirm the action of the Assistant Executive Officer as described in the complaint, or refer the matter for judicial civil action

The CMC and any other interested parties may submit written comments regarding this proposed action. Comments and other written submittals for Water Board consideration are **due no later than 5 pm on Friday, March 28, 2008**. Written material received after the due date will not be provided to the Water Board or become part of the record, unless the Board Chair rules that exclusion would create a severe hardship and that no party (including Water Board staff) will be prejudiced by the late submission. The Board Chair will make such a ruling at or before the hearing. Late submissions that consist of evidence (as opposed to policy statements or comments) will generally be deemed prejudicial unless all designated parties (see below) have time to consider the evidence before the meeting

***California Environmental Protection Agency***

Recycled Paper



Please review the Complaint and procedural information carefully and submit your comments and/or your Waiver of Hearing form and copy of payment by **March 28, 2008**. If you have questions, please contact Harvey Packard at (805) 542-4639 or [hpackard@waterboards.ca.gov](mailto:hpackard@waterboards.ca.gov).

Sincerely,



Michael Thomas  
Assistant Executive Officer

Attachment: Administrative Civil Liability Complaint No. R3-2008-0026

cc:

Mr. Rich Lichtenfels  
San Luis Obispo County Environmental Health  
P. O. Box 1489  
San Luis Obispo, CA 93406

Ms. Frances McChesney  
Office of Chief Counsel  
State Water Resources Control Board  
By email

Jorge Leon  
Office of Enforcement  
State Water Resources Control Board  
P. O. Box 100  
Sacramento, CA 95812-0100

Jill Baltan  
California Dept. of Health Services  
850 Marina Bay Parkway, MSG165  
Richmond, CA 94804

Keith Carls  
KCOY TV  
By email

Joey Racano  
By email

Eric Greening

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

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2008-0026**

**IN THE MATTER OF:**

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION  
CALIFORNIA MEN'S COLONY  
SAN LUIS OBISPO COUNTY**

**CALIFORNIA MEN'S COLONY IS HEREBY GIVEN NOTICE THAT:**

The California Department of Corrections and Rehabilitation, California Men's Colony (hereafter "CMC" or "Discharger") is alleged to have violated provisions of California State law and an Order of the Regional Water Quality Control Board, Central Coast Region (hereafter "Central Coast Water Board"), for which the Central Coast Water Board may impose civil liability pursuant to California Water Code Section 13385.

Unless the Discharger waives its right to a hearing and pays the recommended civil liability (see instructions below), a public hearing on this matter will be held before the Central Coast Water Board on May 9, 2008, at the Water Board hearing room, 895 Aerovista, San Luis Obispo, California. The Discharger 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 Central Coast Water Board.

An agenda will be mailed to the Discharger separately, not less than ten days before the public hearing date. At the public hearing, the Central Coast 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. 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.

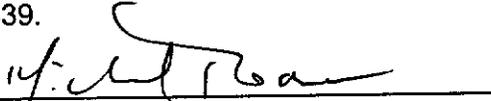
5. **Water Code Section 13385(c) Factors:**

Factor	Consideration
Nature, Circumstances, Extent, and Gravity of the Violations	Large sewage spill to inland surface water tributary to Morro Bay. Sensitive receptors. Occurred during wet weather and high creek flows. The County health department closed Morro Bay to water contact recreation for four days. Sport shellfish harvesting was closed for at least two weeks.
Degree of Culpability	Medium. Backup power generator is regularly tested and was apparently operational until this incident.
Voluntary Cleanup Efforts Undertaken by the Violator	None reported. Discharger minimized spill volume by diverting flow to old wastewater facility.
Susceptibility to Cleanup or Abatement	Low. Spill was washed downstream by high creek flows.
Degree of Toxicity of the Discharge	Low due to high creek flows. Sample results pending.
Prior History of Violations	Discharger has long history of similar violations; however, Discharger has recently made significant facility improvements.
Economic Benefit or Savings Resulting from the Violation	None. See Allegation 4 above.
Ability to Pay	Previous penalties suggest the Discharger is capable of paying proposed penalty.
Other Matters that Justice May Require	Staff costs for responding to violation are \$1200.

**PROPOSED CIVIL LIABILITY**

1. Upon consideration of all factors required by California Water Code Section 13385, the Assistant Executive Officer recommends the Discharger be assessed civil liability in the amount of **forty-thousand dollars (\$40,000)**.
2. The Central Coast Water Board will hold a public hearing on this matter on **May 9, 2008**, 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 Central Coast Water Board may proceed with the scheduled public hearing and consider testimony received from interested persons during the public hearing and decide whether to affirm, reject, or modify the amount of administrative civil liability proposed by the Assistant Executive Officer. The Central Coast Water Board may also decide to continue the matter to a future hearing or refer the matter to the State Attorney General. The public hearing is scheduled at the regularly scheduled Central Coast Water Board meeting on May 9, 2008, at the Water Board hearing 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 Harvey Packard at (805) 542-4639.



Michael J. Thomas  
Assistant Executive Officer

2-21-08

Date

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

**WAIVER OF PUBLIC HEARING**

You may waive your right to a public hearing. If you wish to waive your right to a public hearing, a duly authorized person<sup>1</sup> must check the *first* box, sign, and submit the following ***Waiver of the Right to a Public Hearing*** form and pay the penalty amount specified in the Complaint **no later than March 28, 5:00 P.M.** Please follow the payment instructions below.

If you choose to waive your right to a public hearing, and if full payment and a signed *Waiver of the Right to a Public Hearing* form are received before the hearing, the hearing will not be held, and the violation will be settled. If full payment and a signed *Waiver of the Right to a Public Hearing* form are not received, the matter will be placed on the Central Coast Water Board's agenda for a hearing as stated below.

If you do not waive your right to a public hearing, the Assistant Executive Officer will present an Order to the Central Coast Water Board for the amount proposed in this Complaint at the Central Coast Water Board meeting on May 9, 2008, at the Water Board hearing room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. The Central Coast Water Board will proceed with the scheduled hearing, consider testimony received from interested persons during the hearing, and decide whether to accept the amount of the civil liability proposed by the Assistant Executive Officer, or to increase or decrease the amount. If the Water Board adopts an order, payment of the civil liability to the State Water Resources Control Board will be due and payable no later than June 9, 2008, in accordance with the order. The Central Coast Water Board may also decide to continue the matter to a future hearing or refer it to the State Attorney General. The meeting is scheduled to begin at 8:30 A.M.; however, no specific time has been set for consideration of the order.

**PAYMENT OF ADMINISTRATIVE CIVIL LIABILITY**

**No later than March 28, 2008**, please make your check payable to State Water Resources Control Board, and note "ACL Complaint No. R3-2008-0026" on the check. Please mail the check and signed waiver form to *SWRCB Accounting, Attn: Enforcement, P.O. Box 100, Sacramento, CA 95812-0100*.

Please also mail copies of the check and signed waiver form to *Regional Water Quality Control Board, Attn: Harvey Packard, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401*.

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<sup>1</sup> 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 or sole proprietorship, a principal executive officer or ranking elected official in a public agency, or a duly authorized representative.

## REQUEST FOR HEARING DATE EXTENSION FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT

If you would like to propose a Supplemental Environmental Project, please contact Water Board staff as soon as possible. If staff determines your proposed Supplemental Environmental Project meets applicable requirements, you can elect to settle this matter without a hearing. In some cases, finalizing a settlement that includes a Supplemental Environmental Project takes several weeks or months.

Unless waived, California Water Code Section 13323(b) requires the Water Board to hold a hearing on Complaint No. R3-2008-0026 within 90 days after the date of service of the complaint. Before any hearing date extension is granted, you must waive the 90-day requirement. In order to request an extension, a duly authorized person must check the *second* box, sign, and submit the following ***Waiver of the Right to a Public Hearing*** form **no later than March 28, 2008, 5:00 P.M.**

A waiver and request for extension do not guarantee that the Water Board will grant the extension request or that you will be able to reach a settlement agreement. In many cases, a settlement agreement including a Supplemental Environmental Project can easily be completed within 90 days and no extension is necessary. The Water Board will set a new hearing date if a settlement agreement is not finalized in a timeframe acceptable to Water Board staff.

The due date for written comments is not automatically extended when the hearing date is changed.

**WAIVER OF THE RIGHT TO A HEARING AND/OR WAIVER OF TIME FOR HEARING**

By signing below, I acknowledge that I have read and understand the PROCEDURAL INFORMATION FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT, PUBLIC HEARING AND PAYMENT that was attached to this waiver form.

Check one of the following boxes:

- [ ] By checking this box, I agree to waive California Men's Colony's right to a hearing before the Central Coast Water Board with regard to the violations alleged in Complaint No. R3-2008-0026. Also, I agree to remit payment for the civil liability proposed. I understand that I am giving up the California Men's Colony's right to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition or amount of proposed civil liability. [Check this box if the California Men's Colony will pay the full amount of proposed liability without a hearing, and initial here: \_\_\_\_\_]
- [ ] By checking this box, I agree to waive the 90-day requirement of California Water Code Section 13323(b). I understand this means the Water Board may hold a hearing more than 90 days after the date of service as long as I receive at least ten calendar days' notice of the new hearing date. I understand that the California Men's Colony's waiver of the 90-day requirement does not extend the original due date for written comments, unless the Water Board also extends that due date. I understand that the Water Board may deny the request for extension. [Check this box if the California Men's Colony requests an extension of the hearing date for any reason, including an extension to discuss settlement and/or Supplemental Environmental Projects with Water Board staff. After checking the box, initial here: \_\_\_\_\_].

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title/Position\*

\_\_\_\_\_  
Date

\* 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.