



California Regional Water Quality Control Board

Central Coast Region

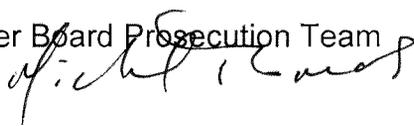


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Environmental
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To: Roger W. Briggs, Executive Officer
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

From: Central Coast Water Board Prosecution Team
Michael Thomas 
Harvey Packard
David LaCaro

Date: January 12, 2009

Subject: Prosecution Staff's Legal and Technical Analysis In Support of
Proposed MMP Order No. R3-2008-0075, California Men's Colony,
San Luis Obispo County

SUMMARY

Waste Discharge Requirements Order No. R3-2006-0032, NPDES Permit No. CA0047856, requires the California Men's Colony (Discharger) to comply with effluent limitations. According to monitoring reports submitted by the Discharger from July 1, 2006, to August 31, 2008, the Discharger violated various effluent limitations, other than that for total chlorine residual, on 42 separate occasions. Mandatory Minimum Penalty Complaint No. R3-2008-0075 (Complaint) provides details of each violation.

California Water Code Sections 13385(h) and 13385(i) require that a mandatory minimum penalty of \$3,000 be assessed for certain violations. The 42 violations alleged in the complaint are all subject to the mandatory minimum penalty. The Prosecution team therefore proposes a total penalty of \$120,000.

DISCUSSION

Requirements: On July 7, 2006, the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), adopted *Waste Discharge Requirements Order No. R3-2006-0032, NPDES Permit No. CA0047856, for the California Men's Colony, San Luis Obispo County* (Order No. R3-2006-0032). In accordance with Section IV of its NPDES Permit the Discharger, is required to comply with effluent limitations.

California Environmental Protection Agency

Violations: As detailed in the Complaint, the Discharger committed the following violations:

Table 1 – Effluent Limit Violations

#	Violation Date	CIWQS Violation No.	Constituent	Permit Limit	Reported Value	Violation Type
1	8/20/2006	439166	Total Coliform	1	4 MPN	Chronic
2	8/21/2006	439167	Total Coliform	1	4 MPN	Chronic
3	8/22/2006	439168	Total Coliform	1	7 MPN	Chronic
4	8/23/2006	439170	Total Coliform	1	4 MPN	Chronic
5	8/24/2006	439171	Total Coliform	1	4 MPN	Chronic
6	8/25/2006	439172	Total Coliform	1	4 MPN	Chronic
7	8/26/2006	439173	Total Coliform	1	4 MPN	Chronic
8	8/28/2006	439174	Total Coliform	1	4 MPN	Chronic
9	8/29/2006	439175	Total Coliform	1	4 MPN	Chronic
10	1/16/2007	611295	Sulfate	125 mg/L	510 mg/L	Serious
11	3/20/2007	567291	Total Coliform	1	500 MPN	Chronic
Plant Upgrade (90-day grace period)³						
12	8/30/2007	660680	Total Coliform	1	17 MPN	Chronic
13	8/31/2007	660681	Total Coliform	1	17 MPN	Chronic
14	9/4/2007	691893	Total Coliform	1	920 MPN	Chronic
15	9/7/2007	691895	Total Coliform	1	46 MPN	Chronic
16	9/10/2007	691896	Total Coliform	1	540 MPN	Chronic
17	9/13/2007	691897	Total Coliform	1	110 MPN	Chronic
18	9/14/2007	691899	Total Coliform	1	110 MPN	Chronic
19	9/16/2007	691892	pH	6.5-8.3 s.u.	6.3 s.u.	Chronic
20	9/16/2007	691900	Dissolved Oxygen	> 2.0 mg/L	0.2 mg/L	Chronic
21	10/23/2007	698126	Chlorodibromomethane	3.5 µg/L ²	8.3 µg/L	Serious
22	10/23/2007	698127	Dichlorobromomethane	13 µg/L ²	16 µg/L	Serious
23	10/28/2007	698125	Dissolved Oxygen	>2.0 mg/L	1.2 mg/L	Chronic
24	11/4/2007	710010	Dissolved Oxygen	>2.0 mg/L	0.5 mg/L	Chronic
25	12/12/2007	764587	Copper	0.012 ug/L ²	0.017 ug/L	Serious
26	12/31/07	764577	Total Coliform	1	8 MPN	Chronic
27	1/8/2008	764674	Copper	0.012 ug/L ²	0.013 ug/L	Chronic
28	1/8/2008	764672	Chlorodibromomethane	3.5 µg/L ²	4.1 µg/L	Chronic
29	1/8/2008	764673	Dichlorobromomethane	13 µg/L ²	16 µg/L	Serious
30	4/8/2008	762889	Chlorodibromomethane	3.5 µg/L ²	6.3 µg/L	Serious
31	4/8/2008	763438	Dichlorobromomethane	13 µg/L ²	19 µg/L	Serious
32	5/16/2008	775623	Dissolved Oxygen	>2.0 mg/L	0.8 mg/L	Chronic
33	6/2/2008	777452	Dissolved Oxygen	>2.0 mg/L	0.2 mg/L	Chronic
34	6/24/2008	777458	Dissolved Oxygen	>2.0 mg/L	0.2 mg/L	Chronic
35	6/24/2008	777444	Total Coliform	1	900 MPN	Chronic
36	7/7/2008	783634	Dissolved Oxygen	>2.0 mg/L	1.5 mg/L	Chronic
37	7/8/2008	783635	Dissolved Oxygen	>2.0 mg/L	1.7 mg/L	Chronic
38	7/8/2008	783637	Chlorodibromomethane	3.5 µg/L ²	6.1 µg/L	Serious

#	Violation Date	CIWQS Violation No.	Constituent	Permit Limit	Reported Value	Violation Type
39	7/8/2008	783638	Dichlorobromomethane	13 µg/L ²	18 µg/L	Serious
40	7/8/2008	783639	Sulfate	125 mg/L	180 mg/L	Serious
41	7/22/2008	783636	Dissolved Oxygen	>2.0 mg/L	0.2 mg/L	Chronic
42	88/21/2008	786557	Dissolved Oxygen	>2.0 mg/L	0.2 mg/L	Chronic

¹ – Effluent limitation is identified in Section IV.A.1.c. of Order R3-2006-0032.

² – Interim effluent limitations identified in Section IV.A.2 of Order

³ – According to Section 13385(j)(1)(D)(i) of the California Water Code, mandatory minimum penalties do not apply to new or reconstructed wastewater treatment units for a period of 90 days.

CIWQS – California Integrated Water Quality System

Complaint Issuance: On December 17, 2008, the Prosecution Team mailed Mandatory Minimum Penalty Complaint No. R3-2008-0075 (Complaint) to the Discharger by certified mail.

Violation History: The Discharger has had numerous violations in the past (e.g., sanitary sewer spills, effluent violations). As a result, the Discharger upgraded the wastewater treatment plant to optimize treatment quality and minimize effluent violations. The new wastewater treatment facility was completed May 31, 2007.

Minimum Civil Liability: California Water Code Section 13385(h) requires that a mandatory minimum penalty of \$3,000 be assessed for each serious violation. Section 13385(h)(2) provides that a serious violation occurs if the discharge exceeds the effluent limitations for a Group II pollutant, as specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations, by 40 percent or more.

California Water Code section 13385(i) requires the Central Coast Water Board to assess a mandatory penalty of \$3,000 for each violation, not counting the first three violations, if the discharger does any of the following four or more times in a period of six consecutive months:

- a) Violates a waste discharge requirement effluent limitation;
- b) Fails to file a report pursuant to Section 13260;
- c) Files an incomplete report pursuant to Section 13260; or
- d) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

According to the definition of serious violation in Section 13385(h) of the Water Code, the Discharger committed 10 serious violations as shown on lines 10, 21, 22, 25, 29 through 31, and 38 through 40 of Table 1 from July 1, 2006, to August 31, 2008. The amount of the mandatory penalty for the 10 serious violations (\$3,000 x 10) is \$30,000.

According to the definition of chronic violations in Section 13385 (i), the Discharger committed 32 chronic violations as shown on lines 1 through 9, 12 through 20, 23, 24, 26 through 28, 32 through 37, 41, and 42 of Table 1, from July 1, 2006, to August 31, 2008. The three chronic violations shown on lines 1, 2, and 3, from August 20, 2006, to August 22, 2006, were not preceded by six consecutive months of compliance and are therefore subject to mandatory penalties. The amount of the mandatory minimum penalty for the 32 chronic violations is \$96,000 (\$3,000 x 32).

Conclusion: The Discharger has violated California Water Code Section 13385 by failing to comply with its effluent limitations. The total amount of the mandatory minimum penalty from July 1, 2006, to August 31, 2008, is \$126,000.

RECOMMENDATION

Adopt Mandatory Minimum Penalty Order No. R3-2008-0075, imposing liability for \$126,000 against the Discharger.

ATTACHMENTS

1. Receipt for Delivery of MMP Complaint No. R3-2008-0075
2. List of Exhibits Incorporated by Reference

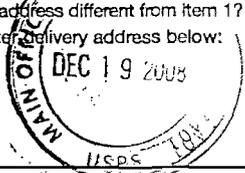
cc: Warden John Marshall
California Men's Colony
P.O. Box 8101
San Luis Obispo, CA 93409-8101

Chris Swanberg, Staff Counsel
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Chris.swanberg@cdcr.ca.gov

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Office of Enforcement
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written evidence - mmp.doc



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <input type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____</p> <p>C. Date of Delivery 12-19-04</p>
<p>1. Article Addressed to:</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> Warden John Marshall California Men's Colony P.O. Box 8101 San Luis Obispo, CA 93409-8101 </div>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> <div style="text-align: center; border: 1px solid black; border-radius: 50%; padding: 10px; width: 100px; margin: 10px auto;">  </div> <p>3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number: 17004 1350 0003 19876 19002 (Transfer from service label)</p>	
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p>	

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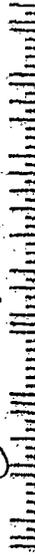
DEC 22 2008

Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

SCANNED
DEC 22 2008
BY: *BB*

DLC

Attn: David LaCass



STATE OF CALIFORNIA
CENTRAL COAST REGION

List of Exhibits Incorporated by Reference
California Men's Colony
MMP Order No. R3-2008-0075

1. *Waste Discharge Requirements Order No. R3-2006-0032, NPDES Permit No. CA0047856, for the California Men's Colony, San Luis Obispo County (Order No. R3-2006-0032)*
2. CMC monitoring reports covering the period from July 1, 2006, to August 31, 2008
3. ACL Complaint No. R3-2008-0075
4. State Water Resources Control Board Water Quality Enforcement Policy, which can be found on the internet at the following link: http://www.waterboards.ca.gov/board_info/agendas/2008/feb/0219_10current_policy.doc

The above-described documents can be found in the Central Coast Water Board's files and on the internet at the following link:
<http://www.waterboards.ca.gov/centralcoast/>