



California Regional Water Quality Control Board

Central Coast Region



Linda Adams
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb3>
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401
Phone (805) 549-3147 • FAX (805) 543-0397

Arnold Schwarzenegger
Governor

December 17, 2008

CERTIFIED MAIL 7004 1350 0003 9876 9002

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

Dear Warden Marshall:

COMPLAINT FOR MANDATORY MINIMUM PENALTY (MMP), CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, CALIFORNIA MEN'S COLONY, SAN LUIS OBISPO COUNTY

Central Coast Water Board staff proposed Mandatory Minimum Penalty Order No. R3-2008-0054 to the Central Coast Water Board on September 5, 2008. Proposed Order No. R3-2008-0054 would have assessed mandatory minimum penalties for dissolved oxygen, total chlorine residual, total coliform, pH, sulfate, dichlorobromomethane, chlorodibromomethane, and copper. The Water Board did not adopt the proposed Order and directed staff to reevaluate the complaint. As a result, staff now proposes to separate the total chlorine violations from the other violations, which are the subject of this complaint. This complaint includes mandatory minimum penalty assessments for dissolved oxygen, total coliform, pH, sulfate, dichlorobromomethane, chlorodibromomethane, and copper violations.

Attached is Mandatory Minimum Penalty Complaint No. R3-2008-0075. This Complaint is based on violations of effluent limitations in Waste Discharge Requirements Order No. R3-2006-0032, National Pollutant Discharge Elimination System Permit No. CA0047856, from July 1, 2004, through August 31, 2008. The attached Complaint specifies the occurrence dates and nature of the violations.

Unless you waive your right to a public hearing and pay the amount proposed in the Complaint (\$126,000), we will present an Order to the Central Coast Water Board for the amount proposed in the Complaint at the February 6, 2009, Central Coast Water Board meeting to be held at 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.

California Water Code Section 13385(l) allows up to \$70,500 of the penalty amount to be expended on a supplemental environmental project (SEP) in accordance with the State Water Resources Control Board's *Water Quality Enforcement Policy*. You may submit a proposal for one or more SEPs. If you do choose to submit a proposal, please

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submit it for our consideration no later than **January 12, 2009**. The *Water Quality Enforcement Policy* specifies the criteria a SEP must meet to qualify for funding consideration and may be found at:

http://www.waterboards.ca.gov/board_info/agendas/2008/feb/0219_10currentpolicy.doc.

You will also find a number of SEPs listed, as well as other useful information, on our website at: <http://www.swrcb.ca.gov/centralcoast/sep/>.

Please review the Complaint carefully and submit your comment or your **Waiver of Hearing** form and copy of payment, and/or an SEP proposal by **January 12, 2009**. If you have questions, please contact **David LaCaro at (805) 549-3892** or Harvey Packard at (805) 542-4639.

Sincerely,



Michael J. Thomas
Assistant Executive Officer

Attachments: 1) Mandatory Minimum Penalty Complaint No. R3-2008-0075
 2) Waiver of Hearing Form

cc: California Men's Colony IPL

Chris Swanberg, Staff Counsel
California Department of Corrections
and Rehabilitation
1515 S Street, Room 3145
Sacramento, CA 95814

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

California Department of Corrections
and Rehabilitation Headquarters
300 Capitol Mall, Suite 1850
Sacramento, CA 95814

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

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

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

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

COMPLAINT NO. R3-2008-0075

MANDATORY PENALTY
IN THE MATTER OF THE
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
CALIFORNIA MEN'S COLONY
SAN LUIS OBISPO COUNTY

This Complaint to assess Mandatory Minimum Penalties pursuant to California Water Code section 13385(h) and (i) 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 Assistant Executive Officer finds the following:

1. 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).
2. California Water Code section 13385(h)(1) requires the Central Coast Water Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation.
3. California Water Code section 13385(h)(2) provides 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.
4. California Water Code section 13385(i) requires the Central Coast Water Board to assess a mandatory penalty of three thousand dollars (\$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.

5. California Water Code section 13385(i)(2) defines a "period of six consecutive months" as "the period commencing on the date that one of the violations described in this subdivision [Finding No. 3 of this Order] occurs and ending 180 days after that date." However, **serious violations** may qualify as chronic violations for the purpose of determining a "period of six consecutive months," and may count as the first three **chronic violations**, though such violations are not counted twice for the purpose of assessing the penalty amount.
6. In accordance to Appendix A to section 123.45 of Title 40 Code of Federal Regulations, sulfate and copper are categorized as a Group I pollutants and chlorodibromomethane, and dichlorobromomethane are categorized as Group II pollutants. Group I and Group II pollutants are subject to serious violations as defined in Finding No. 3.
7. Dissolved oxygen, pH, and total coliform are not Group I or II pollutants and are not subject to serious violations as defined by Finding No. 3. However, violations of effluent limitations for these constituents are assessed mandatory penalties as defined in Finding No. 4.
8. Order No. R3-2006-0032 includes the following:
- a) Section IV.A.1.a. - Effluent Limitations Table

Constituent	Units	Effluent Limit		
		Daily Maximum	7-Day Average	Monthly (30-day Average)
Dissolved Oxygen	mg/L	> 2.0 mg/L at all times		
pH	s.u.	6.5 – 8.3 at all times		
Sulfate	mg/L	125	-	-

mg/L milligrams per liter
s.u. standard units

- b) Section IV.A.2. – Interim Effluent Limitations Table

Constituent	Units	Effluent Limit	
		Average monthly	Maximum Instantaneous
Chlorodibromomethane	µg/L	3.5 ¹	
Dichlorobromomethane	µg/L	13 ¹	

¹ Interim effluent limitations were established for the Discharger provided that the Discharger satisfies the compliance schedule identified in Section VI.C.7 of Order R3-2006-0032.

µg/L micrograms per liter

c) Section IV.A.1.c – Total Coliform Effluent Limitation

The median concentration of total coliform bacteria measured in treated effluent at Discharge Point 001 shall not exceed a most probable number (MPN) of 2.2 organisms per 100 milliliters (mL), as determined from the last seven days for which analyses have been completed. The number of total coliform bacteria shall not exceed a MPN of 23 per 100 mL in more than one sample in any 30-day period. No sample shall exceed an MPN of 240 total coliform bacteria per 100 mL.

9. The California Men's Colony completed the construction of a new wastewater treatment facility on May 31, 2007. Section 13385 (j)(D)(i) of the California Water Code states that mandatory minimum penalties do not apply to violations occurring during the "operation of a new or reconstructed wastewater treatment unit during a defined period of adjustment of testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process." This Complaint does not propose penalties for violations that occurred between May 31, 2007, and August 29, 2007, which includes the new wastewater treatment facility's 90-day adjustment period.

10. According to monitoring reports submitted by the Discharger from July 1, 2006, to August 31, 2008, the Discharger violated the following effluent limitations in Order No. R3-2006-0032:

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

#	Violation Date	CIWQS Violation No.	Constituent	Permit Limit	Reported Value	Violation Type
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
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 Finding No. 8 (above) and Section IV.A.1.c. of Order R3-2006-0032.

² - Interim effluent limitations identified in Finding No. 8 and 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

11. According to the definition of **serious violation** in Finding No. 3, 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 thirty thousand dollars (\$30,000).

12. According to the definition of **chronic violations** in Finding No. 4, 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 ($\$3,000 \times 32$) is ninety-six thousand dollars (\$96,000).

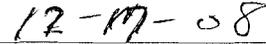
13. The total amount of the mandatory minimum penalty from July 1, 2006, to August 31, 2008, is one hundred and twenty-six thousand dollars ($\$30,000 + \$96,000 = \$126,000$).
14. California Water Code section 13385(l) states that "(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the...regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).
15. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000, et seq.) in accordance with the California Code of Regulations Title 14, Chapter 3, section 15321.

THE CALIFORNIA MEN'S COLONY IS HEREBY GIVEN NOTICE, pursuant to California Water Code section 13385, that California Men's Colony is assessed a Mandatory Minimum Penalty in the amount of one-hundred and twenty-six thousand dollars (\$126,000).

1. The Assistant Executive Officer of the Central Coast Water Board proposes that the Discharger be assessed a Mandatory Penalty in the amount of one hundred and twenty-six thousand dollars (\$126,000).
2. The Central Coast Water Board will hold a public hearing on this matter on **February 6, 2009**, 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 accept the amount of Mandatory Minimum Penalty proposed by the Assistant Executive Officer. The Central Coast Water Board may also decide to continue the matter to a future hearing, direct the Assistant Executive Officer to reissue the Complaint to propose additional penalties under California Water Code section 13385(c) and (e), or refer the matter to the State Attorney General. The public hearing is scheduled at the regularly scheduled Central Coast Water Board meeting on February 6, 2009, at the Central Coast 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.



Michael J. Thomas
Assistant Executive Officer



Date

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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 person¹ 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 January 12, 2009 at 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 February 6, 2009, 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 March 6, 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 January 12, 2009, please make your check payable to *State Water Resources Control Board*, and note "ACL Complaint No. R3-2008-0075" 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.*

¹ 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. R3-2008-0075 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 January 12, 2009 at 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. R3-2008-0075. 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.