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

July 16, 2008

CERTIFIED MAIL 7007 0710 0001 1013 4116

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

Attached is *Complaint for Mandatory Minimum Penalty No. R3-2008-0054* (Complaint). The 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 April 30, 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 ($135,000), we will present an Order to the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) for the amount proposed in the Complaint at the September 5, 2008, 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 $75,000 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 submit it for our consideration no later than **August 4, 2008**. 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 **August 4, 2008**. 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. R3-2008-0054
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

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

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

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

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. R3-2008-0054

MANDATORY PENALTY
IN THE MATTER OF THE
CALIFORNIA DEPARTMENT OF CORRECTIONSAND 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 [California Water Code section 13385(i) of 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, dichlorobromomethane, and total chlorine residual 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, Total Coliform are considered other effluent violations and are not subject to serious violations as defined by Finding No. 3. However, other effluent violations 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

		Effluent Limit		
Constituent	**Units**	**Daily Maximum**	**7-Day Average**	**Monthly (30-day Average)**
Total Chlorine Residual	mg/L	-	-	ND [1]
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

[1] ND = less than 0.1 mg/L. Compliance determination for total chlorine residual shall be based on 99% compliance. To determine 99% compliance with the effluent limitation specified above for total chlorine residual, the following conditions shall be satisfied: (1) the total time during which the total chlorine residual values are above 0.1 mg/L (instantaneous maximum value) shall not exceed 7 hours and 26 minutes in any calendar month; (2) no individual excursion from 0.1 mg/L shall exceed 30 minutes; and (3) no individual excursion shall exceed 2 mg/L.

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 [Section 13385(h) and (i)] do not apply if 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 proposes 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 April 30, 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

#	Violation Date	CIWQS Violation No.	Constituent	Permit Limit	Reported Value	Violation Type
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	2/15/2007	566486	Chlorine Residual, Total	[2]	>2.2 mg/L	Serious
12	3/20/2007	567291	Total Coliform	[1]	500 MPN	Chronic
13	8/30/2007	660680	Total Coliform	[1]	17 MPN	Chronic
14	8/31/2007	660681	Total Coliform	[1]	17 MPN	Chronic
15	9/4/2007	691893	Total Coliform	[1]	920 MPN	Chronic
16	9/7/2007	691895	Total Coliform	[1]	46 MPN	Chronic
17	9/10/2007	691896	Total Coliform	[1]	540 MPN	Chronic
18	9/13/2007	691897	Total Coliform	[1]	110 MPN	Chronic
19	9/14/2007	691899	Total Coliform	[1]	110 MPN	Chronic
20	9/16/2007	691892	pH	6.5-8.3 s.u.	6.3 s.u.	Chronic
21	9/16/2007	691900	Dissolved Oxygen	> 2.0 mg/L	0.2 mg/L	Chronic
22	10/1/2007	698115	Chlorine Residual, Total	[2]	2.54 mg/L	Serious
23	10/2/2007	698118	Chlorine Residual, Total	[2]	0.61 mg L	Serious
24	10/3/2007	698119	Chlorine Residual, Total	[2]	0.32 mg/L	Serious
25	10/7/2007	698120	Chlorine Residual, Total	[2]	0.52 mg/L	Serious
26	10/16/2007	698116	Chlorine Residual, Total	[2]	2.92 mg/L	Serious
27	10/23/2007	698126	Chlorodibromomethane	3.5 ug/L [3]	8.3 ug/L	Serious
28	10/23/2007	698127	Dichlorobromomethane	13 ug/L [3]	16 ug/L	Serious
29	10/24/2007	698122	Chlorine Residual, Total	[2]	1.93 mg/L	Serious
30	10/25/2007	698123	Chlorine Residual, Total	[2]	0.52 mg/L	Serious
31	10/26/2007	698124	Chlorine Residual, Total	[2]	1.02 mg/L	Serious
32	10/28/2007	698125	Dissolved Oxygen	>2.0 mg/L	1.2 mg/L	Chronic
33	11/4/2007	710010	Dissolved Oxygen	>2.0 mg/L	0.5 mg/L	Chronic
34	11/4/2007	710011	Chlorine Residual, Total	[2]	10.74 mg/L	Serious
35	11/14/2007	710012	Chlorine Residual, Total	[2]	20.03 mg/L	Serious
36	11/17/2007	710013	Chlorine Residual, Total	[2]	20.03 mg/L	Serious
37	12/7/2007	764580	Chlorine Residual, Total	[2]	2.03 mgL	Chronic
38	12/12/2007	764587	Copper	0.012 ug/L [3]	0.017 ug/L	Serious
39	12/31/07	764577	Total Coliform	[1]	8 MPN	Chronic
40	1/8/2008	764674	Copper	0.012 ug/L [3]	0.013 ug/L	Chronic
41	1/8/2008	764672	Chlorodibromomethane	3.5 ug/L [3]	4.1 ug/L	Chronic
42	1/8/2008	764673	Dichlorobromomethane	13 ug/L [3]	16 ug/L	Serious
43	2/2/2008	764605	Chlorine Residual, Total	[2]	0.83 mg/L	Chronic
44	4/8/2008	762889	Chlorodibromomethane	3.5 ug/L [3]	6.3 ug/L	Serious
45	4/8/2008	763438	Dichlorobromomethane	13 ug/L [3]	19 ug/L	Serious

[1] – Effluent limitation is identified in Finding No. 8 (above) and Section IV.A.1.c. of Order R3-2006-0032.
[2] – Effluent limitation is identified in Finding No. 8 (above) and Section IV.A.1.a. of Order R3-2006-0032.
[3] – Interim effluent limitations identified in Finding No. 8 and Section IV.A.2 of Order
CIWQS – California Integrated Water Quality System

11. According to the definition of **serious violation** in Finding No. 3, the Discharger committed 19 serious violations as shown on lines 10, 11, 22 through 31, 34 through 36, 38, 42, 44, and 45 of Table 1 from July 1, 2006, to April 30, 2008. The amount of the mandatory penalty for the 19 serious violations ($3,000 x 19) is fifty-seven thousand dollars ($57,000).

12. According to the definition of **chronic violations** in Finding No. 4, the Discharger committed 26 chronic violations as shown on lines 1 through 9, 12 through 21, 32, 33, 37, 39 through 41, and 43 of Table 1, from July 1, 2006, to April 30, 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 subject to mandatory penalties. The amount of the mandatory minimum penalty for the 26 chronic violations ($3,000 x 26) is seventy-eight thousand dollars ($78,000).

13. The total amount of the mandatory minimum penalty from July 1, 2006 to April 30, 2008 ($57,000 + $78,000) is one-hundred and thirty five thousand dollars ($135,000).

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 Complaint 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 CALIFONRIA 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 thirty five thousand dollars ($135,000).

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 thirty five thousand dollars ($135,000).

2. The Central Coast Water Board will hold a public hearing on this matter on **September 5, 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 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 September 5, 2008 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

7-16-08
Date

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