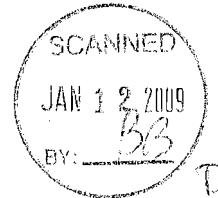
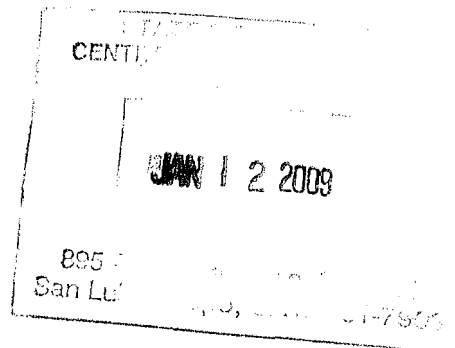


DIVISION OF ADULT INSTITUTIONS
CALIFORNIA MEN'S COLONYP.O. Box 8101
San Luis Obispo, CA 93409-8101

DLC

January 12, 2009

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

COMPLAINT FOR MANDATORY MINIMUM PENALTY AND ADMINISTRATIVE CIVIL
LIABILITY COMPLAINT, CALIFORNIA DEPARTMENT OF CORRECTIONS AND
REHABILITATION, CALIFORNIA MEN'S COLONY, SAN LUIS OBISPO COUNTY

Dear Mr. LaCaro:

The California Men's Colony is in receipt of the Complaint for Mandatory Minimum Penalty (Complaint No. R3-2008-0075) and Administrative Civil Liability Complaint (Complaint No. R3-2008-0074), California Department of Corrections and Rehabilitation, California Men's Colony, San Luis Obispo County dated December 17, 2008.

After discussion with our CDCR Staff Legal Counsel, Chris Swarberg, the California Men's Colony has selected the option of requesting a hearing with the Board on both of the above complaints. Comments will be submitted under separate cover.

If you require further information, please contact Josie Gastelo, Correctional Business Manager II, at (805) 547-7927.

Sincerely,

A handwritten signature in cursive script that reads "M. A. Alves-Wright".

M. A. ALVES-WRIGHT
Associate Warden, Business Services
California Men's Colony

Enclosures

cc: John Marshall, Warden
C. Swanberg, CDCR Sr. Staff Counsel
J. Gastelo, CBM II

Item No. 1 / Attachment No. 2
California Men's Colony ACL Order
February 5, 2009 Meeting

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:

MA Alues Wright
Signature

MA ALUES-WRIGHT
Printed Name

ASSOCIATE GARDEN
Title/Position

1/9/09
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.

OFFICE OF THE SECRETARY

OFFICE OF LEGAL AFFAIRS

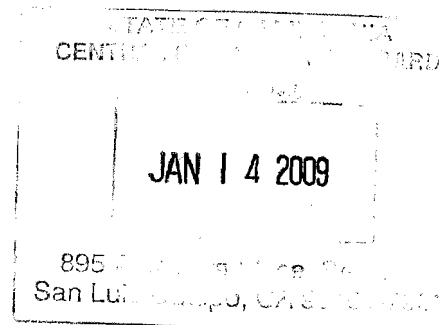
P.O. Box 942883

Sacramento, CA 94283-0001



January 12, 2009

Frances McChesney, Esq.
Senior Staff Counsel
State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100
Sacramento, CA 95812

ALSO VIA EMAIL TO: fmcchesney@waterboards.ca.gov

Re: Central Coast regional Water Quality Control Board
Complaints No's R3-2008-74 and R3-2008-75

Dear Ms. McChesney:

The California Department of Corrections and Rehabilitation (CDCR) responds to the above complaints collectively in this transmittal.

Complaint R3-2008-0075 is essentially the earlier withdrawn complaint for MMP's on various constituents with the chlorine residuals taken out to be treated separately. CDCR and the California Men's Colony did not object nor contest the earlier MMP's in the prior complaint (R3-2008-0054), but merely had proposed implementing a special environmental project (SEP) with a portion of the penalty amounts. Only because the SEP required Board approval, the matter was brought before the Board and the current Complaints are the therefore direct and unfortunate result of CDCR's earlier proposal for a Special Environmental Project.

CDCR adopts its previous responses to the MMP's included in Complaint 0075 and does not contest those base MMP administrative civil liability amounts.

CDCR on the other hand does oppose the penalties contained in Complaint R3-2008-0074 for chlorine residual violations in amounts above the base MMP amount.

The Board has sought, and the board staff has accommodated by proposing, the maximum possible penalties in this case. The imposition of the maximum penalty in this case is unwarranted, unsupported by the evidence, and lacks any scientific support.

It should be noted, that in contrast to some other dischargers in the Region, CDCR has been diligent in addressing and correcting its wastewater problems (which were

significant, due in large measure to the statewide prison overcrowding problem, and compounded with a previously undersized and "old technology" wastewater treatment plant.) CDCR has over the last 6 years planned, designed and constructed an entirely new wastewater treatment plant at a total cost of just under \$30,000,000.00. In addition in recent years CDCR has, in cooperation with the Morro Bay National Estuary Program expended in excess of \$600,000.00 in environmental rehabilitation efforts to help restore Chorro Creek and its tributaries, and to improve water quality in Morro Bay. (Many are unaware that the removal of the derelict boats in Windy Cove was a CDCR sponsored, funded and driven effort, for example).

Well into the process of the new plant design and construction (in which the State is rather inflexible in the timelines to be followed) CDCR was notified by the Board for the first time that certain discharge standards would be significantly lowered (dichlorobromomethane for example). During the design phase the older standards were presumed, resulting in some questions regarding our ability to meet these newer standards even with the new plant. A very significant delay in the new plants construction would have resulted had we started over at that point, and because it was felt that there was a potential to meet the standards with the then existing design, and if not we could retrofit to other technologies to meet them, the process was continued to insure the earliest possible "on-line" date for the new plant.

CDCR has used best efforts to be a compliant discharger, and none of its failures in meeting standards are due to lax management of the plant, or an uncaring attitude. The new plant has proven somewhat difficult to "tweak" into final stable operation, and the discharge violations are reflective of that. When there have been discharge violations, the numerical amounts of the violation are often incredibly low, yet we acknowledge the fact that by their nature of exceeding the limits established, they warrant imposition of base MMPs. As a case in point, in one instance a violation of a THM standard by one part in a **trillion** is the basis for a violation, yet it agreeably is a proper basis for a base MMP.

Chlorine disinfection has been a major problem for the plant operators. They have been required to, in effect, "fine tune" the plants engineering repeatedly to improve performance. They have also been plagued by unforeseeable equipment failures.

We understand that we are responsible for maintaining discharge standards, and when we violate them we understand the MMP mechanisms that impose fines for those failures, intended or not. However the imposition of the maximum allowable fine for every chlorine residual violation is not supported by the evidence. For example, the board staff surmises that a chlorine residual in excess of 2.0 may have a deleterious effect to aquatic life. The unsupported statement does not address time, creek flow rates and assimilative capacities or any other scientific criteria considerations. Regardless of that fact, the staff did not even use its own criteria of 2.0 as any

benchmark, but has imposed the maximum fine for any and ALL chlorine residual violations, including those as low as .52, for example.

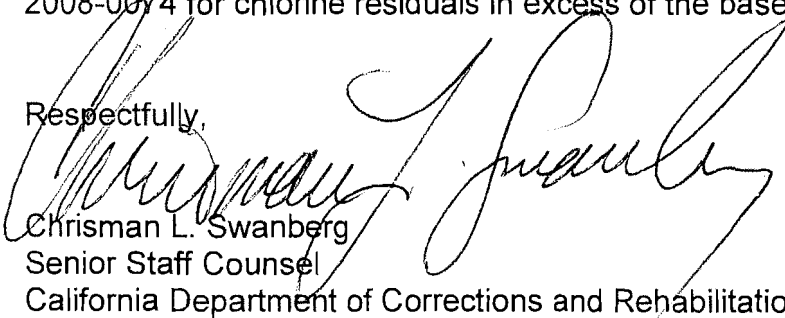
The imposition of a maximum penalty in this case is capricious and arbitrary. A reading of the various liability factors (commencing on page 4) show that in the vast majority of instances, the factors do not warrant nor support a maximum fine. The only exception is under "Discharger's ability to pay", in which case the staff notes "Because the discharger has provided no information on which the Central Coast Water Board could make a finding that it does not have the ability to pay..." The fact is that this document is our first chance to address ability to pay and we do so herein.

The State of California is in the worst financial crisis in its history, facing a \$40 billion shortfall. This very hearing is set on a date that is a "no-work" day for state employees, who are being furloughed. The imposition of these fines are without any funding mechanism by the Department, who itself has seen a contraction in available funding for day to day operations. We are seeking funding for a disinfection system that would forgo the use of chlorine completely, at a cost in excess of \$7,000,000.00. The imposition of these proposed penalties are an unwarranted burden on the taxpaying public, and on a discharger who is doing everything in its power to meet and comply with incredibly low discharge standards for the most part and in a watershed which it has been forced to discharge into despite requests to move the point of discharge elsewhere.

A reading of the California Water Quality Enforcement Manual suggests that, "Higher ACL amounts should be set for intentional or negligent violations than for accidental, non-negligent violations." In practice however this concept has been ignored when assessing CDCR. This Board has imposed penalties on CDCR in amounts far higher than are imposed in other similar cases in other Regions (the imposition of a \$2 a gallon penalty for the accidental spill occurring last December is an excellent example) and seeks to do so again in this case.

CDCR opposes the Administrative Civil Liability amounts as proposed in order R3-2008-0074 for chlorine residuals in excess of the base MMP of \$3,000 per occurrence.

Respectfully,



Chrisman L. Swanberg
Senior Staff Counsel

California Department of Corrections and Rehabilitation.

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Cc:

Via email to: Roger W. Briggs; Jorge Leon; Michael Thomas; Harvey Packard; David LaCaro

Via first class mail to: Rich Lichtenfels; Jill Baltan