

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2010-0024
IN THE MATTER OF
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION AND
CENTINELA STATE PRISON, OWNER/OPERATOR WASTEWATER TREATMENT PLANT;
Imperial — Imperial County

This Order to assess Administrative Civil Liability (ACL) pursuant to California Water Code (CWC) Section 13385 is issued to California Department of Corrections and Rehabilitation and Centinela State Prison (hereinafter Discharger) based on a finding of violations of Waste Discharge Requirements (WDRs) Order No. R7-2003-0096, National Pollutant Discharge Elimination System (NPDES) Permit No. CA7000001.

The Colorado River Basin Regional Water Quality Control Board (Regional Board) finds the following:

1. The California Department of Corrections and Rehabilitation owns and operates the Centinela State Prison Wastewater Treatment Plant (WWTP), which services the Centinela State Prison. The Discharger's WWTP, located at 2302 Brown Road, Imperial, CA 92251, is designed to treat 0.73 million gallons per day (MGD).
2. Wastewater from this WWTP is discharged through the Dixie Drain 1-C via an outfall pipe, a tributary to the New River, and ultimately to the Salton Sea. The Dixie Drain, New River and Salton Sea are waters of the United States.
3. The Regional Board may establish monitoring and reporting requirements, known as the Monitoring and Reporting Program (MRP), as authorized by CWC Sections 13376 and 13383.
4. CWC Section 13385(a) states, in relevant part, that:

“Any person who violates any of the following shall be liable civilly in accordance with this section: (1) Section 13375 or 13376; (3) Any requirements established pursuant to Section 13383.”

5. CWC Section 13385(c) states:

“Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

“(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.”

“(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”

6. On June 25, 2003, the Regional Board adopted WDRs Order No. R7-2003-0096 (NPDES Permit No. CA7000001) for the Discharger to regulate discharges of treated wastewater.
7. In relevant part, WDRs Order No. R7-2003-0096 (section IV.A.4) contains the following effluent limitations:

“Wastewater effluent discharged to the Dixie Drain 1-C shall not have a geometric mean *Escherichia coli* (E. coli) concentration in excess of 126 Most Probable Number (MPN) per 100 milliliters (based on a minimum of not less than five (5) samples for any 30-day period) nor shall any sample exceed 400 MPN per 100 milliliters. The compliance point for this effluent limitation shall be at a location acceptable to the Regional Board’s Executive Officer or his designee”
8. Provisions E.5 and E.10 of WDRs Board Order No. R7-2003-0096 state the following:

“The Discharger shall comply with Monitoring and Reporting Program (MRP) No. R7-2003-0096, and future revisions thereto, as specified by the Regional Board’s Executive Officer.”

“Unless otherwise approved by the Regional Board's Executive Officer, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. All analyses shall be conducted in accordance with the latest edition of "Guidelines Establishing Test Procedures for Analysis of Pollutants", promulgated by the USEPA.”
9. Since at least June 2008 the Discharger has used an uncertified laboratory to perform E. coli analyses. Attachment “A”, a part of this Complaint No. R7-2009-0084 by reference shows the monitoring data in question.
10. Because the Discharger submitted effluent monitoring data for E. coli from a laboratory that did not possess certification for analysis of bacteria constituents, the Regional Board is unable to determine whether the Discharger is in compliance with the Effluent Limitations of Board Order No. R7-2003-0096 for E. coli, cited above in Finding No. 7.
11. On February 27, 2009, the Assistant Executive Officer issued Time Schedule Order (TSO) No. R7-2009-0042 pursuant to CWC Section 13308, requiring the Discharger to correct the monitoring violations of Board Order No. R7-2003-0096 in accordance with a series of tasks stated in the time schedule. The TSO was issued following the discovery in Findings Nos. 9 and 10, above.
12. More specifically, TSO No. R7-2009-0042 provides in substantive relevant part for the Discharger to comply with the as following:
 - a. The Discharger must be in full compliance with WDRs Board Order No. R7-2003-0096, Monitoring and Reporting Programs by July 1, 2009.

- b. By March 31, 2009, the Discharger shall submit a technical report specifying the steps it will take to ensure that bacteria data is collected and analyzed as specified in Board Order No. R7-2003-0096.
13. On March 23, 2009, the Discharger submitted its technical report specifying how it would ensure that bacteria data is collected and analyzed as specified in Board Order No. R7-2003-0096. The Discharger complied with the milestones established in TSO No. R7-2009-0042 prior to the required deadline of July 1, 2009.
14. As stated above, the data indicating potential effluent limitation violations for the bacteria parameters cannot be used to assess compliance with the Effluent Limitations of Board Order No. R7-2003-0096 for E. coli and similarly cannot be used to impose mandatory penalties for potential effluent violations for E. coli. The Discharger may not be subject to mandatory minimum penalties for these potential E. coli effluent limit violations, the Discharger is still liable for violating the MRP for WDRs Board Order No. R7-2003-0096 pursuant to CWC Section 13385(c). The maximum statutory liability for the MRP violations under Section 13385(c) is \$200,000 (\$10,000 per day for twenty violations beginning June 4, 2008 through October 27, 2008).
15. If the Regional Board assesses civil liability under CWC Section 13385(c); CWC Section 13385(e) requires the Regional Board, in determining the amount of any liability, to consider the nature, circumstances, extent and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, results from the violation, and other matters as justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the act that constitutes the violation.
16. The factors in Finding No. 15, above, are evaluated for the violations as follows:
 - a. Nature, circumstance, extent, and gravity of the violations:

Using an uncertified laboratory for compliance monitoring for specified constituents is a violation of the Discharger's Monitoring and Reporting Program for its NPDES Permit. The nature of the NPDES program relies on the Discharger self-monitoring and self-reporting violations. In order to determine whether the Discharger is in compliance with its effluent limitations as set forth in its NPDES Permit, the Regional Board needs to have confidence that the data that is being self-reported by the Discharger is accurate and reliable. Because the analysis of the bacteria constituents was conducted by a laboratory that did not possess the requisite certification for all constituents within Field of Testing 107, the results from the bacteria analyses cannot be seen as reliable to determine compliance with effluent limitations. See Attachment "A" for a summary of the days of violations.
 - b. Susceptibility of discharge to cleanup and abatement, and degree of toxicity discharge:

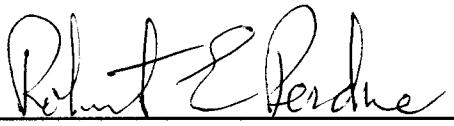
The discharge is not susceptible to cleanup and/or abatement because it is a non-discharge violation.

- c. Discharger's ability to pay:
There was no evidence presented that would indicate that the Discharger would be financially incapable of paying the assessed liability.
- d. Effect on Discharger's ability to continue in business:
The proposed fine should not affect the Discharger's ability to continue operating since the penalty largely pertains to costs that the Discharger would have normally incurred if compliance with the WDRs had been properly observed.
- e. Voluntary cleanup efforts undertaken:
There was no cleanup and abatement necessary as these violations were non-discharge violations.
- f. Prior history of violations:
On January 22, 2009, the Regional Water Board adopted Administrative Civil Liability Order No. R7-2009-0005 imposing administrative civil liability for mandatory minimum penalties in the amount of \$78,000.
- g. Degree of culpability:
As the permittee, the Discharger is the responsible for complying with all aspects of Board Order No. R7-2003-0096. The provisions of Board Order No. R7-2003-0096 and its corresponding Monitoring and Reporting Program are clear and unambiguous regarding the requirements that all analyses be conducted at a laboratory certified for such analyses by the California Department of Public Health. It is the Discharger's responsibility to utilize certified laboratory contracts that can provide reliable results, which are representative of the discharge. The Discharger failed to do so for the period from June to October 2008, as evidenced by the monitoring results it submitted.
- h. Economic benefit and savings resulting from the violations:
The Discharger was in violation of its Permit and MRP from June 2008 through October 2008. During this time period, the Discharger conducted sampling on 20 occasions on 20 different days. This means that the Discharger should have transported its samples to a certified laboratory at least 20 times. In its March 23, 2009 submission in response to the TSO, the Discharger informed the Regional Board that subsequent to the discovery that Advance Technology Service Laboratories (ATS Laboratories) was no longer certified for E. coli testing, it began sending its samples to Test America in Colton, California. The Discharger approximates a commute of over 300 miles per test from the Centinela State Prison wastewater treatment plant in Imperial, California to Test America in Colton, California. The Internal Revenue Service's standard mileage rates of reimbursement indicate that the business mileage rate was 50.5 cents in the first half of 2008 and 58.5 cents in the second half of 2008. Assuming 300 miles per sampling event multiplied by 58.5 cents for mileage multiplied by 20 sampling events during June 2008 until October 2008 is \$3510 in travel expenses for transporting the samples from Imperial, California, to Colton, California.

- In addition to the travel expenses explained above, there are also associated staff costs with transporting samples. One trip from the Centinela State Prison wastewater treatment plant to Test America would take approximately 6 hours roundtrip. Again, this trip would have to be made 20 times during the period of June 2008 until October 2008. One 6 hour roundtrip commute multiplied by 20 trips is 120 hours total. Because there is a limited time period for transporting the samples to Colton, California, it's likely that staff from the Centinela State Prison wastewater treatment plant transported the samples to the laboratory rather than sending them through a courier service. Using a conservative staff cost of 20 dollars an hour multiplied by 120 hours, the total staff costs associated with transporting the samples is \$2400. Therefore, the total calculated economic benefit is \$5910.
- i. Other matters that justice may require:
Staff time to investigate this matter and prepare the ACL complaint and supporting information is estimated to be 40 hours. Based on an average cost to the State of \$150 per hour, the total cost is \$6,000.
 17. On December 23, 2009, the Regional Board Assistant Executive Officer issued ACL Complaint No. R7-2009-0084 recommending that the Discharger be assessed a penalty pursuant to CWC Section 13385(c) in the amount of sixteen thousand dollars (\$16,000) for the violations described above. The amount of the liability proposed is based upon a review of the factors cited in CWC Section 13385(e) and the State Water Resources Control Board's Water Quality Enforcement Policy.
 18. Regional Board staff notified the Discharger and the general public of its intent to hold a hearing on this matter within 90 days from the date of the Complaint was issued unless the Discharger waives its right to a hearing under CWC Section 13323(b).
 19. On March 18, 2010, the Regional Board considered this matter and all comments pertaining to this matter at it public meeting held on March 18, 2010 in La Quinta, California.
 20. 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 Section 15321(a)(2), Title 14, California Code of Regulations.
 21. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with CWC Section 13320 and California Code of Regulations, Title 23, Sections 2050 and following. The State Water Board must receive the petition no later than 5:00 p.m., thirty (30) days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality. Copies will also be provided upon request.

IT IS HEREBY ORDERED, pursuant to CWC Section 13385, the Discharger is assessed ten thousand dollars (\$10,000) in ACL penalties for the violations described in ACL Complaint No. R7-2009-0084 and the Complaint's corresponding Attachment A.

I, Robert Perdue, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on March 18, 2010.



ROBERT PERDUE, Executive Officer

ATTACHMENT "A"
Summary of Violations of Board Order No. R7-2003-0096 for Centinela State Prison

	Violation Type	Violation Date	Violation Description
1	<i>E. Coli</i>	6/4/2008	Used uncertified laboratory
2	<i>E. Coli</i>	6/11/2008	Used uncertified laboratory
3	<i>E. Coli</i>	6/18/2008	Used uncertified laboratory
4	<i>E. Coli</i>	6/25/2008	Used uncertified laboratory
5	<i>E. Coli</i>	6/26/2008	Used uncertified laboratory
6	<i>E. Coli</i>	7/2/2008	Used uncertified laboratory
7	<i>E. Coli</i>	7/8/2008	Used uncertified laboratory
8	<i>E. Coli</i>	7/14/2008	Used uncertified laboratory
9	<i>E. Coli</i>	7/22/2008	Used uncertified laboratory
10	<i>E. Coli</i>	8/19/2008	Used uncertified laboratory
11	<i>E. Coli</i>	9/2/2008	Used uncertified laboratory
12	<i>E. Coli</i>	9/10/2008	Used uncertified laboratory
13	<i>E. Coli</i>	9/15/2008	Used uncertified laboratory
14	<i>E. Coli</i>	9/22/2008	Used uncertified laboratory
15	<i>E. Coli</i>	9/30/2008	Used uncertified laboratory
16	<i>E. Coli</i>	10/1/2008	Used uncertified laboratory
17	<i>E. Coli</i>	10/7/2008	Used uncertified laboratory
18	<i>E. Coli</i>	10/13/2008	Used uncertified laboratory
19	<i>E. Coli</i>	10/21/2008	Used uncertified laboratory
20	<i>E. Coli</i>	10/27/2008	Used uncertified laboratory