



California Regional Water Quality Control Board

Central Coast Region



Alan C. Lloyd
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

September 19, 2005

CERTIFIED MAIL 7004 2510 0002 5555 7527

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

Dear Mr. Marshall:

COMPLAINT FOR MANDATORY MINIMUM PENALTY, CALIFORNIA DEPARTMENT OF CORRECTIONS, CALIFORNIA MEN'S COLONY, SAN LUIS OBISPO COUNTY


Attached is *Complaint for Mandatory Minimum Penalty No. R3-2005-0122* (Complaint). The Complaint is based on violations of effluent limitations in Waste Discharge Requirements Order No. 01-001, National Pollutant Discharge Elimination System Permit No. CA0047856, from April 1, 2004 through June 30, 2005. 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 (\$39,000), 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 Central Coast Water Board meeting on December 2, 2005, at the above address. 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 \$27,000 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 **October 12, 2005**. The *Water Quality Enforcement Policy* specifies the criteria a SEP must meet to qualify for funding at www.swrcb.ca.gov/plnspols/wqep.doc. You may find a number of SEPs listed, as well as other useful information, on our website at: www.swrcb.ca.gov/rwqcb3/sep/index.htm.

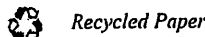
Please review the Complaint carefully and submit your comments and/or your *Waiver of Hearing* form and copy of payment, or an SEP proposal by **October 12, 2005**. If you have questions, please contact **Matt Thompson** at (805) 549-3159 or **Harvey Packard** at (805) 542-4639.

Sincerely,


for Roger W. Briggs
Executive Officer

Attachment: Mandatory Minimum Penalty Complaint No. R3-2005-0122

California Environmental Protection Agency



Item No. **10** Attachment No. 1
December 1-2, 2005 Meeting
CMC Mandatory Penalty

cc:

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

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

Dan Berman
Morro Bay National Estuary Program
601 Embarcadero, Suite 11
Morro Bay, CA 93442

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

COMPLAINT NO. R3-2005-0122

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

This complaint to assess Mandatory Minimum Penalties pursuant to Water Code section 13385(h) and (i) is issued to the California Department of Corrections, California Men's Colony (Discharger), based on a finding of violations of Waste Discharge Requirements Order No. 01-001, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0047856.

The Executive Officer finds the following:

1. On February 2, 2001, the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), adopted *Waste Discharge Requirements Order No. 01-001, NPDES Permit No. CA0047856, for California Department of Corrections, California Men's Colony, San Luis Obispo County* (Order No. 01-001).
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(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 consecutive six-month period:
 - 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.
4. 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).
5. 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.

6. Order No. 01-001 includes in part the following:

Effluent Limitation No. 1:

“Effluent daily dry weather flow rate shall not exceed a 30-day average of 1.2 MGD...”

Effluent Limitation No. 4:

“Effluent shall not have a pH less than 6.5 or greater than 8.3.”

Effluent Limitation No. 5:

“Effluent shall not have a dissolved oxygen concentration of less than 2.0 mg/L.”

Effluent Limitation No. 6:

“Effluent shall not have a measurable chlorine residual (greater than 0.1 mg/L).¹”

7. Dry Weather Flow Rate is a Group I Pollutant. Chlorine Residual is a Group II Pollutant. Dissolved Oxygen and pH are neither Group I or Group II Pollutants. Effluent containing constituent values that are greater than or equal to the limit + 40% for Group I pollutants or the limit + 20% for Group II pollutants are serious violations.
8. A chronic violation occurs when effluent contains a constituent at a concentration that is less than the serious threshold but greater than the permit limit.
9. According to monitoring reports submitted by the Discharger, the Discharger committed the following violations of effluent limitations of Order No. 01-001 in the period April 1, 2004, through June 30, 2005:

#	Violation Date	Constituent	Permitted Limit	Reported Value	Violation Type
1	4/30/04	Dissolved Oxygen	Greater than 2.0 mg/L	1.6 mg/L	Chronic
2	7/24/04	Chlorine Residual	No measurable chlorine residual (<0.1 mg/L)	0.63 mg/L	Serious
3	8/26/04	Dissolved Oxygen	Greater than 2.0 mg/L	0.3 mg/L	Chronic
4	8/26/04	pH	6.5 – 8.3	6.3	Chronic
5	2/23/05	Dissolved Oxygen	Greater than 2.0 mg/L	0.2 mg/L	Chronic
6	April 2005	Dry Weather Flow Rate	1.2 MGD	1.90 MGD	Serious
7	5/10/05	Dissolved Oxygen	Greater than 2.0 mg/L	1.6 mg/L	Chronic
8	5/19/05	Dissolved Oxygen	Greater than 2.0 mg/L	0.7 mg/L	Chronic
9	5/21/05	pH	6.5 – 8.3	6.4	Chronic
10	May 2005	Dry Weather Flow Rate	1.2 MGD	1.907 MGD	Serious
11	6/7/05	Chlorine Residual	No measurable chlorine residual (<0.1 mg/L)	0.18 mg/L	Serious

¹ Footnote No. 1 of Monitoring and Reporting Program No. 01-001 states, “Compliance determinations 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.”


#	Violation Date	Constituent	Permitted Limit	Reported Value	Violation Type
12	6/24/05	Dissolved Oxygen	Greater than 2.0 mg/L	0.23 mg/L	Chronic
13	June 2005	Dry Weather Flow Rate	1.2 MGD	1.991 MGD	Serious

10. According to Finding No. 9, the Discharger committed five serious violations in the period April 1, 2004 through June 30, 2005. The amount of the mandatory penalty for the serious violations (5 x \$3,000) is fifteen thousand dollars (\$15,000).
11. According to Finding No. 9, the Discharger committed eight chronic violations in the period April 1, 2004 through June 30, 2005. California Water Code section 13385(i) requires the Central Coast Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation, not counting the first three, occurring in a consecutive six-month period. In this case, three effluent violations occurred in the six months prior to the first violation listed in Finding No. 10, therefore none of these chronic violations are exempt from mandatory penalty. The mandatory penalty for the above chronic violations (8 x \$3,000) is twenty-four thousand dollars (\$24,000).
12. The total amount of the mandatory penalty for violations occurring in the period April 1, 2004, through June 30, 2005 (\$15,000 + \$24,000) is thirty-nine thousand dollars (\$39,000).

THE CALIFORNIA DEPARTMENT OF CORRECTIONS, CALIFORNIA MEN'S COLONY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Coast Water Board proposes that the Discharger be assessed a Mandatory Penalty in the amount of thirty-nine thousand dollars (\$39,000).
2. The Central Coast Water Board will hold a public hearing on this matter on December 2, 2005, 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 Penalty proposed by the Executive Officer. The Central Coast Water Board may also decide to continue the matter to a future hearing, direct the 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 December 2, 2005, at the Central Coast Water Board Conference 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.

If you have questions regarding this matter, please direct them to Central Coast Water Board staff, **Matt Thompson**, at (805) 549-3159, or Harvey Packard at (805) 542-4639.

for 
 Roger W. Briggs
 Executive Officer

9-19-05
 Date

**PROCEDURAL INFORMATION
FOR
MANDATORY MINIMUM PENALTY 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 person² must check, sign, and submit the following *Waiver of the Right to a Public Hearing* form and pay the mandatory minimum penalty amount specified in the Complaint **no later than October 12, 2005, 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 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 December 2, 2005, at the Central Coast Water Board Conference 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 mandatory minimum penalty proposed by the Executive Officer, or direct the Executive Officer to reissue the complaint alleging increased liability pursuant to Water Code Section 13385(c) and (e). If the proposed Order is adopted, payment of the mandatory minimum penalty to the State Water Resources Control Board will be due and payable no later than January 1, 2006, in accordance with the Order. If the proposed Order is rejected, the Central Coast Water Board may direct the Executive Officer to issue a new complaint and schedule another public hearing. 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 MANDATORY MINIMUM PENALTY

No later than October 12, 2005, please make your check payable to State Water Resources Control Board, and note "MMP Complaint No. R3-2005-0122" 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: Matt Thompson
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

² 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.

WAIVER OF THE RIGHT TO A HEARING

[] By checking the box, I agree to waive my right to a hearing before the Central Coast Water Board with regard to the violations alleged in Complaint No. R3-2005-0122. Also, I agree to remit payment for the civil liability proposed. I understand that I am giving up my right to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition or amount of proposed civil liability.

Signature

Printed Name

Title/Position³

Date

³ 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.