

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

**ORDER NO. R3-2005-0122**

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

The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) finds that:

1. On February 2, 2001, the 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."

7. Dry Weather Flow Rate is a Group I 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	8/26/04	Dissolved Oxygen	Greater than 2.0 mg/L	0.3 mg/L	Chronic
3	8/26/04	pH	6.5 – 8.3	6.3	Chronic
4	2/23/05	Dissolved Oxygen	Greater than 2.0 mg/L	0.2 mg/L	Chronic
5	April 2005	Dry Weather Flow Rate	1.2 MGD	1.90 MGD	Serious
6	5/10/05	Dissolved Oxygen	Greater than 2.0 mg/L	1.6 mg/L	Chronic
7	5/19/05	Dissolved Oxygen	Greater than 2.0 mg/L	0.7 mg/L	Chronic
8	5/21/05	pH	6.5 – 8.3	6.4	Chronic
9	May 2005	Dry Weather Flow Rate	1.2 MGD	1.907 MGD	Serious
10	6/24/05	Dissolved Oxygen	Greater than 2.0 mg/L	0.23 mg/L	Chronic
11	June 2005	Dry Weather Flow Rate	1.2 MGD	1.991 MGD	Serious

10. According to Finding No. 9, the Discharger committed three serious violations in the period April 1, 2004, through June 30, 2005. The amount of the mandatory penalty for the serious violations is nine thousand dollars (3 x \$3,000).
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. 9, therefore none of these chronic violations are exempt from mandatory penalty. The mandatory penalty for the above chronic violations is twenty-four thousand dollars (8 x \$3,000).
12. The total amount of the mandatory penalty for violations occurring in the period April 1, 2004, through June 30, 2005, is thirty-three thousand dollars (\$9,000 + \$24,000).
13. The Executive Officer of the Central Coast Water Board issued Mandatory Penalty Complaint No. R3-2005-0122 on September 19, 2005, pursuant to California Water Code Section 13385. The Complaint proposed imposing a mandatory penalty in the amount of thirty-nine thousand dollars (\$39,000). The

Complaint requested the Discharger submit comments and/or propose a supplemental environmental project (SEP) by October 12, 2005.

14. On October 4, 2005, the Discharger submitted evidence that two of the effluent chlorine residual violations listed in the Complaint are not actually violations, because each excursion above 0.1 mg/L did not exceed 30 minutes, and no individual excursion exceeded 2 mg/L. The Discharger requested the two violations be dismissed. Central Coast Water Board staff reviewed the evidence and agrees the two violations should be dismissed. Finding No. 9 above reflects the revised list of effluent violations.
15. On October 11, 2005, the Discharger submitted copy of a check made payable to State Water Resources Control Board in the amount \$9,000, and proposed that the remainder of the mandatory penalty (\$24,000) be directed to SEPs. The Discharger requested that the \$24,000 be distributed equally to the following SEPs:

**Morro Bay Watershed Riparian Fencing:** This project includes installation of several miles of fencing on both sides of Chorro Creek and its tributaries to exclude cattle from the riparian zone. The Morro Bay National Estuary Program will administer this project and the California Conservation Corps will provide labor. Total project cost exceeds \$345,000. This project will be completed by December 1, 2006.

**Morro Bay Sewage Pump-Out Vessel Operation and Maintenance:** This project provides three years of staffing, maintenance, and operation of a sewage pump-out vessel that would move among moored vessels and provide free sewage pump-out services. This project will be administered by the Morro Bay National Estuary Program and implemented by the City of Morro Bay Harbor Department. Total project cost exceeds \$159,000. This project will commence in July 2006 and end June 30, 2009.

**Morro Bay Derelict Vessel Removal:** This project involves tracking down and notifying derelict vessel owners, removing the moorings, towing and hauling out abandoned vessels; and demolishing and disposing of vessels not worth salvaging. This project will be administered by the Morro Bay National Estuary Program and carried out by the California Department of Fish and Game. Project cost exceeds \$89,000. This project will be completed by August 30, 2006.

16. These projects qualify as SEPs in accordance with the State Water Resources Control Board's Enforcement Policy, Resolution No. 2002-0040. SEPs go above and beyond the obligations of the Discharger and are not an action required of the Discharger by any rule or regulation of any entity. The SEP will benefit water quality. The SEP will not directly benefit Regional Board functions or staff. The Central Coast Water Board reviewed these SEPs when it considered Administrative Civil Liability Complaint No. R3-2005-0037 on July 7, 2005.
17. On October 25, 2005, the Discharger submitted a signed Waiver of the Right to a Hearing Form. The Discharger agrees to waive its right to a hearing before the Central Coast Water Board with regard to the violations alleged in Complaint No. R3-2005-0122. The Discharger agrees to fund the SEPs described in Finding No. 15.
18. 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, Chapter 3, Title 14, California Code of Regulations.
19. Regional Board staff spent approximately 30 hours responding to these violations and preparing this Order. Accordingly, expended Regional Board staff costs are estimated at \$2,250.

**IT IS HEREBY ORDERED**, pursuant to California Water Code Section 13385, that the California Department of Corrections, California Men's Colony is assessed a Mandatory Penalty of **thirty-three thousand dollars (\$33,000)**.

The Discharger shall submit written proof of payment to the Bay Foundation of Morro Bay<sup>1</sup> for the three SEPs described in Finding No. 15 above to the *Regional Water Quality Control Board, Attn: Matt Thompson, 895 Aerovista Place, Suite 101, San Luis Obispo, California, 93401*, no later than the **following due dates, 5:00 p.m.**:

SEP	Payment Amount	Due Date for Proof of Payment
Morro Bay Watershed Riparian Fencing	\$8,000	Jan. 1, 2006
Morro Bay Sewage Pump-Out Vessel Operation and Maintenance	\$8,000	Jan. 1, 2006
Morro Bay Derelict Vessel Removal	\$8,000	Jan. 1, 2006

If proof of payment to the Bay Foundation of Morro Bay for these SEPs and amounts is not submitted by these due dates, the suspended liability for that particular SEP shall be immediately due and payable to State Water Resources Control Board.

The Discharger shall submit written certification of completion of each of these projects and project completion report **no later than 30 days after the project completion dates specified in Finding No. 15**. The project completion report shall include a detailed discussion of performance measures relevant to each project. At a minimum, the project completion report shall specify miles of riparian corridor fenced, capital costs of sewage pump-out vessel paid or description of operation and maintenance services provided, and number of derelict vessels removed and description of any related legal services provided, respectively, and shall include a post-project accounting of expenditures related to each project. The discussion of performance measures must identify the specific tasks or services funded in whole or in part by the SEP. If the project completion report is not submitted **within 30 days after the project completion dates specified in Finding No. 15**, or if the project is not completed to the Executive Officer's satisfaction, the amount of suspended liability for that project shall be immediately due and payable to State Water Resources Control Board. If the final total cost of a project is less than the amount specified above for that project, the Discharger shall remit the difference to State Water Resources Control Board **no later than 30 days after completion of the project**.

Upon request of the Discharger, the Executive Officer or the Central Coast Water Board may extend any of these due dates for good cause. The Central Coast Water Board hereby reserves jurisdiction to modify this Order to extend due dates.

The Discharger shall submit semiannual reports on the progress of each project to the Executive Officer by January 31<sup>st</sup> and July 31<sup>st</sup> of each year. These progress reports shall include discussion of the performance measures relevant to each project.

Any person affected by this action of the Regional Board may petition the State Water Resources Control Board to review the action in accordance with California Water Code Section 13320, and Title 23, California code of Regulations, Section 2050. The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812, must receive the petition by January 1, 2006. Copies of the law and regulations applicable to filing petitions will be provided upon request.

**I, Roger W. Briggs, Executive Officer**, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Central Coast Water Board on December 2, 2005.

<sup>1</sup> The Bay Foundation of Morro Bay is a non-profit organization that serves as bursar to the Morro Bay National Estuary Program.

---

Roger W. Briggs, Executive Officer

S:\NPDES\NPDES Facilities\San Luis Obispo Co\CMC WWTP\MMP No. R3-2005-0122\Stipulated Order No. 05-0122\CMC Stipulated Order No. 05-0122.doc