



California Regional Water Quality Control Board Central Coast Region



Alan C. Lloyd, Ph.D.
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

RECEIVED
05 MAY 16 AM 9:36

895 AEROVISTA PL. STE. 101
SAN LUIS OBISPO, CA 93401

May 8, 2005

Certified Mail

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

70040750000183149049

Dear Mr. Marshall:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2005-0037, CALIFORNIA MEN'S COLONY, SAN LUIS OBISPO COUNTY

Enclosed please find Administrative Civil Liability Complaint No. R3-2005-0037 (Complaint). I am proposing to the Regional Water Quality Control Board (Water Board) that California Men's Colony be assessed civil liability in the amount of six hundred thousand dollars (\$600,000) for several sewage spills amounting to over 220,000 gallons that occurred from February 25, 2004 through January 9, 2005.

On July 8, 2005, in San Luis Obispo, at the above address, the Water Board will hear any relevant testimony you wish to present and public testimony, and decide whether to affirm my recommended liability amount, increase or decrease the amount, or refer the matter to the Attorney General for judicial civil action.

If you have any questions, you may contact Matt Thompson at (805) 549-3159, or Gerhardt Hubner at (805) 542-4647.

Sincerely,

Roger W. Briggs
Executive Officer

Enclosure: Administrative Civil Liability Complaint No. R3-2005-0037

Cc's listed next page

Item No. 5 Attachment No. 1
July 7-8, 2005 Meeting
California Men's Colony ACL

California Environmental Protection Agency



cc:

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

Dennis Wehls
California Department of General Services
707 Third Street
West Sacramento, CA 95606

Lieutenant Colonel Kelly Fisher
Camp San Luis Obispo
P.O. Box 4360
San Luis Obispo, CA 93403-4360

Terry Reece
Cuesta College Maintenance Department
P. O. Box 8106
San Luis Obispo, CA 93403

Facilities Manager
County Operational Facility
Highway 1
San Luis Obispo, CA 93403

Pete Jenny
San Luis Obispo County Parks
County Government Center
San Luis Obispo, CA 93408

Maintenance Operations
County Office Of Education
3350 Education Drive
San Luis Obispo, CA 93405

Supervisor Shirley Bianchi
County Government Center
1050 Monterey St., Room 370
San Luis Obispo, CA 93408

Jeff Poel
County Environmental Health Dept.
P.O. Box 1489
San Luis Obispo, CA 93406

Lori Okun
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

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

Bill Boucher
City of Morro Bay
955 Shasta Avenue
Morro Bay, CA 93442

Jill Baltan
California Dept. of Health Services
850 Marina Bay Parkway, MSG165
Richmond, CA 94804

Sarah Linn
San Luis Obispo County Tribune
3825 S. Higuera St.
San Luis Obispo, CA 93406

Gordon Hensley
SLO Coastkeeper
1013 Monterey St., Suite 207
San Luis Obispo, CA 93401

S:\NPDES\NPDES Facilities\San Luis Obispo Co\CMC
WWTP\ACL Order No. R3-2005-0037\Complaint Transmittal
Letter .doc

California Environmental Protection Agency



Recycled Paper

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2005-0037

IN THE MATTER OF:

**CALIFORNIA DEPARTMENT OF CORRECTIONS
CALIFORNIA MEN'S COLONY
San Luis Obispo County**

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

The California Department of Corrections, California Men's Colony (hereafter "Discharger" or "CMC") is alleged to have violated provisions of California State law and an Order of the Regional Water Quality Control Board (hereafter "Water Board"), for which the Water Board may impose civil liability pursuant to California Water Code Section 13385.

A public hearing on this matter will be held before the Water Board on July 8, 2005, at the Water Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. The Discharger and its authorized representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Water Board.

An agenda will be mailed to the Discharger separately, not less than ten days before the public hearing date. At the public hearing, the Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the State Attorney General for recovery of judicial civil liability.

ALLEGATIONS

1. The Discharger operates wastewater collection, treatment, and disposal facilities that are subject to *Waste Discharge Requirements Order No. 01-001, NPDES Permit No. CA0047856, for California Department of Corrections, California Men's Colony, San Luis Obispo County* (hereinafter "Order No. 01-001"), adopted by the Water Board on February 2, 2001.
2. Order No. 01-001, Provision No. F.6 requires the Discharger to comply with *Standard Provisions and Reporting Requirements for National Pollutant Discharge Elimination System Permits* (Standard Provisions). The Standard Provisions include the following:

"A. GENERAL PERMIT CONDITIONS

1. Introduction of "incompatible wastes" to the treatment system is prohibited.
4. "Bypass" and "overflow" of untreated and partially treated waste is prohibited.
7. Introduction of "pollutant free" wastewater to the collection, treatment, and disposal system in amounts that threaten compliance with this order is prohibited.
8. Collection, treatment, and discharge of waste shall not create a nuisance or pollution, as defined by Section 13050 of the California Water Code.

The Standard Provisions define “incompatible wastes” as “solid or viscous wastes in amounts which cause obstruction to flow in sewers, or which cause other interference with proper operation of treatment works.” The Standard Provisions define “overflow” as “the intentional or unintentional diversion of flow from the collection and transport systems, including pumping facilities.” The Standard Provisions define “pollutant-free wastewater” as “inflow and infiltration, storm waters, and cooling waters and condensates which are essentially free of pollutants.”

3. On February 25, 2004, excessive stormwater inflow to the wastewater collection system caused approximately 10,000 gallons of partially treated wastewater to overflow from the Discharger’s wastewater treatment plant (WWTP)’s primary clarifier and trickling filters into Chorro Creek. The Discharger thereby violated Order No. 01-001, Standard Provisions Nos. A.4, A.7, and A.8.
4. On October 24, 2004, a severe blockage caused approximately 100,000 gallons of raw sewage to overflow from a trunk sewer line into Chorro Creek. The blockage was reportedly caused by introduction of incompatible wastes to the wastewater collection system. The Discharger thereby violated Order No. 01-001, Standard Provisions Nos. A.1, A.4, and A.8.
5. On December 31, 2004, excessive stormwater inflow to the wastewater collection system caused approximately 20,000 gallons of partially treated waste to overflow from the WWTP’s primary clarifier, trickling filters, and secondary clarifier into Chorro Creek. The Discharger thereby violated Order No. 01-001, Standard Provisions Nos. A.4, A.7, and A.8.
6. On January 7, 2005, excessive storm inflow caused approximately 3,000 gallons of raw sewage to overflow from a trunk sewer line into Chorro Creek. The Discharger thereby violated Order No. 01-001, Standard Provisions Nos. A.4, A.7, and A.8.
7. On January 8, 2005, excessive storm inflow caused approximately 60,000 gallons of raw sewage to overflow from a trunk sewer line into Chorro Creek. The Discharger thereby violated Order No. 01-001, Standard Provisions Nos. A.4, A.7, and A.8.
8. On January 9, 2005, excessive storm inflow caused approximately 30,000 gallons of partially treated waste to overflow from the WWTP’s trickling filters into Chorro Creek. The Discharger thereby violated Order No. 01-001, Standard Provisions Nos. A.4, A.7, and A.8.

MAXIMUM CIVIL LIABILITY

Water Code Section 13385(c) authorizes the Water Board to administratively impose civil liability in an amount not to exceed the sum of \$10,000 per day for each day a violation occurs and \$10 per gallon for each gallon in excess of 1,000 that is not susceptible to cleanup or is not cleaned up. The maximum civil liability that may be imposed by the Water Board is therefore at least \$2,230,000, as shown in the following table:

Date	Assessment Basis		Total
	\$10,000 per day of violation	\$10 per gal. (over 1,000 gals.)	
February 25, 2004	\$10,000	(10,000 – 1,000 gal.) X \$10 = \$90,000	\$100,000
October 24, 2004	\$10,000	(100,000 – 1,000 gal.) X \$10 = \$990,000	\$1,000,000
December 31, 2004	\$10,000	(20,000 – 1,000 gal.) X \$10 = \$190,000	\$200,000
January 8, 2005	\$10,000	(3,000 – 1,000 gal.) X \$10 = \$20,000	\$30,000
January 9, 2005	\$10,000	(60,000 – 1,000 gal.) X \$10 = \$590,000	\$600,000
January 10, 2005	\$10,000	(30,000 – 1,000 gal.) X \$10 = \$290,000	\$300,000
Maximum Allowable Civil Liability:			\$2,230,000

This is a conservative estimate of maximum liability. In addition to the violations above, the Discharger likely caused or contributed to a condition of pollution or nuisance on at least the six days that spills occurred (an additional \$60,000 of potential liability). Although the condition of pollution or nuisance likely continued beyond the day of the spills, there is no monitoring data to prove this.

MINIMUM CIVIL LIABILITY

Water Code Section 13385(e) provides that, at a minimum, civil liability shall be assessed at a level that recovers the economic benefit or savings, if any, derived from the acts that constitute the violations. As discussed below, the Discharger did not derive any economic benefit or savings from these violations.

FACTORS TO CONSIDER IN ASSESSMENT OF CIVIL LIABILITY

Pursuant to Water Code Section 13385(e), in determining the amount of liability, the Water Board shall:

...take into account 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, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

These factors are considered as follows:

a. The Nature, Circumstances, Extent, and Gravity of the Violations

On February 25, 2004, excessive stormwater inflow to the wastewater collection system caused influent flows to exceed the hydraulic capacity of the Discharger's WWTP. Approximately 10,000 gallons overflowed from the primary clarifier and trickling filters into Chorro Creek. The overflow was mostly primary-treated, undisinfected wastewater. Chorro Creek was swollen with stormwater at the time and already contained high levels of pollutants from upstream sources. The Discharger sampled upstream and downstream of the point where the spill entered Chorro Creek soon after the overflow occurred. The upstream sample contained approximately 300 MPN/100 mL Total Coliform. The downstream sample contained approximately 500 MPN/100 mL Total Coliform. Order No. 01-001 does not include a Total Coliform limitation for direct comparison. However, Order No. 01-001 specifies that the discharge shall not cause Fecal Coliform to exceed a log mean of 200 MPN/100 mL, based on not fewer than five samples in any 30-day period, or to exceed 400 MPN/100 mL in more than 10 percent of samples in any 30-day period. The sampling data support a presumption that the overflow contributed to an exceedance of this limitation.

On October 24, 2004, a severe blockage caused 100,000-gallons of raw sewage to overflow from a trunk sewer line into Chorro Creek. The blockage was reportedly caused by contraband materials, plastic sheeting, and blankets flushed by CMC inmates. The flushing of these incompatible wastes was the result of relocation of inmates from a cellblock that was not properly roofed when a rainstorm occurred October 16, 2004. The Discharger responded quickly after the overflow was discovered, but the blockage required three hours to clear, hence the large volume of overflow. No sampling results are available, but the large volume of sewage likely caused or contributed to an exceedance of the Fecal Coliform limitation described above.

On December 31, 2004, excessive stormwater inflow to the wastewater collection system caused influent flows to exceed the hydraulic capacity of the Discharger's WWTP. Approximately 20,000 gallons of partially treated wastewater overflowed from the primary clarifier, trickling filters, and secondary clarifier into Chorro Creek. The nature, circumstances, extent, and gravity of this violation are similar to the February 25, 2004, violation described above, except that the storm which resulted in excessive inflow was especially intense, and resulted in large sewage spills at other areas in the Central Coast Region.

On January 7, 2005, excessive storm inflow caused approximately 3,000 gallons of raw sewage to overflow from a trunk sewer line into Chorro Creek. On January 8, 2005, excessive storm inflow caused approximately 60,000 gallons of raw sewage to overflow from a trunk sewer line into Chorro Creek. Both overflows occurred just upstream of an old, undersized section of trunk sewer line that was constricting flow, which the Discharger was in the process of replacing. It could be argued that the overflows would not have occurred in the near future after the old section of sewer line is replaced. However, unless all sources of excessive inflow are eliminated, sewage overflows may continue to occur in this area, albeit less severe, even after the entire trunk sewer line is replaced.

On January 9, 2005, excessive inflow caused approximately 30,000 gallons of partially treated wastewater to overflow from the WWTP trickling filters into Chorro Creek. The nature, circumstances, extent, and gravity of 30,000-gallon overflow from the WWTP are similar to the February 25, 2004, and December 31, 2004 violations described above.

On January 9, 2005, the Discharger collected samples from Chorro Creek upstream and downstream of where the 60,000-gallon overflow entered the Creek. Both the upstream and downstream samples contained greater than 1,600 MPN/100 mL Total Coliform. Upstream samples collected on January 10, 2005, contained 1,700 MPN/100 mL. This suggests that the overflows contributed to, but were not solely responsible for, impairment of Chorro Creek.

Chorro Creek is tributary to Morro Bay National Estuary, which supports several sensitive beneficial uses, including shellfishing and water contact recreation. These overflows likely contributed to impairment of shellfishing, water contact recreation, and other beneficial uses of Morro Bay.

The fact that the December 31, 2004 storm caused other large spills throughout the Central Coast Region supports liability less than the maximum. However, all other considerations support assessment of substantial liability. When compared, however, to the full range of violations that may be subject to Water Code Section 13385, these violations are only moderately severe. Consideration of these factors supports assessment of less than the maximum liability.

b. Degree of Culpability

The Discharger's degree of culpability is moderate. The Discharger evaluated inflow and infiltration to its collection system as part of its December 1998 *Wastewater Treatment Plant and Trunk Sewer Facility Plan* (Facility Plan). The Facility Plan deemed severity of inflow and infiltration "marginally excessive;" and determined that increasing capacity of the treatment plant to accommodate additional flow would be more cost-effective than identifying and eliminating sources of inflow and infiltration. The Discharger chose to increase the capacity of the treatment plant rather than identify and eliminate sources of inflow and infiltration. This suggests the Discharger is well aware of the excessive inflow problem, therefore is highly culpable for those overflows caused by excessive inflow.

On the other hand, the storms that caused the excessive inflow leading to the subject spills were especially intense, and some broke historical records, which supports a lesser degree of culpability.

The Discharger is highly culpable for the 100,000-gallon overflow on October 24, 2004. As described previously, the spill was caused by introduction of incompatible wastes to the collection system by inmates that were not properly sheltered when a rainstorm occurred October 16, 2004, and were relocated from their cells. According to Discharger officials, it is well known that inmates are likely to flush incompatible materials when they are to be relocated from their cells and separated from their belongings. The Discharger relocated the inmates from their cells, yet did not take any action, such as shutting off the water supply, to prevent the inmates from flushing incompatible materials. The Discharger is not capable of controlling all inmate behavior, but the Discharger is responsible for sheltering the inmates and ensuring that incompatible wastes are not introduced to the collection system. This supports a high degree of culpability.

None of these overflows were intentional, which supports a lower degree of culpability. However, at least some of these violations were negligent. Intentional or negligent violations support a higher liability amount than non-negligent, accidental violations.

Considering all these factors, the Discharger's degree of culpability is moderate. This supports assessment of liability that is slightly less than the maximum.

c. Voluntary Cleanup Efforts Undertaken by the Violator

During all of these overflow incidents, the Discharger responded quickly to eliminate the cause of the spill and contain the overflow as much as possible. As an indication of the Discharger's efforts, 5 staff and 27 inmates responded to the 60,000-gallon overflow on January 9, 2005. The Discharger built berms around the overflowing manhole to contain the overflow as much as possible, and disinfected the affected area. Consideration of this factor supports assessment of liability that is significantly less than the maximum.

d. Susceptibility to Cleanup or Abatement

All of these overflows occurred in close proximity to Chorro Creek, or a storm drain leading directly to Chorro Creek. The Discharger responded quickly to each overflow, but the sewage reached Chorro Creek and was washed away by heavy creek flows before the overflows could be completely contained. The Discharger was able to contain and cleanup only minor amounts of the overflows. Consideration of this factor justifies no change in the assessment.

e. Degree of Toxicity of the Discharge

Very little industry exists in the Discharger's service area to contribute toxic compounds to the sewage and the sewage was significantly diluted by heavy creek flows. No dead fish or other indications of toxicity were observed downstream of the overflows. Therefore, the overflows presumably were relatively non-toxic. Consideration of this factor supports assessment of liability that is significantly less than of the maximum.

f. Prior History of Violations

The Discharger has a long history of sewage overflows that supports assessment of substantial liability. According to Discharger records, over 260 sewage overflows have occurred since November 1990, ranging in volume from less than 100 gallons up to 200,000 gallons. In the period of January 2000 through November 2004, an average of nearly three overflows occurred each month. Eighteen overflows occurred in December 2002 alone. Sewage overflows are the subject of several Notices of Violation, Cleanup and Abatement Orders (CAO), and Administrative Civil Liability Orders. CAO No. 98-82, issued in September 1998, required the Discharger to complete construction of collection system improvements by December 2001. The collection system improvements were not completed until April 2005.

Excessive inflow was the subject of a Notice of Violation dated February 25, 2004. The Notice of Violation provided the Discharger an opportunity to describe what steps it would take to address the problem. In a March 24, 2004 letter response, the Discharger acknowledged that CMC's West Facility has an excessive inflow problem, but did not describe steps that it would take to address the problem. As evidenced by several overflows subsequent to this correspondence, excessive inflow continues to be a problem. These informal enforcement actions were not successful at getting the Discharger to aggressively address the excessive inflow problem. Finally, the Executive Officer issued CAO Order No. R3-2005-0036 on February 23, 2005. The CAO requires the Discharger to identify and eliminate sources of excessive inflow by October 1, 2006, and replace a section of old and undersized sewer main that contributed to the October 24, 2004 overflow by September 1, 2005.

Staff met with the Discharger on April 20, 2005, to discuss its response to CAO No. R3-2005-0036. The Discharger believes that improperly abandoned sewer laterals at its West Facility are the source of excessive inflow. The Discharger will soon televise approximately 11,000 feet of sewer lines at the West Facility to identify and eventually eliminate these sources. The Discharger is also working cooperatively with other entities tributary to their collection system to address those entities' sources of inflow. The Discharger is also in the process of replacing the old and undersized sewer main that contributed to the large overflow on October 24, 2004.

The Discharger's long history of sewage spills, extensive efforts by staff to convince the Discharger to address its excessive inflow problem, and the Discharger's recent efforts to address the problem supports assessment of the maximum liability.

g. Economic Benefit or Savings Resulting from the Violations

As discussed previously, the Discharger's original approach to addressing its excessive inflow problem was to increase the capacity of its trunk sewer line and WWTP, rather than to identify and eliminate sources of excessive inflow. The Discharger completed the new trunk sewer line in April 2005 and is currently constructing the new WWTP. The total cost of the project is approximately \$25 million. The Discharger believed these improvements would address the excessive inflow problem when it committed to the project.

Considering this, there is no evidence that these violations resulted in any economic benefit or savings for the Discharger.

h. Discharger's Ability to Pay Civil Liability and Ability to Stay in Business

The Discharger has not provided any information that would indicate an inability to pay the proposed civil liability.

i. Other Matters that Justice May Require

Responding to these violations and preparing this Administrative Civil Liability Complaint required approximately 100 hours of staff time. Estimated staff costs are \$7,500 (100 hours staff time x \$75/hour).

PROPOSED CIVIL LIABILITY

Upon consideration of factors as required by California Water Code Section 13385, the Executive Officer recommends civil liability in the amount of **six hundred thousand dollars (\$600,000)**.



Roger W. Briggs
Executive Officer

5-9-05

Date