

DKP

Central Valley Regional Water Quality Control Board

9 May 2012

James G. and Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

CERTIFIED MAIL
7011 2000 0001 1769 0827

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2012-0542 FOR SWEENEY DAIRY,
WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY**

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) section 13268, for violations of the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order, which was issued by the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) on 3 May 2007. The Complaint charges James G. and Amelia M. Sweeney (hereinafter Discharger) with civil liability in the amount of **seven thousand six hundred and fifty dollars (\$7,650)**, which represents a penalty assessment that is based on a consideration of the failure to respond to requests made pursuant to CWC section 13267(b) for technical reports.

Pursuant to CWC section 13323, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #3) and submitting it to this office by **28 May 2012**, along with payment for the full amount; the amount of the assessed administrative liability (\$7,650) will be reduced provided the Discharger responds to the request for technical reports by **28 May 2012**;
- Waive the right to a 90-day hearing and agree to enter into settlement discussions with the Central Valley Water Board and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **28 May 2012**;
- Waive the right to a 90-day hearing in order to extend the hearing deadlines (checking off box next to item #5); *or*
- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be

considered final pending a 30-day period of public notice, during which time interested parties may comment on this action by submitting information to this office, attention Dale Essary. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the Complaint, return payment, and issue a new complaint.

If the Central Valley Water Board does not receive a signed waiver **by 28 May 2012**, then a hearing on this matter will be scheduled for the **2/3 August 2012** regular meeting of the Central Valley Water Board to be held at 11020 Sun Center Drive, Suite 200, in the City of Rancho Cordova, California, 95670. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify an Administrative Civil Liability Order based on the enclosed Complaint, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability. Specific notice about this hearing and its procedures are enclosed with this Complaint.

Payment of this assessed civil liability amount (\$7,650) does not absolve the Discharger from complying with the General Order, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the General Order in a timely manner.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Dale Essary at (559) 445-5093.



CLAY L. RODGERS
Assistant Executive Officer

Enclosure: Administrative Civil Liability Complaint R5-2012-0542
Hearing Procedures for Administrative Civil Liability Complaint R5-2012-0542

cc w/encl: Ms. Pamela Creedon, Central Valley Water Board, Rancho Cordova
Mr. Cris Carrigan, Office of Enforcement, SWRCB, Sacramento
Tulare County Resource Management Agency, Visalia
Tulare County Health & Human Services Agency, Visalia

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2012-0542

IN THE MATTER OF

JAMES G. AND AMELIA M. SWEENEY
SWEENEY DAIRY
TULARE COUNTY

This Complaint is issued to James G. and Amelia M. Sweeney (hereinafter Discharger) pursuant to California Water Code (CWC) section 13268, which authorizes the imposition of Administrative Civil Liability (ACL), CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that indicate that the Discharger failed to submit technical reports pursuant to an Order issued by the Regional Water Quality Control Board, Central Valley Region under the authority of CWC section 13267.

The Assistant Executive Officer of the Regional Water Quality Control Board, Central Valley Region (hereinafter Central Valley Water Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns and operates the Sweeney Dairy located at 30712 Road 170, Visalia, California, County of Tulare.
2. The Dairy is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (hereinafter General Order), which was issued by the Central Valley Water Board on 3 May 2007. (Exhibit A.) Monitoring and Reporting Program R5-2007-0035 (hereinafter MRP) accompanies the General Order. (Exhibit B.) The General Order and the MRP contain reporting requirements for dairies regulated by the General Order. The General Order became effective on 9 May 2007.
3. The General Order and the MRP required that an Annual Report for the calendar year 2010 be submitted for regulated facilities by 1 July 2011 (2010 Annual Report), including an Annual Dairy Facility Assessment with facility modifications implemented to date. The General Order also required certification of completion statements by 1 July 2011, including certification by a Certified Nutrient Management Specialist of retrofitting completion to improve nitrogen balance as proposed in 1 July 2009, certification of modifications made to meet construction criteria for corrals, pens, animal housing areas, and manure and feed storage areas, and certification(s) by a California Registered Professional of completion of modifications made to meet storage capacity requirements and flood protection requirements.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

4. An administrative civil liability may be imposed pursuant to the procedures described in CWC section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
5. Pursuant to CWC section 13267, subdivision (b), a regional board may require that any person who has discharged, discharges, or is suspected of having discharge or discharging, or who proposes to discharge waste within its region..., shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
6. Pursuant to CWC section 13268, subdivision (a), any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
7. Pursuant to CWC section 13268, subdivision (b)(1), civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

ALLEGED VIOLATIONS

8. On 16 August 2011, the Central Valley Water Board staff issued a Notice of Violation, notifying the Discharger that the 2010 Annual Report with appurtenant components had not been received. (Exhibit C.) The Notice of Violation also requested that the delinquent report be submitted as soon as possible to minimize potential liability.
9. On 15 February 2012, the Central Valley Water Board staff issued a pre-filing settlement letter notifying the Discharger that staff was in the process of assessing civil liability for failure to submit the 2010 Annual Report. (Exhibit D.) The letter included a calculation of the maximum penalty (\$229,000) and a recommended penalty amount (\$7,650) as of 15 February 2012 for the failure to submit the missing report. The Discharger was provided an opportunity to meet with the Central Valley Water Board staff to discuss the alleged violation and submit any information regarding the factors listed in CWC section 13327 that would be deemed relevant to determining an appropriate monetary penalty. The letter requested that all responses be received by 7 March 2012. The letter also indicated that if staff did not receive a response from the Discharger by 7 March 2012, the Executive Officer would issue a Complaint to the Discharger in the proposed penalty

amount (\$7,650). As of the date of issuance of this Complaint, the Central Valley Water Board staff has not received any response to the 15 February 2012 pre-filing settlement letter.

10. Central Valley Water Board's compliance tracking system and case files indicate that the Board has not received the 2010 Annual Report or any of the appurtenant components thereof.
11. The Discharger is alleged to have violated the following sections of the General Order and of the MRP:

A) Provision E.3 of the General Order, which states:

"The Discharger shall comply with the attached Monitoring and Reporting Program No. R5-2007-0035 which is part of this Order, and future revisions thereto or with an individual monitoring and reporting program, as specified by the Central Valley Water Board or the Executive Officer."

B) Provision E.13 of the General Order, which states in part:

"The Discharger must comply with all conditions of this Order, including timely submittal of technical and monitoring reports as directed by the Executive Officer."

C) The MRP, which states in part:

"An annual monitoring report is due by 1 July of each year [T]he annual report shall cover information on crops harvested during the previous calendar year"

12. The Discharger violated both the General Order and the MRP by failing to submit the 2010 Annual Report with appurtenant components as directed by the MRP that accompanies the General Order, which contain reporting requirements for dairies regulated by the General Order.

SUMMARY OF ALLEGED VIOLATIONS

1. **Violation No. 1:** The Discharger failed to submit an annual report for 2010 with appurtenant components by 1 July 2011 as required by the General Order and the MRP. As of the date of this Complaint, this report is now 311 days late.

The Discharger has been out of compliance for a total of 311 days. The pre-filing settlement letter issued to the Discharger on 15 February 2012 establishes a total of 229 days in which the Discharger has been out of compliance, and is the basis for determining the recommended civil liability amount (see below).

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

13. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability. This policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final_111709.pdf.

14. The administrative civil liability was derived from the use of the penalty methodology in the Policy. In summary, this penalty assessment is based on a consideration of the failure to respond to requests made pursuant to CWC section 13267, subdivision (b), for Violation 1. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

Violations under Water Code section 13267 are assessed on a per day basis. However, the violations at issue are primarily reporting violations and therefore qualify for the alternative approach to penalty calculation under the Enforcement Policy. The failure to submit an annual report does not cause daily detrimental impacts to the environment or the regulatory program. It is appropriate to assess daily penalties for the first thirty (30) days, plus one violation for each additional thirty-day period. For Violation 1, the days fined is reduced to 13 days (Attachment B).

The required factors have been considered using the methodology in the Enforcement Policy, as explained in detail in Attachment A and shown in the Penalty Calculation for Civil Liability (Attachment B).

15. The maximum penalty for the violations described above is \$229,000 based on a calculation of the total number of per-day violations times the statutory maximum penalty (229 total days of violation X \$1,000). However, based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **seven thousand six hundred and fifty dollars (\$7,650)** for the violations cited above. The specific factors considered in this penalty are detailed in Attachment A. The Discharger's culpability, and ability to pay and continue in business were considered, but did not change the amount of liability. The Discharger's history of compliance increased the amount of liability (see Attachment A). Other factors as justice may require were considered, but circumstances warranting an adjustment under this step were not identified by staff or provided by the Discharger.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

The Assistant Executive Officer proposes that the Discharger be assessed an administrative civil liability pursuant to Water Code sections 13323 and 13268 in the amount of **seven thousand six hundred and fifty dollars (\$7,650)** for failure to submit the 2010 Annual Report with appurtenant components by the 1 July 2011 deadline as required by the General Order and the MRP.

The Assistant Executive Officer proposes that the amount of the assessed administrative liability (\$7,650) may be reduced provided the Discharger submits a complete 2010 Annual Report with appurtenant components. The amount of the assessed civil liability shall be reduced by \$2,000 if the 2010 Annual Report with appurtenant components is received by **28 May 2012** and which the Executive Officer finds complete. The total adjustment to the liability amount will not exceed \$2,000.

If the Central Valley Water Board holds a hearing, it may choose to impose an administrative civil liability in the amount proposed or for a different amount, decline to seek civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing.

There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Payment of the assessed liability amount does not absolve the Discharger from complying with the General Order or the MRP, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the General Order, the MRP, and/or future orders issued by the Central Valley Water Board.

Date

Clay L. Rodgers
Assistant Executive Officer
Central Valley Water Board Prosecution Team

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent James G. and Amelia M. Sweeney (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2012-0542 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. ***(Check here if the Discharger will waive its right to a hearing and accept the proposed liability amount of seven thousand six hundred and fifty dollars (\$7,650) subject to adjustment for timely submission of the required report)*** I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and

I certify that the Discharger will be liable for **seven thousand six hundred and fifty dollars (\$7,650) in full**. However, the Discharger has the ability to adjust the liability amount if the Discharger submits a complete 2010 Annual Report with appurtenant components by **28 May 2012**.

The amount of the assessed civil liability shall be reduced by two thousand dollars (\$2,000) for a 2010 Annual Report with appurtenant components that is received by **28 May 2012** and which the Executive Officer finds complete.

In addition to the reports, the Discharger shall also remit payment of the adjusted liability amount, by check, which will contain a reference to "ACL Complaint R5-2012-0542" and will be made payable to the "State Water Resources Control Board Cleanup and Abatement Account". Payment must be received by the Central Valley Water Board by **28 May 2012** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **2/3 August 2012** Central Valley Water Board meeting.

I understand that payment of the **\$7,650** in full is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

4. ***(Check here if the Discharger will waive the 90-day hearing requirement, but wishes to engage in settlement negotiations. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)*** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
5. ***(Check here if the Discharger will waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted. Attach a separate sheet with the amount of additional time requested and the rationale.)*** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery

of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

EXHIBIT A

Waste Discharge Requirements General Order for Existing Milk Cow Dairies
Order R5-2007-0035

and

EXHIBIT B

Monitoring and Reporting Program R5-2007-0035

can be viewed at:

[http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/
r5-2007-0035.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2007-0035.pdf)

EXHIBIT C

Notice of Violation Issued 16 August 2011
For Failure to Submit 2010 Annual Report



Matthew Rodriguez
Secretary for
Environmental Protection

1685 E Street, Fresno, California 93706
(559) 445-5116 • FAX (559) 445-5910
<http://www.waterboards.ca.gov/centralvalley>

FILE

Edmund G. Brown Jr.
Governor

NOTICE OF VIOLATION

16 August 2011

James G. & Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

POTENTIAL ADMINISTRATIVE CIVIL LIABILITY FOR FAILURE TO SUBMIT ANNUAL REPORT, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

The dairy facility identified above is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order No. R5-2007-0035 (General Order), which was issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) on 3 May 2007. The General Order required that a 2010 Annual Report be submitted for regulated facilities by 1 July 2011, including an Annual Dairy Facility Assessment with facility modifications implemented to date. The General Order also required certification of completion statements by 1 July 2011, including certification by a Certified Nutrient Management Specialist of retrofitting completion to improve nitrogen balance as proposed in 1 July 2009, certification of modifications made to meet construction criteria for corrals, pens, animal housing areas, and manure and feed storage areas, and certification(s) by a California Registered Professional of completion of modifications made to meet storage capacity requirements and flood protection requirements.

The required reports are requested pursuant to California Water Code (CWC) section 13267. CWC section 13268 provides that failure to submit the required reports can subject you to administrative civil liability (monetary penalties) at a rate of up to \$1,000 for each day each report is late or substantially incomplete if imposed by the Central Valley Water Board, or at a rate up to \$5,000 for each day a report is late or substantially incomplete if imposed by the superior court. It is important that you promptly provide the Central Valley Water Board with the reports required by the General Order that were due by 1 July 2011, to minimize your potential liability.

Please contact Lorrin Sutton at (559) 445-6086 if you have any questions regarding this matter.

DALE E. ESSARY

DALE E. ESSARY
Senior Engineer
Confined Animals Unit

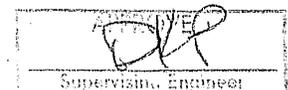


EXHIBIT D

Letter Issued 15 February 2012

Forthcoming Assessment of Civil Liability for Failure to Submit 2010 Annual Report



Matthew Rodriguez
Secretary for
Environmental Protection

California Regional Water Quality Control Board

Central Valley Region
Karl E. Longley, ScD, P.E., Chair

1685 E Street, Fresno, California 93706
(559) 445-5116 • FAX (559) 445-5910
<http://www.waterboards.ca.gov/centralvalley>



Edmund G. Brown Jr.
Governor

15 February 2012

CERTIFIED MAIL
7011 2000 0001 1769 1626

James G. and Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

FORTHCOMING ASSESSMENT OF CIVIL LIABILITY FOR FAILURE TO COMPLY WITH CALIFORNIA WATER CODE SECTION 13267, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

The purpose of this letter is to inform you of a forthcoming Administrative Civil Liability Complaint (Complaint) and to notify you of your opportunity to negotiate and settle the assessment of monetary penalties for your failure to comply with the California Water Code. **Please read this notice carefully.**

The subject facility (Dairy) is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), which was issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) on 3 May 2007. Monitoring and Reporting Program (MRP) R5-2007-0035 accompanies the General Order. The General Order and the MRP contain reporting requirements pursuant to section 13267 of the California Water Code, which authorizes the Central Valley Water Board to require dairies to furnish technical reports under penalty of perjury. Anyone failing to comply with section 13267 is guilty of a misdemeanor and liable civilly in accordance with section 13268 of the California Water Code in an amount up to one thousand dollars (\$1,000) for each day the violation occurs.

The General Order and the MRP required, pursuant to section 13267 of the California Water Code, that an Annual Report for the calendar year 2010 (2010 Annual Report) be submitted for regulated facilities by 1 July 2011.

On 16 August 2011, Central Valley Water Board staff issued a Notice of Violation notifying you that the 2010 Annual Report had not been received for the Dairy. The Notice of Violation also requested that the delinquent report be submitted as soon as possible to avoid incurring any additional liability. To date, the required 2010 Annual Report has not been received.

As of 15 February 2012, the 2010 Annual Report is 229 days overdue. The maximum penalty for the violation described above is two hundred twenty-nine thousand dollars (\$229,000) based on a calculation of the total number of per-day violations times the statutory maximum penalty (229 total days of violation X \$1,000). Based on the use of the State Water Resources Control Board's

California Environmental Protection Agency

Sweeney Dairy
Tulare County

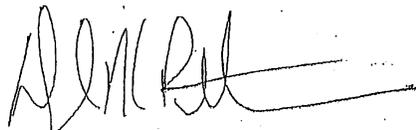
Water Quality Enforcement Policy, the Executive Officer of the Central Valley Water Board intends to issue you a Complaint in the amount of seven thousand six hundred fifty dollars (\$7,650) for this violation. This recommended penalty amount is based on information contained in the Central Valley Water Board's files and takes into account such factors as your culpability, cleanup and cooperation, history of violations, ability to pay and continue in business, and other factors as justice may require.

By way of this letter, you are being notified of the opportunity to meet with Central Valley Water Board staff prior to the issuance of the Complaint to discuss the alleged violations and proposed penalty amount. This meeting affords you the opportunity to potentially reduce the recommended penalty amount if you present new information to the Central Valley Water Board staff regarding the factors listed above or other information you believe is relevant to determining an appropriate monetary penalty.

If you intend to argue that you have an inability to pay the proposed penalty amount, you must bring documentation with you to the meeting to demonstrate such an inability. Appropriate documentation **must include** the last three years of signed federal income tax returns including schedules **and may also include** credit card or line of credit statements, mortgage loan statements, bank account statements, or any other document that explains the special circumstances regarding past, current, or future financial conditions. This information may be used in determining an appropriate monetary penalty assessment to resolve this matter without a hearing. If a settlement is reached at this meeting, the Executive Officer will forego issuing the Complaint. To avoid further liability, you are urged to submit the outstanding report.

In order to initiate any discussions to settle this matter, you must contact Dale Essary at (559) 445-5093 by **7 March 2012** to schedule a day and time to meet with Central Valley Water Board staff. If we do not receive a response from you by this date, the Executive Officer will issue you a Complaint in the proposed penalty amount and this matter will proceed to a formal enforcement hearing before the Central Valley Water Board or will refer the matter to the Attorney General's Office or other prosecution agency.

If you have any questions regarding this notice, please contact Dale E. Essary by phone at (559) 445-5093 or by email at dessary@waterboards.ca.gov.



DOUGLAS K. PATTESON
Supervising WRC Engineer

cc: Ms. Pamela Creedon, Central Valley Water Board, Rancho Cordova
Mr. Cris Carrigan, Office of Enforcement, SWRCB, Sacramento
Tulare County Resource Management Department, Visalia
Tulare County Health & Human Services Agency, Visalia

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

James G. and Amelia M. Sweeney
 Sweeney Dairy (owner/operator)
 30712 Road 170
 Visalia, CA 93292

A. Signature

[Signature] Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below. No

RECEIVED
 FEB 21 2012
 FRESNO, CALIF.

3. Service Type:

- Certified Mail
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number

(Transfer from service label)

7011 2000 0001 1769 1626

**Attachment A – ACL Complaint No. R5-2012-0542
Specific Factors Considered – Civil Liability
Sweeney Dairy (Complaint)**

Each factor of the State Water Board Enforcement Policy and its corresponding score for each violation are presented below:

- 1. Violation No. 1 (Failure to submit 2010 Annual Report):** In accordance with the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), a 2010 Annual Report with appurtenant components must be submitted for regulated facilities by 1 July 2011. To date, James G. and Amelia M. Sweeney (hereinafter Discharger) have not submitted this report for the Sweeney Dairy.

Calculation of Penalty for Failure to Submit 2010 Annual Report

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is 0.30.

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements. The potential for harm was determined to be minor due to the following: The failure to submit the 2010 Annual Report with appurtenant components did not increase the amount of pollution discharged or threatened to discharge into Waters of the State. The deviation from requirements was determined to be major, as the requirement to submit technical reports has been rendered ineffective. The failure to submit the required technical reports undermines the Central Valley Water Board's efforts to prevent water quality degradation and implement the regulatory protection measures detailed in the General Order.

Initial Liability

A failure to submit annual reports is punishable under CWC 13268(a)(1) by civil liability in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Discharger failed to submit a 2010 Annual Report by 1 July 2011 as required by the General Order and the MRP, which is now 229 days late.

Attachment A – ACL Complaint No. R5-2012-0542

However, the alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable. The failure to submit required technical reports does not cause a daily detrimental impact to the environment or the regulatory program and it does not result in an economic benefit that can be measured on a daily basis. It is the extended time period of non-compliance that causes the detrimental impact to both the environment and the regulatory program. Furthermore, the Discharger only receives an economic benefit by not submitting the required technical reports, and not a per-day benefit during the entire period of violation.

Applying the per-day factor to the adjusted number of days of violation rounded to the nearest full day equals 13 days of violation. A calculation of initial liability totals \$5,850 (0.3 per day factor X 13 adjusted days of violation X \$1,000 per day penalty).

Step 4. Adjustment Factors

a) *Culpability: 1*

Discussion: The Discharger was given the neutral score of 1, which neither increases nor decreases the fine.

The Discharger is fully responsible for failure to submit annual reports alleged in this Complaint. The requirement to submit a 2010 Annual Report and appurtenant components were detailed in the General Order. The Discharger was issued a Notice of Violation on 16 August 2011, which requested that the report be submitted as soon as possible to minimize liability. Since that time, the Discharger has failed to submit the 2010 Annual Report or any of the appurtenant components, and is therefore highly culpable for failure to comply with the program.

b) *Cleanup and Cooperation: 1*

Discussion: The Discharger was given the neutral score of 1, which neither increases nor decreases the fine. Despite the fact that the Discharger received multiple notices regarding the requirements set forth in the General Order, the Discharger continues to fail to comply. The violation of CWC section 13268(a), alleged herein, is a non-discharge violation, and thus cleanup is not applicable.

c) *History of Violations: 1.5*

Discussion: The Discharger was given the score of 1.5, which increases the fine. The Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2011-0068 on 13 October 2011 for the Discharger's failure to submit the 2009 Annual Report and the Waste Management Plan by the required deadlines, as

Attachment A – ACL Complaint No. R5-2012-0542

required by the General Order and the Monitoring and Reporting Program. The Enforcement Policy requires that a minimum multiplier of 1.1 be used when there is a history of repeat violations.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

- a) *Total Base Liability Amount: \$5,850* (Initial Liability (\$3,900) x Adjustments (1)(1)(1.5)).

Step 6. Ability to Pay and Continue in Business

- a) *Adjusted Combined Total Base Liability Amount: \$5,850*

Discussion: The Discharger has the ability to pay the total base liability amount based on 1) the Discharger owns the Dairy, a significant asset, 2) the Discharger operates a dairy, an ongoing operating business.

Unless information is submitted by the Discharger indicating an inability to pay, based on the reasons discussed above an ability to pay factor of 1 has been applied to the Combined Total Base Liability Amount.

Step 7. Other Factors as Justice May Require

- a) *Adjusted Combined Total Base Liability Amount: \$5,850+ \$1,800 (Staff Costs) = \$7,650.*

- b) *Discussion:* The State and Central Valley Water Board has incurred \$1,800 in staff costs associated with the investigation and enforcement of the violations alleged herein. This represents approximately 12 hours of staff time devoted to investigating and drafting the complaint at \$150 an hour. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liability Amount. A further adjustment of the combined total base liability amount may be made if the Discharger submits a complete 2010 Annual report with appurtenant components by 6 June 2012. The amount of the combined total base liability amount may be reduced by \$2,000 for the completed report that is submitted to the Central Valley Water Board by 6 June 2012. This reduction in the combined total base liability amount by \$2,000 for the completed report accounts for enforcement efficiencies gained by the Discharger submitting the completed report.

Step 8. Economic Benefit

- a) *Estimated Economic Benefit: \$2,500*

Attachment A – ACL Complaint No. R5-2012-0542

Discussion: The Discharger has received an economic benefit from the costs saved in not drafting and preparing the annual report. This is based on the current average consulting cost of producing one annual report (\$2,500). The adjusted total base liability amount of \$5,850 is more than at least 10% higher than the economic benefit amount (\$2,500) as required by the enforcement policy.

Step 9. Maximum and Minimum Liability Amounts

a) *Minimum Liability Amount: \$2,750*

Discussion: The Enforcement Policy requires that the minimum liability amount imposed be at least ten percent higher than the economic benefit amount. As discussed above, the Central Valley Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the violations cited in this Complaint is \$2,500. Economic benefit plus ten percent equals \$2,750.

b) *Maximum Liability Amount: \$229,000*

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code Section 13367(b)(1): one thousand dollars (\$1,000) for each day in which the violation occurs. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Discharger could face penalties for the total number of days in violation (229 total days X \$1,000 per day).

The proposed liability falls within these maximum and minimum liability amounts.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit the 2010 Annual Report is **\$7,650**. Attachment B is a spreadsheet that demonstrates the use of the penalty calculation methodology.

Step 1	Potential Harm Factor (Generated from Button)		
Step 2	Per Gallon Factor (Generated from Button)		
	Gallons		
	Statutory / Adjusted Max per Gallon (\$)		
	Total		\$
	Per Day Factor (Generated from Button)	0	
	Days		
	Statutory Max per Day		
	Total	0.3	\$
Step 3	Per Day Factor	13	
	Days		
	Statutory Max per Day	1,000	
	Total		\$ 3,900.00
	Initial Amount of the ACL		\$ 3,900.00
Step 4	Culpability	1	\$ 3,900.00
	Cleanup and Cooperation	1	\$ 3,900.00
	History of Violations	1.5	\$ 5,850.00
	Total Base Liability Amount		\$ 5,850.00
Step 5	Ability to Pay & to Continue in Business	1	\$ 5,850.00
Step 6	Other Factors as Justice May Require	1	\$ 5,850.00
	Staff Costs*	1,800	\$ 7,650.00
	Economic Benefit	2,500	\$ 7,650.00
	Minimum Liability Amount	\$2,750	
	Maximum Liability Amount	229,000	
	Final Liability Amount		\$ 7,650.00

Penalty Day Range Generator

Start Date of Violation=	7/2/11
End Date of Violation=	2/15/12
Maximum Days Fined (Steps 2 & 3) =	229
Minimum Days Fined (Steps 2 & 3) =	13

Days
Days

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2012-0542

ISSUED TO
JAMES G. AND AMELIA M. SWEENEY
SWEENEY DAIRY
TULARE COUNTY

SCHEDULED FOR AUGUST 2/3, 2012

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Overview

Pursuant to Water Code section 13323, the Executive Officer has issued an Administrative Civil Liability (ACL) Complaint to James G. and Amelia M. Sweeney, owner/operator of Sweeney Dairy, alleging violations of Water Code section(s) 13267 by failing or refusing to furnish technical or monitoring program reports as required by CWC 13267(b), specifically failing to submit a 2010 Annual Report with appurtenant components as required by Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035. The ACL Complaint proposes that the Central Valley Water Board impose administrative civil liability in the amount of \$7,650. A hearing is currently scheduled to be conducted before the Board during its August 2/3 meeting.

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount. The Board may also decline to assess any liability, or may continue the hearing to a later date. If less than a quorum of the Board is available, this matter may be conducted before a hearing panel. The public hearing will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Board's meeting agenda. The meeting will be held at:

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure, which has been approved by the Board Chair for the adjudication of such matters. The procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at

<http://www.waterboards.ca.gov>

Copies will be provided upon request. In accordance with Section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648(b) and herein, Chapter 5 of the Administrative Procedures Act (Gov't Code, § 11500 et seq.) does not apply to this hearing.

The Discharger shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

Hearing Participants

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons." Designated Parties may present evidence and cross-examine witnesses and are subject to cross-examination. Interested Persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff, or others, at the discretion of the Board Chair.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. James G. and Amelia M. Sweeney

Requesting Designated Party Status

Persons who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses), along with a statement explaining why the parties listed above do not adequately represent the person's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

Primary Contacts

Advisory Team:

Kenneth Landau, Assistant Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4726
klandau@waterboards.ca.gov

Alex Mayer, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
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Phone: (916) 341-5051; fax (916) 341-5199
amayer@waterboards.ca.gov

Prosecution Team:

Pamela Creedon, Executive Officer
Clay Rodgers, Assistant Executive Officer
Doug Patteson, Supervising WRC Engineer
Dale Essary, Senior WRC Engineer
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Ellen Howard Staff Counsel

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ehoward@waterboards.ca.gov

Vanessa Young, Staff Counsel

State Water Resources Control Board, Office of Enforcement
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vyoung@waterboards.ca.gov

Discharger

James G. and Amelia M. Sweeney
30712 Road 170
Visalia, CA 93292

Separation of Prosecutorial and Advisory Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Board (the "Prosecution Team") have been separated from those who will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Advisory Team are: Ken Landau, Assistant Executive Officer and Alex Mayer, Staff Counsel. Members of the Prosecution Team are: Pamela Creedon, Executive Officer, Clay Rodgers, Assistant Executive Officer, Doug Patteson, Supervising WRC Engineer, Dale Essary, Senior WRC Engineer, Ellen Howard, Staff Counsel, and Vanessa Young, Staff Counsel.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Pamela Creedon regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

Designated Parties and Interested Persons are forbidden from engaging in ex parte communications regarding this matter. An ex parte communication is a written or verbal communication related to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an

Interested Person and a Board Member or a member of the Board's Advisory Team. However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Communications regarding non-controversial procedural matters are also not considered ex parte communications and are not restricted.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each Designated Party shall have a combined 30 minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide a closing statement. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference, as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will not generally receive copies of materials incorporated by reference unless copies are provided, and the referenced materials are generally not posted on the Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the Designated Party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

Prosecution Team: The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the ACL Complaint, Staff Report, or other material submitted by the Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Board staff.

Designated Parties (including the Discharger): All Designated Parties shall submit comments regarding the ACL Complaint along with any additional supporting evidence not cited by the Central Valley Water Board's Prosecution Team no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party that would like to submit evidence, legal analysis, or policy statements to rebut information previously submitted by other Designated Parties shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

Copies: Board members will receive copies of all submitted materials. The Board Members' hard copies will be printed in black and white on 8.5"x11" paper from the Designated Parties' electronic copies. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra nine paper copies for the Board Members. For voluminous submissions, Board Members may receive copies in electronic format only. Electronic copies will also be posted on the Board's website. Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Board will not reject materials solely for failure to provide electronic copies.

Other Matters: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) and will respond to all significant comments. The Summary Sheet and the responses shall clearly state that they were prepared by the Prosecution Team. The Summary Sheet and the responses will be posted online, as will revisions to the proposed Order.

Interested Persons: Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under "Important Deadlines" to be included in the Board's agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair will likely exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will *not* be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The ACL Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Rancho Cordova, CA 95670. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml

Although the web page is updated regularly, to assure access to the latest information, you may contact Clay Rodgers (contact information above) for assistance obtaining copies.

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

IMPORTANT DEADLINES

All required submissions must be received by 5:00 p.m. on the respective due date.

May 7, 2012	<ul style="list-style-type: none"> ▪ Prosecution Team issues ACL Complaint, Hearing Procedure, and other related materials.
May 17, 2012	<ul style="list-style-type: none"> ▪ Objections due on Hearing Procedure. ▪ Deadline to request "Designated Party" status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
May 22, 2012	<ul style="list-style-type: none"> ▪ Deadline to submit opposition to requests for Designated Party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
May 28, 2012	<ul style="list-style-type: none"> ▪ Discharger's deadline to submit <i>90-Day Hearing Waiver Form</i>. <p><u>Electronic or Hard Copy to:</u> Prosecution Team Primary Contact</p>
May 31, 2012*	<ul style="list-style-type: none"> ▪ Advisory Team issues decision on requests for designated party status. ▪ Advisory Team issues decision on Hearing Procedure objections.
June 7, 2012*	<ul style="list-style-type: none"> ▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements," above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
June 27, 2012*	<ul style="list-style-type: none"> ▪ Remaining Designated Parties' (including the Discharger's) deadline to submit all information required under "Submission of Evidence and Policy Statements" above. This includes all written comments regarding the ACL Complaint. ▪ Interested Persons' comments are due. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
July 9, 2012*	<ul style="list-style-type: none"> ▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. ▪ Deadline to submit requests for additional time. ▪ If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of <i>this</i> deadline. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
July 12, 2012*. [†]	<ul style="list-style-type: none"> ▪ Prosecution Team submits Summary Sheet and responses to comments. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
August 2/3, 2012*	<ul style="list-style-type: none"> ▪ Hearing

* Dischargers have the right to a hearing before the Board within 90 days of receiving the Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, the Discharger is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing civil liability. However, if the Board accepts the waiver, all deadlines marked with an "*" will be revised if a settlement cannot be reached.

[†] This deadline is set based on the date that the Board compiles the Board Members' agenda packages. Any material received after this deadline will not be included in the Board Members' agenda packages.

Administrative Civil Liability

Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint (complaint) by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer. The complaint describes the violations that alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person/s named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

Complaint Resolution options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; (5) hearing. Each of these options is described below.

Withdrawal: may result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and reissuance: may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver: may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement: results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at: http://www.waterboards.ca.gov/plans_policies/. Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Regional Water Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Regional Water Board may issue an order

requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors that must be considered by the Regional Water Board

Except for Mandatory Minimum Penalties under Water Code section 13385 (h) and (i), the Regional Water Board is required to consider several factors specified in the Water Code, including nature, circumstance, 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 ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Cal. Water Code §§ 13327, 13385(e) & 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits

3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - IRS Form 1120 for C Corporations
 - IRS Form 1120 S for S Corporations
 - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:
 - Audited Financial Statements for last three years;
 - A list of major accounts receivable with names and amounts;
 - A list of major accounts payable with names and amounts;
 - A list of equipment acquisition cost and year purchased;
 - Ownership in other companies and percent of ownership for the last three years;
 - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
 - City/Town/Village;
 - County;
 - Municipality with enterprise fund;
 - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - Population;
 - Number of persons age 18 and above;
 - Number of persons age 65 and above;
 - Number of Individual below 125% of poverty level;
 - Median home value;
 - Median household income.
3. Current or most recent estimates of:
 - Population;
 - Median home value;
 - Median household income;
 - Market value of taxable property;

- Property tax collection rate.
- 4. Unreserved general fund ending balance;
- 5. Total principal and interest payments for all governmental funds;
- 6. Total revenues for all governmental funds;
- 7. Direct net debt;
- 8. Overall net debt;
- 9. General obligation debt rating;
- 10. General obligation debt level.
- 11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code section 13328, if necessary, in order to collect payment of the administrative civil liability amount.