

Administrative Civil Liability Complaint Fact Sheet

The California State Water Resources Control Board (State Water Board) and the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board) are authorized to issue complaints for civil liabilities under California Water Code (Water Code) section 13323 for violations of the Water Code. This document describes generally the process that follows the issuance of a complaint.

The issuance of a complaint is the first step in the possible imposition of an order requiring payment of administrative civil liabilities. The complaint details the alleged violation(s) including the appropriate Water Code citations and summarizes the evidence that supports the allegations. **If you receive a complaint, you must respond timely as directed. If you fail to respond, a default order may be issued against you.** The complaint is accompanied by a transmittal letter, and a waiver options form. 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 Santa Ana Water Board Prosecution Team and the person(s) named in the complaint, referred to as the “Discharger(s).” The Prosecution Team is comprised of Santa Ana 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 comments. If the matter proceeds to a hearing, the hearing will be held before the Santa Ana Water Board (either the seven Governor-appointed board members or the Executive Officer). Those who hear the evidence and rule on the matter act as judges. The Santa Ana Water Board is assisted by an Advisory Team, who provide 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 Santa Ana Water Board, or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Notice.

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; or (5) hearing.

Withdrawal may result if the Discharger provides information to the Prosecution Team that clearly and unmistakably 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. The settlement can be payment of an amount less than the proposed penalty or partial payment and suspension of the remainder pending implementation by the Discharger(s) of identified activities, such as making improvements that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project (CP). Qualifying criteria for CPs and SEPs are contained in the State Water Board's Enforcement Policy, which is available at the State Water Board's enforcement website at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/policy.shtml

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 ninety (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. Executive Order N-63-20 has suspended section 11440.30 of the Government Code, which prohibits a presiding officer to conduct hearings by electronic means if a party objects, provided the following conditions are met:

1. Each participant in the hearing has an opportunity to participate and to hear the entire proceeding while it is taking place and to observe exhibits;
2. A member of the public who is otherwise entitled to observe the hearing may observe the hearing using electronic means.
3. The presiding officer satisfies all requirements of the American with Disabilities Act (ADA) and the Unruh Civil Rights Act.

The Prosecution Team has the burden of proving the allegations and must present competent evidence to the 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 other's witnesses. Interested persons may provide comments but may generally not submit evidence or testimony. At the end of the presentations by the Designated Parties, the Santa Ana Water Board will deliberate to decide the outcome. The Santa Ana 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 Board

Except for Mandatory Minimum Penalties under Water Code Section 13385 (h) and (i), the Santa Ana Water Board considers several factors specified in the Water Code and the State Water Board's Water Quality Enforcement Policy, 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 (Water Code sections 13327, 13385(e), and 13399 (a)(2)). During the period provided to submit evidence (set forth in the Hearing Notice) 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 (3) years of signed federal Internal Revenue Service (IRS) 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; and
12. Other debt documentation.

For a business:

1. Copies of last three (3) years of company IRS tax returns, signed and dated.
2. Copies of last three (3) years of company financial audits.
3. Copies of last three (3) years of IRS tax returns of business principals, signed and dated; and
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 (3) years, specifically:
 - a. IRS Form 1120-C for C Corporations.
 - b. IRS Form 1120-S for S Corporations; or
 - c. IRS Form 1065 for partnerships.
2. A completed and signed IRS Form 8821. This allows the IRS to provide the State 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:
 - a. Audited Financial Statements for last three (3) years.
 - b. A list of major accounts receivable with names and amounts.
 - c. A list of major accounts payable with names and amounts.
 - d. A list of equipment acquisition costs and year(s) purchased.

- e. Ownership in other companies and percent of ownership for the last three (3) years; and
- f. Income from other companies and amounts for the last three (3) years.

For a municipality, county, or district:

- 1. Type of entity:
 - a. City/Town/Village.
 - b. County.
 - c. Municipality with enterprise fund; or
 - d. Independent or publicly owned utility.
- 2. The following 1990 and 2000 United States Census data:
 - a. Population.
 - b. Number of persons age eighteen (18) years and above.
 - c. Number of persons age sixty-five (65) years and above.
 - d. Number of Individuals below one hundred and twenty-five percent (125%) of poverty level;
 - e. Median home value; and
 - f. Median household income.
- 3. Current or most recent estimates of:
 - a. Population.
 - b. Median home value.
 - c. Median household income.
 - d. Market value of taxable property; and
 - e. 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; and
- 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.