

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0536

IN THE MATTER OF

TOMS SIERRA COMPANY, DBA SIERRA ENERGY  
QUINCY BULK FUEL PLANT, 188 CRESCENT STREET, QUINCY  
PLUMAS COUNTY

TOMS SIERRA COMPANY IS HEREBY GIVEN NOTICE THAT:

1. Toms Sierra, doing business as Sierra Energy (hereafter the Discharger), is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) may impose civil liability pursuant to section 13385 of the California Water Code (Water Code).
2. This Administrative Civil Liability Complaint (ACLC) is issued under authority of Water Code section 13323.

DISCHARGE PROHIBITIONS

3. Section 301 of the Clean Water Act (33 U.S.C. §1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.

VIOLATIONS SUBJECT TO THIS COMPLAINT

4. The Discharger violated section 301 of the Clean Water Act and Water Code section 13385(a)(5) by discharging red-dye kerosene into Clear Stream, a water of the State of California and Water of the United States, starting on 21 February 2011 and ending on 22 February 2011.
5. The details of these violations are set forth in full in the accompanying Technical Analysis, which is incorporated herein by reference as if set forth in full.

MAXIMUM LIABILITY

6. Water Code section 13385 provides that any person who violates a requirement of Section 301 of the federal Clean Water Act shall be civilly liable. Water Code section 13385(c)(1) provides that civil liability may be assessed in an amount not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

7. Based on the discharge of kerosene to Clear Stream from 21 February 2011 to 22 February 2011, the total maximum liability under Water Code section 13385(c)(1) is \$20,000.

#### MINIMUM LIABILITY

8. The Water Quality Enforcement Policy further instructs the Regional Water Boards to assess liability against a violator at least 10 percent higher than the economic benefit realized from the violation so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.
9. As described in the attached Technical Analysis, the Economic benefit considered with this type of event is calculated over time, where there are accrued costs associated with not protecting Clear Stream from this type of discharge. Implementation of appropriate best management practices (BMPs) would have prevented this discharge from occurring. These costs would be spread out over a period of years of normal operation of a secondary containment structure of this type. The Prosecution Team has estimated these costs to be \$7,500. The minimum liability for this violation would therefore be \$8,250.

#### PROPOSED LIABILITY

10. The amount of discretionary liability assessment proposed is based upon consideration of factors contained in Water Code section 13385(e). Section 13385(e) specifies the factors that the Central Valley Water Board shall consider in establishing the amount of discretionary liability for the alleged violations, which include: the nature, circumstance, extent, and gravity of the violations, the ability to pay, the effect on ability to continue in business, prior history of violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other factors as justice may require.
11. Based on the penalty calculation methodology in Section VI of the Water Quality Enforcement Policy, it is recommended that the Central Valley Water Board impose civil liability against Sierra Energy LLC in the amount of \$20,000 for the discharge of kerosene to Clear Stream from 21 February 2011 to 22 February 2011. Attachment 1 provides a summary table of the decision made in the methodology to determine the final liability amount.

Dated this 26 day of April, 2013,

 (FON)

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PAMELA C. CREEDON, Executive Officer

Signed pursuant to the authority delegated  
by the Central Valley Water Board

Attachment 1: Summary of Enforcement Policy Penalty Methodology

**Attachment No. 1**  
**Discharger: Tom's Sierra Company**

**Penalty Methodology Decisions**  
**ACL Complaint No. R5-2013-0536**

<b>Step 1: Potential Harm Factor</b>				
Violations	Harm/Potential Harm to Beneficial Uses [ 0 - 5 ]	Physical, Chemical, Biological or Thermal Characteristics [ 0 - 4 ]	Susceptibility to Cleanup or Abatement [ 0 or 1 ]	Total Potential for Harm [ 0 - 10 ]
Kerosene Spill	3	4	1	8

<b>Step 2: Assessments for Discharge Violations</b>					
Violations	Per Gallon Factor				Statutory/ Adjusted Max per Gallon [ \$ ]
	Potential for Harm [ 0 - 10 ]	Deviation from Requirement [ minor, moderate, major ]	High Volume Discharges	Total Per Gallon Factor	
Kerosene Spill	8	major	no	na	na

<b>Step 3: Per Day Assesments for Non-Discharge Violations</b>				
Violations	Per Day Factor			Statutory/ Adjusted Max [ \$ ]
	Potential for Harm [ minor, moderate, major ]	Deviation from Requirement [ minor, moderate, major ]	Total Per Day Factor	
na	na	na	na	na

<b>Step 4: Adjustments</b>					
Violations	Culpability [ 0.5 - 1.5 ]	Cleanup and Cooperation [ 0.75 - 1.5 ]	History of Violation	Multiple Violations (Same Incident)	Multiple Day Violations
Kerosene Spill	1.3	1.2	1.1	yes	na

<b>Step 5: Total Base Liability Amount</b>
Sum of Steps 1- 4
\$20,000

<b>Step 8: Economic Benefit</b>
\$7,500

<b>Step 6: Ability to Pay/Continue in Business</b>
[ Yes, No, Partly, Unknown ]
Yes

<b>Step 9</b>	
Minimum Liability Amount	Maximum Liability Amount
\$8,250	\$20,000

<b>Step 7: Other Factors as Justice May Require</b>	
Costs of Investigation and Enforcement Adjustment	Other
na	na

<b>Step 10: Final Liability Amount</b>
\$20,000

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

**TECHNICAL ANALYSIS**

**Proposed Administrative Civil Liability  
Contained in Complaint No. R5-2013-0536  
Tom's Sierra Company dba Sierra Energy  
Sierra Energy Quincy Bulk Fuel Plant Kerosene Spill to Clear Stream, Plumas County**

**26 April 2013**

**By**

**Grant C. Stein, P.G., E.I.T.  
Groundwater Unit**

## **A. INTRODUCTION**

This technical analysis provides a summary of factual and analytical evidence that support the findings in Complaint No. R5-2013-0536 to support an administrative assessment of civil liability in the amount of \$20,000 against Tom's Sierra Company doing business as Sierra Energy (hereafter the Discharger) for violations of section 301 of the Clean Water Act (33 U.S.C. §1311) and section 13376 of the California Water Code (Water Code), and are therefore liable under Section 13385(a)(1) and (a)(5) of the Water Code.

The Discharger owns and operates the Tom's Sierra Quincy bulk fuel plant located at 188 Crescent Street in Quincy, Plumas County. The plant distributes bulk fuel and oils from nine aboveground storage tanks (ASTs) ranging in size from 3,000 to 20,000 gallons in capacity. Total capacity is 117,000 gallons. Products stored in the ASTs include gasoline, diesel fuel, kerosene, hydraulic oil, bar and chain oil, methanol, and motor oil. These products are distributed by the Crescent Street facility to customers throughout the Quincy area.

The Discharger discharged approximately 100 gallons of red-dyed kerosene into a v-ditch that is hydrologically connected to Clear Stream, a water of the State of California and Water of the United States, starting on 21 February 2011 and ending on 22 February 2011. The kerosene release was the result of an AST secondary containment drain valve being left open during a spill of kerosene that occurred when a kerosene AST was overfilled.

As detailed further in this technical analysis, impacts to beneficial uses from the spill are reasonably expected, with minor harm to beneficial uses. Approximately one month after the spill, California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) staff collected a sample of water that was discharging from the v-ditch to Clear Stream. This sample contained kerosene, as well as other petroleum constituents, suggesting that environmental impacts from the spill may have been ongoing. Approximately two months after the spill, the Discharger collected samples of water from Clear Stream, both up-stream and downstream from the facility, which were non-detect for kerosene. This suggested that long term environmental impacts from the spill were unlikely. Evidence of the spill's short term impacts on the beneficial uses is not available. However, a discharge of this magnitude likely produced localized short term impacts to the biota of the creek that came into contact with the kerosene. Furthermore, the discharge of kerosene created a public nuisance within Clear Stream that lingered for several days after the discharge.

Several Central Valley Water Board inspection reports issued prior to the kerosene release documented the existence of the drainage valve within the AST secondary containment, put the Discharger on notice that the drainage valve was not operated in accordance with a spill prevention control and countermeasure plan (SPCC) plan, and noted non-compliance with the Above-ground Petroleum Storage Act. These concerns went unaddressed until the occurrence of the kerosene release.

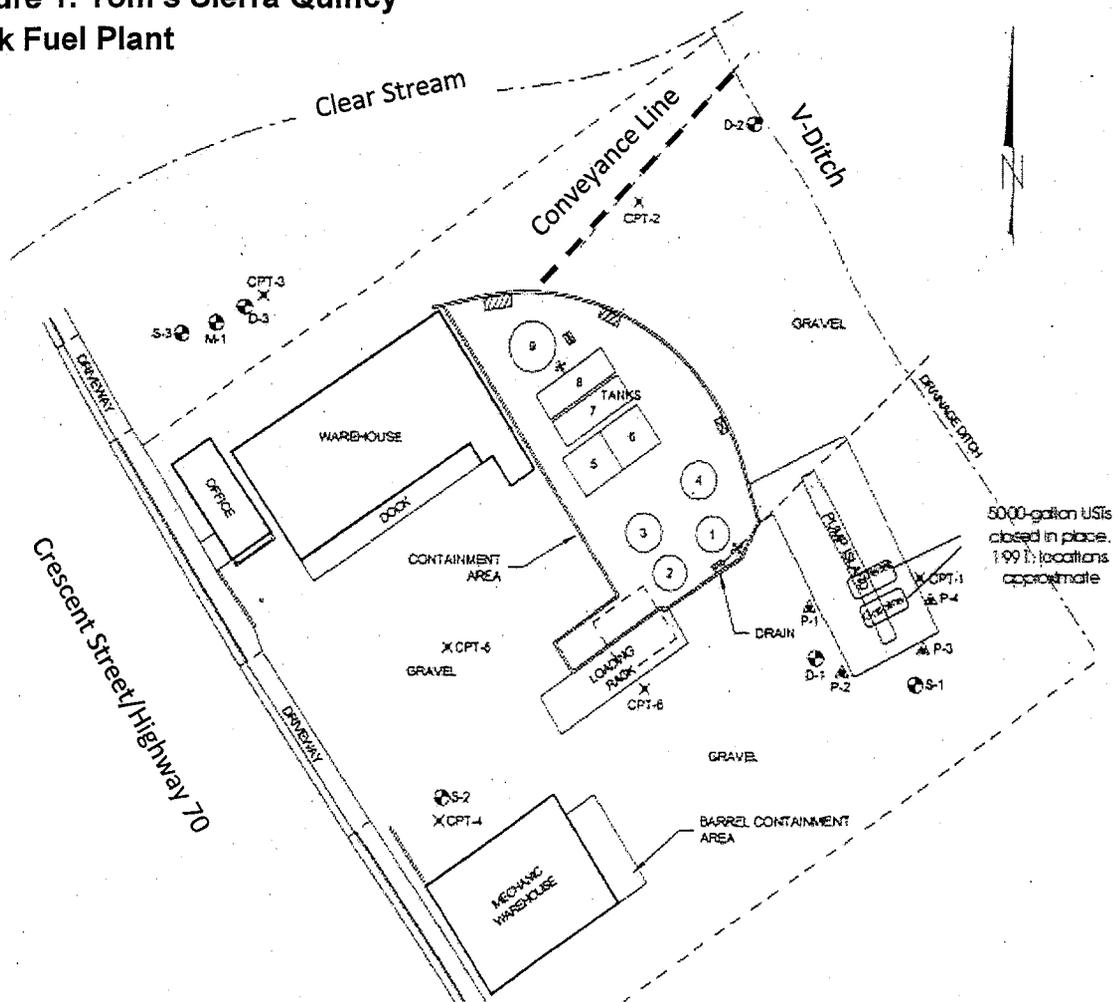
## B. NATURE, CIRCUMSTANCES, EXTENT AND GRAVITY OF VIOLATIONS

California Water Code section 13385 requires the Central Valley Water Board to consider several factors when determining the amount of civil liability to impose. These factors include: "...the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the ability to pay, and prior history of violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."

### Overview of Discharge Area

The kerosene release occurred at the Tom's Sierra Quincy Bulk Fuel Plant, located along Crescent Street/Highway 70 in the town of Quincy. Clear Stream runs along the northern boundary of the facility (see figure 1).

**Figure 1: Tom's Sierra Quincy Bulk Fuel Plant**



The kerosene spill occurred within the AST secondary containment area of the plant. The secondary containment drain valve was open, and the kerosene flowed through the conveyance line to the v-ditch, where it discharged to Clear Stream. Kerosene product was visually observed within Clear Stream, and detected in analytical samples, at least 1 mile downstream of the facility.

#### AST Secondary Containment History

The AST secondary containment area has been a topic of regulatory discussion for many years. In 1996, Central Valley Water Board staff inspected the facility and saw non-compliance with Chapter 6.67, California Health and Safety Code section 25270 to 25270.13, the Aboveground Petroleum Storage Act (APSA). The secondary containment for the ASTs had an incomplete concrete floor and an open valve that allowed discharge to surface water. The Discharger responded by letter after the inspection that the secondary containment floor had since been completed with concrete, and that the drain valve in secondary containment was always kept closed, and only opened to drain excess rainwater from the containment.

In June 2002, during a site inspection, Central Valley Water Board staff found APSA non-compliance. During this inspection, staff noted the facility lacked an amended SPCC plan. The plan lacked containment calculations and on-site drainage in petroleum storage areas. ASTs lacked periodic integrity testing. The truck unloading area containment was eroded. The drainage valve in the AST secondary containment area was open. An uncapped pipe ran from this valve to a nearby drainage ditch.

In March 2007, Sierra Energy was issued Cleanup and Abatement Order No. R5-2007-0706 for potential impacts to groundwater, surface water, and sensitive receptors in the area. The order required among other things, submittal of an Upgrade Work Plan to bring the facility into current compliance with Chapter 6.67 of the California Health and Safety Code (APSA). Among other requirements, APSA requires preparation and maintenance of a SPCC plan. No SPCC plan was available on site during the 23 February 2011 spill response, during a 31 August 2011 inspection or available in Plumas County Department of Environmental Health files. In October 2007 the Discharger submitted an Aboveground Storage Tank Upgrade Work Plan to the Central Valley Water Board. The work plan proposed removal of a dilapidated horizontal AST, installation of a storm water treatment system to treat water that accumulates in secondary containment, and obtaining an NPDES permit to discharge the treated storm water to Clear Stream. The Central Valley Water Board never responded to this work plan or provided comment. The Discharger's culpability for discharge is slightly reduced to account for these factors in section D.4.a.

#### Kerosene Discharge and Spill Response

On 21 February 2011, a release of kerosene occurred at the facility. According to file records, an SST Oil Company (SST) tanker truck filling the kerosene AST overfilled the tank resulting in a release to secondary containment. It has been alleged by the Discharger that SST erred in making this delivery to the Tom's Sierra facility (who's kerosene tank was already full), as the delivery was supposed to be made to the neighboring Richardson Heating Oil facility (also

owned by the Discharger). A valve, which drains the subject secondary containment structure to Clear Stream (adjacent to the northern boundary of the property), was found to be open and allowed the discharge of an estimated 100 gallons of kerosene to Clear Stream, tributary to Spanish Creek and thence the Feather River. According to information in the file, the valve was discovered to be open, and consequently closed on 22 February 2011. The Office of Emergency Services (OES) was notified of the spill on 23 February 2011. According to Gerald Sipe, Plumas County Director of Environmental Health, OES was not immediately notified because it appeared that the spill was contained within the secondary containment structure.

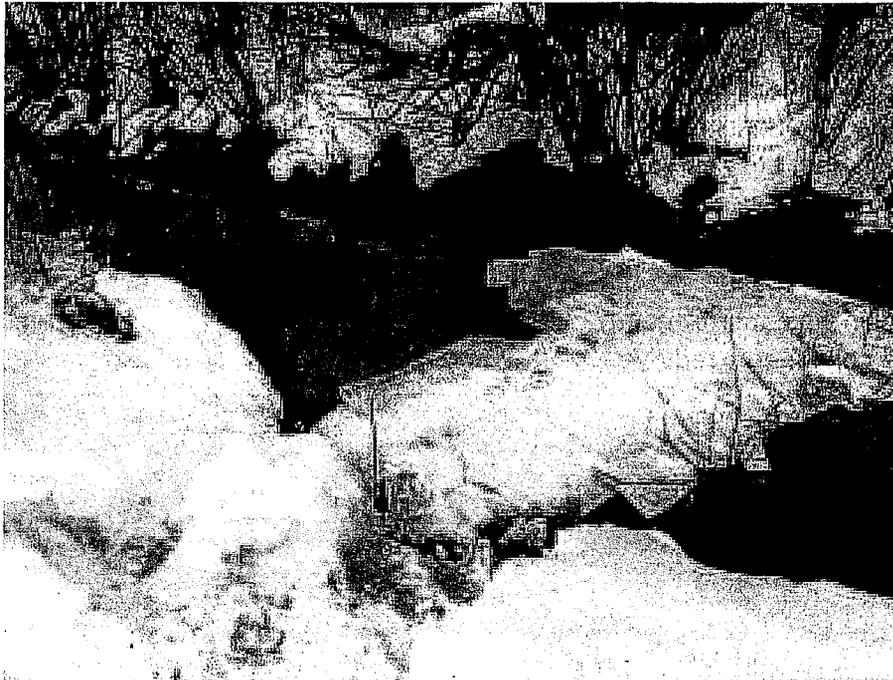
On 23 February 2011, Central Valley Water Board staff responded to the OES spill notification along with Hector Orozco of California Department of Fish and Game's Office of Spill Prevention and Response, and Gerald Sipe of Plumas County Environmental Health. Upon arrival at the site, staff noted that the facility had no emergency spill response equipment on-site, however SST had hired Ben's Trucking and Equipment to assist in cleaning up the spill. Ben's Trucking steam cleaned the secondary containment area, disposed of impacted water from the secondary containment area and placed absorbent booms and pads within the V-ditch and Clear Stream. It is unknown how much of the originally spilled kerosene was recovered during clean-up efforts. Staff also noted that no SPCC plan was available on-site. Staff noted red staining of snow, free product, and petroleum sheen on standing water within secondary containment, which was approximately half full of snow at the time (see photograph 1). The spilled kerosene contained a red dye.



**Photograph 1: AST Secondary Containment Area 2/23/11**

Staff was informed by a Ben's Trucking and Equipment employee that a valve which drains the secondary containment structure had earlier been found open. Fluids conveyed through this valve and piping, discharge to a V-ditch, which in turn discharges to Clear Stream. Clear Stream is a seasonal tributary to Spanish Creek. Clear Stream flows approximately 2 miles to the northeast of the facility where it joins Spanish Creek. Spanish Creek is a major tributary of the Feather River, which has beneficial uses including Municipal and Domestic Supply, Power Generation, Recreation, Cold Freshwater Habitat, Spawning, and Wildlife Habitat.

At the V-ditch (discharge point), strong petroleum odor was observed along with red staining of snow and petroleum sheen on the water. The petroleum sheen extended along the remaining length of the V-ditch (approximately 20 feet) and into Clear Stream. Petroleum sheen was observed in Clear Stream up to 1 mile downstream of Sierra Energy (see photograph 2).



**Photograph 2: Clear Stream downstream of Tom's Sierra Energy  
2/23/11**

Staff collected several samples of water from Clear Stream. Samples were obtained at the Highway 70 overcrossing of Clear Stream (upstream of Tom's Sierra), the secondary containment drain pipe discharge point, the point where the plant V-ditch enters Clear Stream, the Railway Avenue overcrossing of Clear Stream (approximately 500 feet downstream of Tom's Sierra), and within Clear Stream adjacent to Quincy High School (approximately 1 mile downstream of Tom's Sierra). All samples were analyzed for TPHd, TPHk, VOCs, and PAHs. Analytical results indicate kerosene constituents above water quality objectives within Clear Stream, downstream of Sierra Energy; upstream samples were non-detect for all constituents. Constituents exceeding Water Quality Objectives are summarized in Table 1 below.

**Table 1: 23 February 2011 Clear Stream Sample Collection Results**

Sample Location	Distance from Source	TPH-K (ug/L)	TPH-D (ug/L)	Napthalene (ug/L)	Benzene (ug/L)	Toluene (ug/L)	Ethylbenzene (ug/L)	Total Xylenes (ug/L)
Clear Stream at Highway 70	~100 feet upstream	ND	ND	ND	ND	ND	ND	ND
Drain pipe discharge to V-Ditch	At source	140,000	180,000	120	6.7	200	69	1030
Drainage Ditch at Clear Stream	~40 feet downstream	550	770	ND	ND	ND	ND	ND
Clear Stream at Railway Avenue	~500 feet downstream	480	630	3.3	ND	ND	ND	1.52
Clear Stream at Quincy High School	~1 mile downstream	62	ND	1.2	ND	ND	ND	ND
Water Quality Objective	--	<b>100<sup>1</sup></b>	<b>56<sup>2</sup></b>	<b>17<sup>3</sup></b>	<b>0.15<sup>4</sup></b>	<b>40<sup>5</sup></b>	<b>30<sup>6</sup></b>	<b>20<sup>7</sup></b>
<sup>1</sup> 1980 U.S EPA Suggested-No-Adverse-Response Level <sup>2</sup> U.S. EPA IRIS Reference Dose as a drinking water level <sup>3</sup> CA Department of Public Health Notification Level <sup>4</sup> CA Drinking Water Public Health Goal				<sup>5</sup> CA DPH Drinking Water Secondary MCL <sup>6</sup> U.S. EPA Drinking Water Secondary MCL <sup>7</sup> U.S. EPA Drinking Water Secondary MCL				

**28 MARCH 2011 INSPECTION**

On 28 March 2011, Central Valley Water Board staff (Grant Stein and Dale Stultz) returned to the site, to follow up on spill response. Upon arrival at the site, Dave Frenzel, the Discharger's plant manager, informed staff that the valve discharging from secondary containment had been closed and locked. Mr. Frenzel informed staff that Ben's Truck and Equipment had cleaned out the secondary containment structure and removed all petroleum impacted snow and water, however staff observed standing water with fuel sheen within the secondary containment structure.

Mr. Frenzel also stated that absorbent pads had been placed in the V-ditch that discharges to Clear Stream. The absorbent pads were in the V-ditch as described. Staff also observed strong petroleum odor and sheen on water within the V-ditch which was discharging to Clear Stream at

the time of inspection. A sample of this water and an upstream sample were obtained for laboratory analyses of TPHd, TPHk, TPHg, VOCs, and SVOCs.

The upstream sample was non-detect for all constituents analyzed. The sample of V-ditch water contained TPHd, TPHk, TPHg, toluene, ethylbenzene, xylene, naphthalene, methyl tert butyl ether (MTBE), isopropylbenzene, n-Propylbenzene, 1,3,5-Trimethylbenzene, 1,2,4-Trimethylbenzene, and p-Isopropyltoluene. Constituents exceeding Water Quality Objectives one month after the spill are summarized in Table 2. Laboratory reports are included as Attachment C.

**Table 2**  
**28 March 2011 Clear Stream Sample Collection Results**

Sample Location	Distance from Source	TPH-K (ug/L)	TPH-D (ug/L)	TPH-G (ug/L)	MTBE <sup>6</sup> (ug/L)	Xylene (ug/L)
Clear Stream at Highway 70 (upstream)	~100 feet upstream	ND	ND	ND	ND	ND
Drainage Ditch at Clear Stream	~40 feet downstream	1200	1100	170	17	21
Water in Secondary Containment	At Source	310	4,200,000	9200	ND	8.7
Water Quality Objective	--	100 <sup>1</sup>	56 <sup>2</sup>	5 <sup>3</sup>	5 <sup>4</sup>	17 <sup>5</sup>

<sup>1</sup>1980 U.S EPA Suggested-No-Adverse-Response Level  
<sup>2</sup> U.S. EPA IRIS Reference Dose as a drinking water level  
<sup>3</sup> U.S. EPA Health Advisory  
<sup>4</sup> CA Dept. of Public Health Secondary MCL  
<sup>5</sup> U.S. EPA, *Federal Register*, Taste & Odor Threshold  
<sup>6</sup> Methyl tert-Butyl Ether

**C. VIOLATIONS SUBJECT TO THE COMPLAINT**

The following violations are the basis for assessing administrative civil liability pursuant to Water Code section 13385(a)(1) and (a)(5):

**1. The Clean Water Act prohibits introduction of pollutants to surface waters without an NPDES Permit**

The discharger violated section 301 of the Clean Water Act (33 U.S.C § 1311) and Water Code section 13376 which prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. There is no NPDES permit that authorizes the discharge of kerosene to Clear Stream.

The Discharger discharged kerosene to Waters of the U.S. During the February 2011 spill, a kerosene spill within the bulk AST secondary containment structure flowed out of the secondary containment, through an open drainage valve, to a drainage v-ditch, which drains to Clear Stream. Floating kerosene product was observed in Clear Stream and identified in analytical sample from Clear Stream. Clear Stream is a tributary of Spanish Creek, which is itself, a major tributary of the North Fork of the Feather River, a

water of the U.S. The discharge began on 21 February 2011, the date the Kerosene was spilled into the secondary containment structure and stopped on 22 February 2011, the date the opened valve from the secondary containment structure was closed.

Kerosene is a "pollutant" as defined by Section 502 (6); Clear Stream is a "navigable water" as defined by Section 502 (7); and the release of kerosene to Clear Stream through the v-ditch was a "discharge of a pollutant" as defined by Section 502(12) of the Clean Water Act (33 U.S.C. §1362). Thus, the discharger violated section 301 of the Clean Water Act and Section 13385(a)(5) of the California Water Code by discharging kerosene to Clear Stream through the secondary containment structure and v-ditch for a total of 2 days.

#### **D. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY**

Administrative civil liability (ACL) may be imposed pursuant to the procedures described in Water Code section 13323. The complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

Pursuant to Water Code section 13385(c)(1) the Central Valley Water Board may impose civil liability in an amount not to exceed \$10,000 per day for each day of violation, plus \$10 per gallon in excess of 1,000 gallons per discharge.

Water Code section 13385(e) requires the Central Valley Water Board to consider several factors when determining the amount of civil liability to impose pursuant to section 13385. These factors include: "...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."

The 2009 State Water Resources Control Board Water Quality Enforcement Policy, Section VI, provides a penalty calculation methodology for Regional Water Boards to use in administrative civil liability cases. The penalty calculation methodology enables the water boards to fairly and consistently implement liability provisions of the Water Code for maximum enforcement impact to address, correct, and deter water quality violations. The penalty calculation methodology provides a consistent approach and analysis of factors to determine liability based on the applicable Water Code section.

## 1. Step 1: Potential for Harm for Discharge Violations

Pursuant to the Enforcement Policy, the Central Valley Water Board shall calculate actual or threatened impacts to beneficial uses using a three-factor scoring system to determine a final score for potential for harm. The three factors utilized in the determination of the potential for harm score include: (a) the potential for harm to beneficial uses; (b) the degree of toxicity of the discharge; and (c) the susceptibility of the discharge to cleanup or abatement for any violation or group of violations. The scores for these factors are then added to give a final Potential for Harm score.

As further detailed below, a score of **eight** is assigned to Step 1 of the penalty calculation.

### a. Factor 1: Harm or Potential Harm to Beneficial Uses

This factor evaluates direct or indirect harm or potential for harm from the violation. A score between 0 (negligible) and 5 (major) is assigned in accordance with the statutory factors of the nature, circumstances, extent and gravity of the violation.

The discharge of approximately 100 gallons of kerosene resulted in moderate harm to the beneficial uses of Clear Stream, Spanish Creek, and the Feather River. Accordingly a score of **three** has been assigned to Factor 1 of the penalty calculation. The Enforcement Policy defines moderate as:

“Moderate - moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects).”

The discharge of kerosene to a small stream, such as Clear Stream, can be reasonably expected to cause severe impact to beneficial uses of the stream. Beneficial uses of the North Fork of the Feather River (and thence Clear Stream), include municipal and domestic supply, contact and non-contact recreation, power generation, cold freshwater habitat, cold water spawning and wildlife habitat. Beneficial uses likely impacted by the kerosene release include cold freshwater habitat, contact and non-contact recreation, and cold water spawning and wildlife habitat. Kerosene is a hazardous substance under the Health and Safety Code.

### b. Factor 2 : Physical, Chemical, Biological or Thermal Characteristics of the Discharge

The characteristics of the discharged material posed a **significant** (score of 4) risk or threat to potential receptors. The Enforcement Policy defines above-moderate as:

“Discharged material poses a significant risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material far exceed risk factors or receptor harm is considered imminent.”

Kerosene contains high levels of toxic pollutants, carcinogens, potential carcinogens, oxygen-demanding organic compounds, and other pollutants. The high degree of toxicity of kerosene poses a direct threat to human and ecological receptors. Kerosene is a hazardous substance under the Health and Safety code. Accordingly, a score of **four** is assigned to Factor 2.

**c. Factor 3: Susceptibility to Cleanup or Abatement**

Pursuant to the Enforcement Policy a score of zero (0) is assigned for this factor if 50 percent or more of the discharge is susceptible to cleanup or abatement. A score of one (1) is assigned for this factor if less than 50 percent of the discharge is susceptible to cleanup or abatement.

In this case, very little of the discharged kerosene was susceptible to cleanup or abatement. The spill was not responded to for two days, which allowed the kerosene to disperse broadly and precluded opportunities for cleanup and abatement. Accordingly, a score of **one** is assigned to Factor 3.

Based on the above scores for harm to the environment (moderate, score of 3), risk to potential receptors (significant risk, score of 4), and susceptibility to cleanup (less than 50 percent cleaned up, score of 1), a total score of **8** is assigned to Step 1 of the penalty calculation methodology.

**2. Step 2: Assessments for Discharge Violations**

Water Code section 13385(c) states that the Central Valley Water Board may impose civil liability pursuant to section 13323 in an amount up to ten thousand dollars (\$10,000) for each day in which the violation occurs and where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, provides for an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. Since the exact volume discharged is unknown and is estimated to be less than 1,000 gallons, liability is proposed on a per day basis only.

**Per Day Assessment**

To calculate the initial liability amount on a per day basis, a **Per Day Factor** is determined from Table 2 of the Enforcement Policy (page 15) by using the **Potential for Harm score** (step 1) and the extent of **Deviation from Requirements** (minor, moderate, or major) of the violation.

a. Deviation from Requirement (Major)

The deviation from requirement is **Major**. The discharge of pollutants to the Clear Stream occurred without authorization under an NPDES permit. Therefore, the Discharger is assessed a major deviation from requirements where the requirement has been rendered ineffective in its essential functions.

b. Per Day Factor (0.600)

A Per Day Factor of 0.600 is selected from Table 2 of the Enforcement Policy.

a. Initial Amount of the ACL

The maximum per day liability amount allowed under Water Code section 13385(a)(1) is ten thousand dollars (\$10,000) for each day in which the violation occurs.

As the discharge of kerosene began on 21 February 2011 and continued until 22 February 2011, the number of days of violation is two. The initial base amount of the ACL is calculated to be twenty thousand dollars (\$20,000). The base amount is multiplied by the per day factor of 0.600 assigned in step 2 b. above, to give an initial amount of the ACL of \$12,000.

**3. Step 3: Per Day Assessments for Non-Discharge Violations**

This step does not apply. Non-discharge violations are not alleged in the ACL Complaint.

**4. Step 4: Adjustment Factors**

The Enforcement Policy describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to clean-up or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

a. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of **1.3** has been selected as detailed below.

The Discharger was **negligent per se** because it violated the regulatory requirements of the SPCC plan, and this directly resulted in the discharge of petroleum to Clear Stream. Reasonably prudent bulk tank operators would have recognized that the design of this secondary containment structure that drained directly to surface waters would contribute to a violation of the exact type experienced in Quincy in March 2011. In fact, the majority of Bulk Tank operators in the Central Valley Region operate above ground storage tanks that cannot discharge accumulated stormwater to surface waters and must be removed by shipping the stormwater to an appropriate treatment facility. Central Valley Water Board staff conducted inspections of the Quincy facility in the early 1990s and told the former operator of the facility that this design was improper and not protective of water quality. In addition, the Discharger was negligently operating in direct conflict with their SPCC plan by having the drainage valve in the 'open' position. The SPCC plan states that the secondary containment drainage valve would remain closed at all times, except to discharge unpolluted accumulated rainwater. If the SPCC plan had been adhered to, and the valve were kept closed, the discharge of kerosene would never have occurred.

The Central Valley Water Board has considered mitigating factors to reduce this number downward, but is not persuaded to make any adjustments to this factor. The Central Valley Water Board recognizes that the initial kerosene spill into the secondary containment structure was the result of a negligent act of a third-party caused by an accidental delivery of kerosene to an AST that was already full. However, the third party trucking company was not responsible for the valve of the AST being left open. In fact, the entire point of having a secondary containment structure is to hold petroleum on-site in case of accidental overflows. The Discharger was fully responsible for maintaining the secondary containment structure in a fashion that was most protective to water quality. The Discharger's failure to properly operate the secondary containment structure lead to the discharge of petroleum to surface waters.

In addition, the Central Valley Water Board recognizes that the Discharger submitted an Aboveground Storage Tank Upgrade Work Plan in October 2007 as required by CAO R5-2007-0706. The work plan proposed removal of a dilapidated horizontal AST, installation of a storm water treatment system to treat water that accumulates in secondary containment, and obtaining an NPDES permit to discharge the treated storm water to Clear Stream. The Central Valley Water Board admits that it never responded to this work plan nor provided comment. However, this lack of response did not prevent the Discharger from moving forward with a plan to permanently close the drainage valve and remove accumulated stormwater and ship it off-site for treatment. Implementation of these measures would have prevented the March 2011 kerosene spill from occurring.

b. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation. In this case a Cleanup and Cooperation multiplier of **1.2** has been selected.

Upon detecting the spill, the Discharger did not respond quickly. In fact, OES was not notified of the spill until two days after the spill occurred. In addition, Central Valley Water Board staff noted upon arrival to the site two days following the spill, that the Discharger did not have any emergency spill response equipment on-site and was not participating in the clean-up. SST (the transport company that inadvertently overfilled the tank) hired a clean-up firm to perform the clean-up, both with-in secondary containment and the aftermath of the kerosene discharge to Clear Stream. It is the Prosecution Team's understanding that this clean-up was solely paid for by SST, with no assistance from the Discharger.

c. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1.1 is recommended as the Discharger has a history of violations and the site is regulated by Clean-up and Abatement Order R5-2007-0706.

**5. Step 5: Determination of Total Base Liability Amount**

The Total Base Liability amount of **\$20,592** is determined by adding the initial liability amounts for each violation and applying the adjustment factors in step 4. Accordingly, the Total Base Liability amount for the violations is calculated by multiplying the total base liability by the adjustment factors:

$$\begin{aligned} & \text{(Initial Base Liability) X (Culpability) X (Cleanup) X (History of Violations) =} \\ & (\$12,000) \text{ X } (1.3) \text{ X } (1.2) \text{ X } (1.1) = \$20,592 \end{aligned}$$

The maximum penalty amount allowed by statute is \$20,000. Therefore the total base liability is adjusted downward to **\$20,000**.

**6. Step 6: Ability to Pay and Ability to Continue Business**

The Enforcement Policy provides that if the Central Valley Water Board has sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward. Similarly, if a violator's ability to pay is greater than similarly situated dischargers, it may justify an increase in the amount to provide a sufficient deterrent effect.

The Prosecution team is not in receipt of any financial information that suggest an inability of the Discharge to continue in business if the Total Base Liability were to be paid, nor any information suggesting that the Discharger's ability to pay is greater than or less than similarly situated dischargers. The Discharger is a corporation that owns and operates several bulk fuel distribution facilities across northern California. It is an ongoing business that generates profits. Public records indicate that Sierra Energy generated sales totaling \$50,000,000 in 2010. The Regional Board has no reason to believe that it cannot pay the liability proposed under this Complaint.

### **7. Step 7: Other Factors as Justice May Require**

The Enforcement Policy provides that if the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express findings are made to justify this. In addition, the costs of investigation should be added to the liability amount according to the Enforcement Policy.

The Prosecution team recommends no adjustments to the proposed maximum liability of \$20,000.

### **8. Step 8: Economic Benefit**

The Enforcement Policy directs the Central Valley Water Board to determine any economic benefit of the violations based on the best available information, and suggests that the amount of the administrative civil liability should exceed this amount whether or not economic benefit is a statutory minimum. Economic benefit would be considered with this type of event over time, where there are accrued costs associated with not protecting Clear Stream from this type of discharge. Implementation of appropriate best management practices (BMPs) would have prevented this discharge from occurring. Furthermore, if the discharger had updated its SPCC Plan and trained its staff about the proper operation of the secondary containment structure, a spill of this type may not have occurred.

The Prosecution Team estimates the economic benefit for this violation to be \$7,500. This is based on an assumption that: 1) it would have taken one full time employee at the Quincy facility making \$30,000 per year approximately 5% of their time to attend training and perform proper inspections of the secondary containment structure (\$1,500); and 2) the Discharger did not implement BMPs for at least 5 years, the date of the last updated SPCC plan in 2006 until 2011, the date of the kerosene spill. The proposed liability exceeds the estimated economic benefit of the violations plus 10%, which is the minimum amount of recovery required by the Enforcement Policy.

### **9. Step 9: Maximum and Minimum Liability Amounts**

The maximum liability that the Central Valley Water Board may assess pursuant to Water Code section 13385(a)(1) is ten thousand dollars for each day that the violation occurs. Therefore, the maximum liability the Central Valley Water Board may assess is **\$20,000**.

### **10. Step 10: Final Liability Amount**

This technical analysis provides the foundation for the proposed civil liability of **\$20,000** for the discharge of kerosene to Clear Stream, Spanish Creek and thence the Feather River, lasting two days.

The proposed amount of civil liability attributed to the discharge of kerosene in violation of the Clean Water Act and the California Water Code was determined by taking into consideration the

factors in Water Code sections 13350 and 13385, and the penalty calculation methodology in the 2009 Enforcement Policy.

The proposed civil liability is appropriate for this kerosene discharge based on the following reasons:

- a. The discharge of kerosene to sensitive waters of the State was a catastrophic occurrence that could have been prevented had the Discharger followed its own SPCC plan.
- b. The high degree of toxicity of kerosene had the potential to negatively impact beneficial uses.
- c. The discharge of kerosene created a public nuisance in Clear Stream, which lingered for several days.
- d. The proposed civil liability assessment is sufficient to recover costs incurred by staff of the Central Valley Water Board, and it serves as a deterrent for future violations.

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R5-2013-0536

ISSUED TO  
TOMS SIERRA COMPANY, DBA SIERRA ENERGY  
QUINCY BULK FUEL PLANT, 188 CRESCENT STREET, QUINCY  
PLUMAS COUNTY

SCHEDULED FOR 25/26 JULY 2013

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 Toms Sierra Company, doing business as Sierra Energy, alleging violations of Section 301 of the Clean Water Act and Water Code section 13385 for the discharge of red-dye kerosene into Clear Stream. The ACL Complaint proposes that the Central Valley Water Board impose administrative civil liability in the amount of \$20,000. A hearing is currently scheduled to be conducted before the Board during its 25/26 July 2013 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](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. 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.

### **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 David Coupe, attorney. Members of the Prosecution Team are: Pamela Creedon, Executive Officer; Clint Snyder, Assistant Executive Officer; Bryan Smith, Supervising Water Resources Control Engineer; Grant Stein, Engineering Geologist; and Ellen Howard, Attorney.

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.

### **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. Toms Sierra Company dba Sierra Energy

### **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

11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670

Phone: (916) 464-4726

klandau@waterboards.ca.gov

David P. Coupe, Senior Staff Counsel  
c/o San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
Phone: (510) 622-2306  
Fax: (510)622-2460  
E-mail: dcoupe@waterboards.ca.gov

**Prosecution Team:**

Clint Snyder, Assistant Executive Officer  
Central Valley Water Board, Redding Office  
364 Knollcrest Drive, Suite 205  
Redding, CA 96022  
Phone: (530) 224-3213; fax: (530) 224-4857  
csnyder@waterboards.ca.gov

Ellen Howard, Staff Counsel  
State Water Resources Control Board, Office of Enforcement  
Physical Address: 1001 I Street, Sacramento, CA 95814  
Mailing Address: P.O. Box 100, Sacramento, CA 95812  
Phone: (916) 341-5677; fax: (916) 341-5284  
Ellen.Howard@waterboards.ca.gov

**Discharger**

Brad Barnett, President  
Toms Sierra Company dba Sierra Energy  
1020 Winding Creek Road, Suite 100  
Roseville, CA 95678  
Phone: (916) 218-1600  
E-mail: bradbarnett@sierraenergy.net

M. Taylor Florence  
Locke Lord, LLP  
500 Capitol Mall, Suite 1800  
Sacramento, CA 95814  
Phone: (916) 930-2582  
E-mail: tflorence@lockelord.com

**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 (see Gov. Code, § 11430.10 et seq.). 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 may 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 364 Knollcrest Drive, Suite 205, Redding, CA 96002. 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](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 Clint Snyder (contact information above) for assistance obtaining copies.

### **Questions**

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

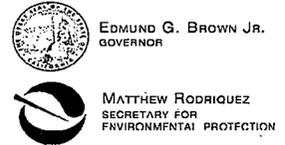
## IMPORTANT DEADLINES

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

26 April 2013	<ul style="list-style-type: none"> <li>▪ Prosecution Team issues ACL Complaint, Hearing Procedure, and other related materials.</li> </ul>
6 May 2013	<ul style="list-style-type: none"> <li>▪ Objections due on Hearing Procedure.</li> <li>▪ Deadline to request "Designated Party" status.</li> </ul> <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>
10 May 2013	<ul style="list-style-type: none"> <li>▪ Deadline to submit opposition to requests for Designated Party status.</li> </ul> <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>
24 May 2013	<ul style="list-style-type: none"> <li>▪ Discharger's deadline to submit <i>90-Day Hearing Waiver Form</i>.</li> </ul> <p><u>Electronic or Hard Copy to:</u> Prosecution Team Primary Contact</p>
30 May 2013*	<ul style="list-style-type: none"> <li>▪ Advisory Team issues decision on requests for designated party status.</li> <li>▪ Advisory Team issues decision on Hearing Procedure objections.</li> </ul>
5 June 2013*	<ul style="list-style-type: none"> <li>▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements," above.</li> </ul> <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>
25 June 2013*	<ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ Interested Persons' comments are due.</li> </ul> <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>
2 July 2013*	<ul style="list-style-type: none"> <li>▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections.</li> <li>▪ Deadline to submit requests for additional time.</li> <li>▪ 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.</li> </ul> <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>
3 July 2013* <sup>†</sup>	<ul style="list-style-type: none"> <li>▪ Prosecution Team submits Summary Sheet and responses to comments.</li> </ul> <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>
25/26 July 2013*	<ul style="list-style-type: none"> <li>▪ Hearing</li> </ul>

*\* 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.*

*<sup>†</sup> 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.*



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## Central Valley Regional Water Quality Control Board

29 April 2013

Mr. Brad Barnett  
Toms Sierra Company  
1020 Winding Creek Road, Suite 100  
Roseville, CA 95678

**CERTIFIED MAIL:**  
7012 2920 0001 2252 6849

Mr. Taylor Florence  
Locke Lord, LLP  
500 Capitol Mall, Suite 1800  
Sacramento, CA 95814

**CERTIFIED MAIL:**  
7012 2920 0001 2252 6832

### **90-DAY WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY R5-2013-0536, TOMS SIERRA COMPANY DBA SIERRA ENERGY, QUINCY BULK FUEL PLANT, 188 CRESCENT STREET, QUINCY, PLUMAS COUNTY**

On 26 April 2013 the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2013-0536 (ACL) to Toms Sierra Company, doing business as Sierra Energy, alleging violation of Section 301 of the Clean Water Act and Water Code section 13385 for the discharge of red-dye kerosene into Clear Stream. The original ACLC package did not contain the attached *90 Day Hearing Waiver Form*. Please find a copy of this form attached to this correspondence.

Water Code section 13323 provides that a Discharger has the right to a hearing before the Central Valley Water Board within 90 days after issuance of an ACL. However, you may elect to waive this right if you prefer to pay the proposed penalty in full, engage in settlement communications, or extend the hearing dates or hearing deadlines included in the Hearing Procedures attached to the ACL. If you prefer to waive your right to a hearing within 90 days you must submit the attached waiver form to the Central Valley Water Board by 24 May 2013.

If you have any questions, please contact me at (916) 341-5677 or [ehoward@waterboards.ca.gov](mailto:ehoward@waterboards.ca.gov).

A handwritten signature in black ink, appearing to read "Ellen Howard".

Ellen Howard, Esq.  
Counsel for the Prosecution Team

Enclosure: 90-Day Waiver Form for Administrative Civil Liability

GCS:lmw

cc by email: Ms. Pamela Creedon, EO, Central Valley Water Board, Rancho Cordova  
Mr. Kenneth Landau, AEO, Central Valley Water Board, Rancho Cordova  
Mr. David Coupe, State Water Board Office of Chief Council, Oakland  
Ms. Ellen Howard, State Water Board Office of Enforcement, Sacramento  
Mr. Gerald Sipe, Plumas County Dept. of Environmental Health, Quincy

S:\Programs\Groundwater Unit\Cases\Sierra Energy\July\_2013\_Board\_Meeting\_ACLC\Sierra Energy ACL R5-2013-0536 Waiver  
Cover Ltr.Doc

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the Toms Sierra Company (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0536 (hereafter Complaint). 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. The person who has been issued a complaint may waive the right to a hearing."

**(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **twenty thousand dollars (\$20,000)** by check that references "ACL Complaint R5-2013-0536" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **24 May 2013**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant 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. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount 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.

**(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** 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 I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

**(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. 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. 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.

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(Print Name and Title)

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(Signature)

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(Date)