

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2015-0019

IN THE MATTER OF

RECOLOGY, INC. DBA RECOLOGY YUBA SUTTER
RECOLOGY YUBA SUTTER LANDFILL
YUBA COUNTY

This Order is issued to Recology, Inc. dba Recology Yuba Sutter (hereafter Discharger or Recology) pursuant to California Water Code section 13350, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on findings that the Discharger violated provisions of Amended Cleanup and Abatement Order R5-2013-0704-01.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds:

BACKGROUND

1. The Discharger owns and operates the Recology Yuba Sutter Landfill, a closed Class III landfill located at 3001 N. Levee Road, Marysville in Yuba County.
2. On 14 May 2003, the Central Valley Water Board issued WDRs Order R5-2003-0093 which prescribes requirements for post-closure maintenance and corrective action for waste management units (WMUs) LF-1, LF-2, and LF-3. The WDRs contain, among other items, prohibitions, and monitoring and reporting requirements with which the Discharger must comply.
3. Several active operations are conducted on the cover of WMU LF-1, including storage and processing of green waste, green waste composting, a materials recovery facility, a vehicle maintenance yard, and storage of white goods. The compost operation covers approximately 16 acres of WMU LF-1 and is permitted by the County to accept a maximum of 400 tons per day of green waste, with a capacity of 40,000 tons of material on-site at any one time. This Order only addresses violations at the composting area of WMU LF-1.

PREVIOUS ENFORCEMENT

4. On 29 August 2013, the Assistant Executive Officer of the Central Valley Water Board issued Cleanup and Abatement Order (CAO) R5-2013-0704 to address the issues that have resulted in storm water bench mark exceedances, landfill gas (LFG) generation, migration of LFG into the groundwater, and groundwater impacts.

5. In regard to the composting¹ area, Ordered Paragraph 9 of the CAO required the Discharger to enhance its operations and implement measures properly control, drain, and collect leachate², in order to prevent an unpermitted discharge of waste from the facility. The CAO required the Discharger to prepare a *Compost Area Leachate Collection Work Plan* (Work Plan) describing how leachate generated at the compost area would be managed. As a component of the Work Plan, the CAO required the Discharger to describe how its contact storm would be collected, conveyed, and stored in a containment system that met the minimum capacity specifications of Table 4.1 of Title 27 (a 1,000-year, 24-hour storm event). The CAO also required that the Work Plan include a water balance to justify the size of the containment system installed. Finally, the Work Plan needed to provide a construction schedule to ensure that the conveyance and containment systems were installed and operational by 1 October 2014.
6. The Discharger submitted the *Compost Area Leachate Collection Work Plan* on 31 January 2014. Upon review of the Work Plan, Board staff notified the Discharger in a Notice of Violation dated 14 May 2014 that it was incomplete and did not meet the intent of Ordered Paragraph 9 and therefore the Discharger was in violation of the CAO. In order for the Discharger to timely comply with the 1 October 2014 deadline described above, staff required the Discharger to submit weekly progress reports starting on 30 May 2014 describing the specific actions the Discharger had taken to comply with Ordered Paragraph 9 of the CAO.
7. Staff met with the Discharger on 19 August 2014 to discuss the leachate collection system requirements in Ordered Paragraph 9 to ensure that the Discharger complied with the CAO in a manner that would support its continued compost operations at the facility. The meeting was summarized in a letter from the Discharger dated 27 August 2014, indicating the Discharger will install a collection, storage, and transfer system designed to accommodate runoff from the compost area for the 25-year, 24-hour storm event. The Discharger also acknowledged staff's concern over the stormwater runoff model and onsite storage capacity.
8. In an email dated 28 August 2014, staff responded to the 27 August 2014 letter confirming staff's understanding of the 19 August 2014 meeting which included confirmation of the Parties' agreement that all rainfall, up to and including, a 25-year, 24-hour storm event³ must be collected from the compost area and the CAO will be revised to require the collection of all rainfall, up to including, a 25-year, 24-hour storm event at the compost area. The Prosecution Team also stated if Recology failed to meet this agreed upon standard, that additional enforcement would be recommended.
9. On 13 January 2015, the Assistant Executive Officer issued Amended CAO R5-2013-0704-01 (Amended CAO) which memorialized the agreement between the Parties

¹ Unless otherwise specified in this Order, the term "compost area" includes the green waste area.

² As used in this Order, "leachate" refers to a mixture of leachate from the compost piles and green waste area which is mixed with storm water.

³ Defined as 3.16 inches of rain in a 24-hour period.

regarding the implementation of the 25-year, 24-hour storm event design standard for the compost leachate collection system. The effective date of the Amended CAO, as agreed upon and stipulated to by the Parties, is 28 August 2014 (i.e, the date of subsequent electronic confirmation for all regulatory and enforcement purposes).

10. On 4 September 2014 staff conducted a site inspection of the compost area and leachate collection system. Staff met with the Discharger and their primary consultants, Golder Associates. The group reviewed a current site map showing placement of storage tanks, sumps, and drainage controls. During this meeting, the Discharger told staff that an additional six storage tanks would be placed onsite for a total of 12, 21,000-gallon Baker Tanks prior to the 2014/2015 wet season. Staff prepared a Site Inspection Report dated 30 September 2014 reflecting these changes to the compost area leachate collection system. The Site Inspection Report indicated that the compost area had not met the intent of the Work Plan, the agreed upon 25-year, 24-hour storm event design standard, or the CAO operational deadline of 1 October 2014.
11. In accordance with CAO Ordered Paragraph 15, the Discharger is required to submit Quarterly Progress Reports describing work completed to comply with the requirements in the CAO and work to be conducted the following quarter. On 29 October 2014 the Discharger submitted the third quarter 2014 progress report. The report reflects the Discharger's understanding that its compost water management system must capture all rainfall up to and including a 25-year, 24-hour storm event (i.e. 3.16 inches in a 24 hour period). The report indicated that the compost water management system was installed and operational by 1 October 2014 in accordance with the CAO Ordered Paragraph 9 and Amended CAO Ordered Paragraph 9.
12. The first storms of the 2014/2015 wet season occurred approximately late-November with several mild storms, during which the Discharger was able to observe the performance of the compost leachate collection system. Total onsite storage capacity at the start of the wet season was 252,000-gallons. On 3 December 2014 staff conducted an inspection of the compost area during a storm event. During the 24-hour period from 4:00 am on 3 December to 4:00 am on 4 December, approximately 1.83 inches of precipitation fell on the site, as measured at the Yuba County Airport weather station. Staff recorded observations of the performance of the compost leachate collection system in the 18 December 2014 Site Inspection Report, as discussed below.
13. Staff observed multiple operational issues with the collection system during the 3 December 2014 site inspection. Specifically, staff noted that leachate ponded on the compost pad instead of draining into the collection system, the pumping capacity of the sumps was inadequate, the storage tanks were overflowing and spilling, and staff observed leachate discharging off-site to the "Hog Farm" area. The observed lack of collection and storage capacity took place when less than 1.83 inches of precipitation had fallen, which is significantly less than the 25-year, 24-hour storm event of 3.16 inches. Staff concluded that as of 3 December 2014, the installed compost leachate collection system did not meet the Amended CAO requirement to

contain all leachate up to a 25-year, 24-hour storm. Staff immediately e-mailed the Discharger to express concerns about the lack of capacity and violation of the CAO. An inspection report and Notice of Violation was subsequently issued on 18 December 2014.

14. The Discharger's water balance includes disposal of leachate to the City of Marysville (City)'s wastewater treatment plant, or POTW. Disposal of leachate is a critical part of the system's performance to ensure that the Discharger is able to collect all contact water generated by all storms, up to and including, the 25-year, 24-hour design standard. According to the City, during the 24-hour period between the 3-4 December 2014, the Discharger disposed of approximately 160,000 gallons of leachate to the POTW. However, the Discharger originally based its 30 July 2014 revised water balance analysis on the presumption that a maximum of 65,000 gallons per day could be disposed of at the City's POTW. Despite disposing an increased volume to the POTW, storage capacity of the compost leachate collection system was overrun with leachate during this storm event, resulting in the unauthorized off-site discharge to the "Hog Farm" area. This further indicates that the compost leachate collection system was undersized during the 3-4 December 2014 storm event and not capable of complying with the 25-year, 24-hour design standard.
15. In emails dated 4 December and 5 December 2014, the Discharger described additional tasks that would be conducted to address areas of concern and potential violations of the WDRs and CAO. Following the 3-4 December 2014 storm event, the Discharger added eight additional storage tanks for a total of 20, 21,000 gallon Baker Tanks bringing the onsite capacity to approximately 420,000-gallons; installed additional BMPs to help control sheet flow and discharge rate, replumbed storage tanks for better distribution, reconfigured piping, and improved drainage inlets.
16. On 5 December 2014 a Revised Monitoring and Reporting Program (MRP) was issued which requires Recology to measure and document the amount of stormwater falling on the compost area, the amount collected, and the disposal method. The Revised MRP also requires the Discharger to submit monthly reports evaluating the compost leachate collection system, summarizing all observations, evaluating how the system is performing compared to the 25-year, 24-hour storm event standard, and submit hauling receipts if leachate is trucked offsite.
17. On 8 December 2014 the Discharger submitted a summary of actions taken following the 3-4 December 2014 storm event. The attached Technical Memorandum prepared by Golder Associates included recommendations to improve the compost leachate collection system's performance, including preventing clogging, improving pumping capacity, and increasing storage. Based on these recommendations, the Discharger mobilized an additional eight 21,000 gallon Baker Tanks for a total of 28 tanks (588,000 gallons) of storage.
18. On 9 December 2014, the Assistant Executive Officer issued an Investigative Order pursuant to Water Code section 13267 (13267 Order) requiring the Discharger to

submit technical reports in response to the 3-4 December 2014 storm event. The 13267 Order required, among other things, a reevaluation of the run-off coefficients used in the water balance, recalibration of the compost leachate collection system's water balance based on wet season data to date, and, as a component of the water balance analysis, a discharge plan for leachate collected in storage tanks so the upgraded system maintains its capacity to capture leachate generated up to an including a 25-year, 24-hour storm event, or smaller storm events occurring over multiple days. Technical reports required by the 13267 Order were due on 16 December 2014.

19. On 11 December 2014 staff conducted a second inspection of the compost area during a storm event. The Discharger's weather station showed that rainfall at the site totaled 1.67 inches from 4:00 AM on 10 December to 2:00 PM on 11 December. Therefore, during the inspection, the rainfall was below the 25-year, 24-hour design standard. Staff observed that the Discharger had currently installed a total of 32 storage tanks with a capacity of 672,000-gallons, installed additional pumps and piping to more efficiently distribute leachate, and installed BMPs including straw bales, straw waddles, and sand bags. However, during this inspection, staff observed similar conditions as those observed during the 3 December site inspection, including overwhelmed sumps, a lack of pumping capacity, ponding of leachate on the compost pad due to poor drainage, and an offsite discharge of leachate to the "Hog Farm" area. An inspection report and Notice of Violation was subsequently issued on 5 January 2015.
20. On 16 December 2014 the Discharger submitted a partial response and Technical Report required under the 13267 Order. On 18 December 2014 the Discharger submitted additional information pertaining to the revised water balance analysis required under the 13267 Order. Staff's review found that a critical component of the water balance analysis remained outstanding. Though the Discharger has upgraded its compost leachate collection system to 39 Baker tanks, with a capacity to contain up to 819,000 gallons of leachate flowing into the collection system during a 25-year, 24-hour storm event, the water balance did not address the disposal element to balance the inflow into the system with the volume flowing out of the system. Recology did not provide information pertaining to its discharge plan for the leachate contained in its Baker tank storage system, nor did the Discharger provide a plan as to how long it would take to empty the storage tanks to ensure the collection system has adequate capacity to capture leachate from the next storm event, up to and including another 25-year, 24-hour event.
21. Board staff issued a Notice of Violation on 22 December 2014 to address the Discharger's incomplete responses to the 13267 Order submitted on 16 and 18 December 2014. The Discharger submitted follow-up information on 24 December 2014 in response to Board staff's NOV. Additional information on the water balance analysis as described above in Paragraph 20 was submitted on 15 January 2015. As of the date the Complaint was issued, Discharger had not yet submitted the application for an industrial discharge permit to allow it to discharge an approved volume of leachate into the City of Marysville's sewage collection system. The water

balance cannot be completed until the Discharger has a permit and know the conditions (volume and timing) for its discharge into the sewage collection system. The permit between the Discharger and the City of Marysville was finally submitted to the Board on 28 January 2015.

REGULATORY CONSIDERATIONS

22. As described above, the Discharger failed to install an operational compost leachate collection system by 1 October 2014 that complied with the agreed upon 25-year, 24-hour standard (as memorialized in the Amended CAO) to contain all leachate generated from rainfall events up to and including a 25-year, 24-hour storm event of 3.16 inches. As a result of this failure, at least two unauthorized releases of leachate offsite have occurred in violation of Ordered Paragraph 9 of Amended CAO R5-2013-0704-01. Furthermore, the Discharger did not complete a revised water balance analysis addressing both containment and disposal of leachate for its compost leachate collection system until 28 January 2015, the date the Discharger submitted its City of Marysville Wastewater Discharge Permit 15-05. Until the water balance analysis was completed, the Prosecution Team could not determine whether the additional modifications to the compost leachate collection system could contain all leachate generated from rainfall events up to and including a 25-year, 24-hour storm event of 3.16 inches. The Discharger remained in violation of Ordered Paragraph 9 of Amended CAO R5-2013-0704-01 until 28 January 2015, however, the number of days of violation cease accruing on 20 January 2015, the date the Complaint was issued.
23. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board.
24. Surface water drainage is to the southwest into the Yuba River, which is a tributary to the Feather River, which is tributary to the Sacramento River, which flows into the Sacramento-San Joaquin River Delta. The beneficial uses of the Yuba River are: agricultural irrigation; agricultural stock watering; industrial power supply; water contact recreation; other non-contact water recreation; warm and cold freshwater aquatic habitat; warm and cold migration; warm and cold spawning; wildlife habitat; and navigation. Groundwater flows generally to the south-southwest beneath the site with groundwater elevations ranging between 50 to 63 feet above mean sea level.
25. The beneficial uses of the underlying groundwater are municipal and domestic supply, agricultural supply, industrial service supply, and industrial process supply.
26. The Central Valley Regional Water Board may impose administrative civil liabilities for violations of a CAO and/or applicable Board orders pursuant to the procedures described in Water Code section 13323. This Administrative Civil Liability Order finds

that the Discharger's conduct constitutes a violation of Amended CAO R5-2014-0704-01 and imposes administrative civil liabilities pursuant to Water Code section 13350.

27. Issuance of this Administrative Civil Liability Order to enforce Division 7, Chapter 5.5 of the Water Code is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2) and all applicable law.

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13350

28. Water Code section 13350, subdivision (a)(1) states that a person who violates a cease and desist order or cleanup and abatement order shall be liable civilly and remedies may be proposed, in accordance with subdivision (d) or (e).
29. Water Code section 13350, subdivision (e), states in part:
 - (e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both.
 - (1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.
30. **Maximum Civil Liability for Violation of the Amended CAO:** Per Water Code section 13350(e)(1), civil liability administratively imposed by the Central Valley Water Board may not exceed \$5,000 per violation per day. The Discharger has been in violation of the Amended CAO from 1 October 2014 through at least the day of issuance of the Complaint (20 January 2015) for a total of 112 days. The maximum administrative civil liability that may be assessed for violating the Amended CAO is **five hundred and sixty thousand dollars (\$560,000)**.
31. **Minimum Civil Liability for Violation of the Amended CAO:** Pursuant to the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy), administrative civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation plus ten percent. The economic benefit gained by non-compliance has been calculated using the US EPA's BEN model. The invoices submitted by the Discharger have been used to calculate the economic benefit from 1 October 2014 (the CAO compliance date) through 20 January 2015 (date of issuance of the Complaint). With the information provided by the Discharger (consisting mostly of invoices showing costs to rent and mobilize additional Baker Tanks) at the time the Complaint was issued an extremely conservative estimate of the minimum economic benefit is calculated to be \$42,903. An administrative subpoena was issued concurrently with the Complaint, and required the Discharger to produce documents responsive to the subpoena to more completely determine the Discharger's benefit of noncompliance. In response to the administrative subpoena, the Discharger submitted additional

information regarding its benefit of noncompliance. Although the Prosecution Team did not quantify the Discharger's additional benefit of noncompliance based on this information, the estimate of \$42,903 in economic benefit is still a conservative estimate given some of the information regarding income, profits, and staff costs. Therefore, a conservative estimate of the minimum civil liability which must be assessed pursuant to the Enforcement Policy is **\$47,193** (i.e., economic benefit plus 10%).

ADMINISTRATIVE CIVIL LIABILITY

32. Pursuant to Water Code section 13327, the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, 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 violations, and other matters that justice may require.
33. 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 as outlined in Water Code sections 13327 and 13385(e). The entire Enforcement Policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf
34. The recommended administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, and Water Code sections 13327 and 13350(e), as explained in detail in Attachment A to this Order. 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.
35. As described above, the California Water Code's maximum penalty for the violations is \$560,000 and the minimum penalty is likely more than \$47,193. Based on consideration of the above facts, and after applying the penalty methodology, and considering the Discharger's ability to pay, the Central Valley Water Board has determined that civil liability be imposed administratively on the Discharger in the amount of **\$440,440**. The specific factors considered in this penalty are detailed in Attachment A.
36. Notwithstanding the issuance of this Order, 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.

IT IS HEREBY ORDERED that Recology, Inc shall pay a civil liability of \$440,440 as follows:

Within 30 days of adoption of the Order, the Discharger shall pay four hundred forty thousand four hundred and forty dollars (\$440,440) by check made payable to the *State Water Pollution Cleanup and Abatement Account*. The check shall have written upon it the number of this ACL Order.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 16 April 2015.

Original Signed By

PAMELA C. CREEDON, Executive Officer

Attachment A: Penalty Calculation Methodology

**ATTACHMENT A to Administrative Civil Liability Order R5-2015-xxxx:
Specific Factors Considered for Administrative Civil Liability
Recology Yuba Sutter Landfill, Yuba County**

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13327. Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final_111709.pdf.

Violation of Amended Cleanup and Abatement Order R5-2013-0704-01: Failure to install an operational compost leachate collection system by 1 October 2014 that complied with the required design standard of a 25-year, 24-hour storm event.

Ordered Paragraph 9 of Amended Cleanup and Abatement Order R5-2013-0704-01 (Amended CAO) requires the Discharger to submit a *Compost Area Leachate Collection Work Plan* that describes how leachate⁴ generated during storm events will be collected and directed to containment and conveyance systems which are designed, constructed, operated, and maintained so that the leachate is separated from the underlying landfill closure cover. Separating leachate from the landfill closure cover prevents the percolation of additional liquids into the underlying waste mass minimizing the generation of landfill gas and VOCs.

The Amended CAO gives the Discharger the option to choose either an above ground storage tank containment system or a surface impoundment (pond) system with at least a single liner as the compost area leachate collection system that will be described in the *Work Plan* and ultimately installed and operational by 1 October 2014, the start of the rainy season. Pursuant to the agreed upon design standard memorialized in the Amended CAO, the Parties stipulated that the chosen compost area leachate collection system would collect and contain all leachate generated during rainfall events up to and including the 25-year, 24-hour design storm event of 3.16 inches. Rather than constructing a new surface impoundment containment system as most other similar dischargers have done, Recology chose to construct an above ground storage tank containment system. In order to determine how many tanks the Discharger would need to have on-site to comply with the design standard, the *Work Plan* needed to include a water balance analyzing the flow of leachate in and out of the compost area leachate collection system during all storms up to and including a 25-year, 24-hour storm. The water balance is to include calculations justifying the volume of leachate generated during storm events, the volume of storage capacity that is required, and the volume of leachate disposed of between storms. The net difference between these values will determine the size of the tank system required to meet the storm standard in the Amended CAO. Despite the requirements in the Amended CAO and in a 9 December 2014 Water Code section 13267 Order, the Discharger has

⁴ For this document, the term "leachate" refers to a mixture of leachate from the compost piles and green waste area, mixed with storm water.

failed to submit an adequate water balance, and as described below, the current tank system cannot contain the leachate generated by all storms up to and including the 25-year, 24-hour event.

The Discharger failed to install an operational compost leachate collection system by 1 October 2014, the start of the rainy season, that complied with the agreed upon design standard as memorialized in the Amended CAO to contain all leachate generated by all storms up to and including a 25-year, 24-hour storm event of 3.16 inches. This failure is evidenced by the lack of storage capacity in the compost area leachate collection system resulting in an unauthorized offsite discharge of leachate witnessed by Board staff during the 3-4 December 2014 storm event of approximately 1.83 inches of precipitation. It is further evidenced by collection system capacity issues, including an unauthorized offsite discharge of leachate that persisted during Board staff's 11 December 2014 site inspection. Finally, the Discharger did not complete a revised water balance analysis addressing both containment and disposal of leachate for its compost leachate collection system until 28 January 2015, the date the Discharger submitted its City of Marysville Wastewater Discharge Permit 15-05. Until the water balance analysis was completed, the Prosecution Team could not determine whether the additional modifications to the compost leachate collection system could contain all leachate generated from rainfall events up to and including a 25-year, 24-hour storm event of 3.16 inches. The Discharger remained in violation of Ordered Paragraph 9 of Amended CAO R5-2013-0704-01 until 28 January 2015, however, the number of days of violation cease accruing on 20 January 2015, the date the Complaint was issued. These are three examples demonstrating the ongoing nature of the Discharger's failure to install an operational compost area leachate collection system by 1 October 2014 that complied with the 25-year, 24-hour design standard.

Step 1 – Potential for Harm for Discharge Violations

Although the Discharger caused unauthorized discharges of leachate from its compost area on 3 December and 11 December 2014, this Complaint only accounts for non-discharge violations of the Amended CAO.

Step 2 – Assessment for Discharge Violations

Although the Discharger caused unauthorized discharges of leachate from its compost area on 3 December and 11 December 2014, this Complaint only accounts for non-discharge violations of the Amended CAO.

Step 3 – Per Day Assessment for Non-Discharge Violations

The "per day" factor is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of the deviation from the applicable requirements.

Potential for Harm: The Enforcement Policy requires determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. In this case, the failure to install an operational compost leachate collection system by 1 October 2014 that complied with the required design standard of 25-year, 24-hour storm event continues to have the potential to impact beneficial uses. The requirement to install an operational conveyance and containment system as described and analyzed in the Discharger's *Compost Area Leachate Collection Work Plan*

prior to the rainy season was specifically included in the CAO to ensure that leachate generated during rain events is separated from the underlying landfill closure cover of LF-1 to prevent the generation of landfill gas (LFG). As noted in the CAO, LFG is migrating outside of the waste management unit and has impacted the unsaturated zone and shallow groundwater beneath the landfill. Furthermore, the Discharger's current composting operations generate leachate that is not properly controlled, drained, or collected so that when it rains the leachate mixes with storm water resulting in an unpermitted discharge of waste from the facility. The failure to install an operational system by the required deadline presents a particular threat to beneficial uses during the rainy season as stormwater continues to commingle with leachate without adequate conveyance and containment system in place.

Furthermore, sample results, summarized in Attachment 4 to the 6 March 2013 inspection report, exceeded water quality objectives for several constituents of concern expected to be present in compost leachate. Staff concluded in that inspection report that leachate from composting operations at the facility is likely designated waste as the sample results exceeded both stormwater benchmarks and water quality objectives. The characteristics of the compost leachate sampled at the facility were the impetus for Ordered Paragraph 9 of the CAO and Amended CAO – those characteristics warranted measures to prevent infiltration of leachate into the waste mass, to collect, direct, and contain leachate in a system where it would be isolated from the environment. The characteristics of the compost leachate in and of itself present a substantial threat to beneficial uses and the potential for harm to water quality is exacerbated where containment fails, regardless of whether the failure resulted in the waste reaching waters of the state or United States. Therefore, the potential for harm to beneficial uses is determined to be **Moderate**, which is defined as *“The characteristics of the violation present a substantial threat to beneficial uses and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm.”*

Deviation from Requirement: The Enforcement Policy requires determination of whether the violation represents either a minor, moderate, or major deviation from the applicable requirements. On 4 September 2014, Board staff conducted a site inspection of the facility. Prior to the inspection, staff and representatives of Recology reviewed a site map and informed Board staff that a total of 12 Baker Tanks would be on-site and operational prior to the 2014/2015 rainy season beginning on 1 October 2014. However, the compost area leachate collection system consisting of 12, 21,000 gallon Baker Tanks for a total capacity of 252,000 gallons was not sufficient to contain the required design storm event as observed by Board staff during the 3 December 2014 storm event. The undersized collection system became overwhelmed by leachate generated from the 2.17 inches of rainfall – leachate rose to the top of the sidewalls of the sump (indicating the sump was too small and the pumps were undersized for the flow into the sump), leachate overtopped several of the Baker Tanks, leachate spilled and drained back to the lower berm causing ponding over LF-1, and an unauthorized discharge of leachate to the “Hog Farm” area occurred because of undersized sumps and inadequate pumping capacity in relation to the rate of runoff generated from the compost area. Subsequent to the 3 December 2014 storm event, the Discharger implemented additional upgrades to its collection system as described in a letter dated 8 December 2014, including eight additional Baker Tanks for a

total of 420,000 gallons of storage capacity. On 10 December 2014, the Discharger had a total of 32 Baker Tanks on site with a total capacity of 672,000 gallons.

Board staff conducted another site inspection on 11 December 2014 to observe how the above-referenced upgrades to the leachate collection system after the 3 December storm event would perform during the next storm event. From the time Board staff arrived onsite at approximately 10 AM until staff concluded the inspection at 2 PM, approximately 1.67 inches of precipitation fell at the facility. Initial observations indicated the Discharger made a significant effort to increase storage capacity of the collection system by adding more Baker Tanks. However, staff noted that the Discharger's employees and contractors were working to plumb the storage tanks and install additional pumps, indicating that the new upgrades to the collection system were not fully operational at the time of this storm event. Board staff observed similar problems with the compost leachate collection system as those observed during the 3 December 2014 inspection, including ponding leachate, inadequate sump capacity, and inadequate pumping capability at the northern sumps, which ultimately resulted in another unauthorized discharge to a temporary unpermitted visqueen basin in the "Hog Farm" area. At the time of the inspection, staff concluded that the northern sumps do not have the pumping capability to move the volume of leachate generated during the storm event.

The CAO and Amended CAO required the submittal of a *Compost Area Leachate Collection Plan* by 1 February 2014. The plan was to describe how leachate would be collected, stored, and disposed of so that the Discharger could collect all contact stormwater would be collected from storm events up to and including a 25-year, 24-hour storm. The submittal date for this plan ensured that the Discharger would have a full construction season to install the collection and storage system prior to the 2014-2015 rainy season. However, at the time the Discharger submitted its *Compost Area Leachate Collection Plan* on 31 January 2014, the Discharger had not chosen the type of containment system that would be used to store leachate as required by Ordered Paragraph 9 of the CAO.

During the summer of 2014, the Discharger chose to install an aboveground Baker Tank system as its compost leachate collection system. The Discharger submitted a water balance analysis for its chosen above ground tank system in August 2014 that purported to justify the number of Baker tanks in the collection system. Board staff has experience calculating runoff volumes, and had serious concerns that the runoff coefficients used in the water balance resulted in an underestimation of the potential runoff volume. Staff expressed these strong concerns to the Discharger and its engineering consultants in various meetings and explained how the chosen coefficients contradicted the Discharger's certified low permeability compost pad. However, the Discharger continually stated that the values were appropriate and that it would be able to meet the requirements of Ordered Paragraph 9 of the Amended CAO. However, the December rainfall events proved that the coefficients were inappropriate.

In its 9 December 2014 Investigative Order, the Assistant Executive Officer required the Discharger to submit a revised water balance calibrated from rain data during the 3 December 2014 storm event by 16 December 2014. The Investigative Order was issued pursuant to Water Code section 13267. Despite reminders, phone calls, and inspections

by staff, the Discharger has not submitted a water balance demonstrating that it has adequate collection, storage, and disposal capacity for all storms up to and including a 25-year, 24-hour storm event. As of the date of this Complaint, a water balance demonstrating that the compost leachate collection system complies with the 25-year, 24-hour standard remains outstanding.. This Complaint does not directly assess penalties for the failure to submit the water balance by the 16 December 2014 deadline in the 13267 Order, but instead demonstrates the manner in which the failure to submit an adequate water balance perpetuates the Discharger's failure to have an operational system in place that complies with the 25-year, 24-hour storm event standard.

By approximately 16 December 2014, the Discharger upgraded the storage capacity of its collection system by adding more Baker Tanks totaling 819,000 gallons of storage. However, the Discharger has not addressed the disposal element to balance the inflow into the system with the volume flowing out of the system. Given that the Discharger increased its storage capacity, a disposal plan to ensure the collection system has enough capacity to capture leachate from the next storm event, up to and including a 25-year, 24-hour event, becomes even more critical. Without this information, the Discharger cannot install the additional upgrades or modifications necessary to contain all leachate generated from rainfall events up to and including a 25-year, 24-hour storm event. It is unknown when the Discharger will install a system that complies with the Amended CAO. The continuing failure to install an adequate collection, storage, and disposal system is a major deviation from the requirement to have such a system in place by 1 October 2014. The deviation from the applicable requirement (i.e., failure to install an operational compost area leachate collection system by 1 October 2014 in compliance with the 25-year, 24-hour design standard, as required) is determined to be **Major**, which is defined as "*The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).*"

Using Table 3 in the Enforcement Policy, the Per Day Factor of **0.55** is assigned. This value is to be multiplied by the days of violation and the maximum per day penalty, as shown below.

Violation 3 - Initial Liability Amount

The initial liability amounts for the violation calculated on a per-day basis is as follows:
1 October 2014 to 20 January 2015, for a total of 112 days of violation.

$$112 \text{ days} \times \$5,000 \times 0.55 = \$308,000$$

Total Initial Liability = \$308,000

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Culpability

The Enforcement Policy states, “[h]igher liabilities should result from intentional or negligent violations than for accidental, non-negligent violations. The test is what a reasonable and prudent person would have done or not done under similar circumstances.” A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. A culpability factor of 1 is considered a neutral assessment of culpability and is assigned when a discharger conducts itself as a reasonably prudent person under similar circumstances. In this case, the Discharger was given a multiplier of **1.3**. As early as 19 August 2014, well before the start of the rainy season, the Prosecution Team raised concerns during the Parties' face-to-face meeting and conference calls that the stormwater run-off model used to calculate the potential volume of leachate that would be generated during a 25-year, 24-hour storm event substantially underestimated the potential volume of leachate that would need to be collected, stored, and disposed of. Furthermore, the Prosecution Team urged the Discharger to consider adding more capacity to its collection system. However, the Discharger did not implement corrective actions responsive to staff's concerns prior to the first storm event of the 2015/2015 rainy season.

The Discharger is further culpable because it has known since the Cleanup and Abatement Order was adopted in August 2013 that the leachate collection, storage, and disposal system was required to be installed and operational by 1 October 2014. However, the Discharger did not adequately plan for this event and submitted an incomplete *Work Plan* on 31 January 2014. During recent phone conversations, the Discharger stated that designing an appropriately-sized leachate collection system is an “iterative” task. However, the Prosecution Team does not view the implementation of this requirement as an iterative process. This system should have been engineered and installed during the summer of 2014, and should not have experienced overflow events. Other dischargers, including Recology, have successfully designed leachate collection systems prior to a rainy season. Recology has a compost area at its Hay Road landfill, and constructed a pond system to collect runoff occurring during an annual average rainfall year plus a 100-year, 24-hour storm event.

The violation of the Amended CAO, and subsequent discharge events, are further aggravated by Recology's delay to resolve the volume of collected leachate it could dispose to the City of Marysville (City) sewer system. In its water balance and discussions with staff, Recology implied that it had an informal agreement with Marysville to dispose of up to 65,000 gallons per day. However, staff learned that Recology disposed of approximately 160,000 gallons during the December 3rd storm event and over 400,000 gallons during the December 11-12 storm event. In late December 2014, Board staff discussed the matter with the City, and learned that not only had Recology not applied for an industrial discharge permit, the elevated discharges caused the City to be concerned about flows at a lift station as well as the total volume of water being discharged to its

sewer ponds. Recology did not receive an industrial discharge permit from the City until 28 January 2015. Finally, a culpability factor of 1.3 is also justified because Recology has failed to submit the water balance required by the 9 December 2014 Water Code section 13267 Investigative Order. As discussed in the "Deviation from Requirement" section, until an adequate water balance is submitted, Recology cannot modify its leachate collection system to comply with the requirement to collect all storm events up to and including a 25-year, 24-hour event.

Cleanup and Cooperation

Regarding cleanup and cooperation, the Enforcement Policy examines "the extent to which the discharger voluntarily cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken." A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation.

A higher multiplier is appropriate because staff's inspection during the 3 December 2014 rain event found that the Discharger did not have an operations plan for the collection system or any staff on-site to monitor or manage the collection system. During the inspection, Board staff strongly suggested that the Discharger instruct its staff to go to the compost area and manage the system, and it was only at that point that the Discharger began to address the overflowing tanks, clogged pumps, and other non-functional parts of the system. A higher multiplier is also appropriate because the Discharger was still installing additional tanks during the 11 December 2014 rain event, has delayed in obtaining an industrial discharge permit, has delayed in calculating the final water balance, has delayed in submitting the technical reports required by the Water Code section 13267 Order, and has delayed in constructing a system to meet the conditions of the Amended CAO.

However, after Board staff's inspection and strongly worded email of 3 December 2014, the Discharger immediately took steps to increase the number of storage tanks and other equipment at the site. Although not a permanent solution, nor authorized by WDRs, the Discharger also constructed a visqueen pond to capture overflows from an undersized sump, and collected some of the leachate which had overflowed into the "Hog Farm" area.

Given the above, it is not appropriate to assign a multiplier value equal to or less than 1, and a multiplier of 1.1 or higher is appropriate for this situation. For this particular instance, a multiplier of **1.1** was used.

History of Violations

Where there is a prior history of repeat violations, a minimum multiplier of 1.1 should be used pursuant to the Enforcement Policy. A neutral factor of **1** has been assigned because the Discharger does not have a history of prior CAO violations at this facility.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

Violation 5 - Total Base Liability Amount

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$$\$308,000 \times 1.3 \times 1.1 \times 1 = \$440,440$$

Total Base Liability = **\$440,440**

Step 6 – Ability to Pay and Continue in Business

The ability to pay and to continue in business must be considered when assessing administrative civil liabilities. The Prosecution Team conducted an initial inquiry regarding the Discharger’s ability to pay based on publicly available information. The Discharger operates municipal solid waste disposal facilities and is the parent corporation to approximately 40 subsidiaries located throughout California, Nevada, Oregon, and Washington.⁵ The Discharger has an exclusive contract to pick up garbage and recycling in the City of San Francisco that is worth approximately \$300 million per year. In addition to this contract with the City to collect residential and commercial waste, the Discharger and the City also have another \$44 million contact proposed for the collection of waste from city departments. Since 2009, the City of San Francisco has paid the Discharger an average of \$5.5 million annually for garbage collection, or a total of about \$27.5 million, for its city departments, the largest share of the cost for the Recreation and Park Department.⁶

The Discharger also provides exclusive refuse collection, recycling, and transfer station operations to the Regional Waste Management Agency (Cities of Marysville, Live Oak, Yuba City, and Wheatland, and Yuba and Sutter Counties) for refuse collection. Recology Yuba Sutter realized a net revenue surplus⁷ of \$563,720 in Rate Year 2012 and a surplus of \$324,509 in Rate Year 2013. Because Rate Year 2015 also had a projected surplus of \$599,558, a rate small reduction for 2015 was allowed. Based on this information, there is no indication that the proposed administrative civil liability amount would result in undue hardship to the Discharger or affect its ability to continue in business.

Step 7 – Other Factors as Justice May Require

The costs of investigation and enforcement are “other factors as justice may require”, and could be added to the liability amount. The Central Valley Water Board has incurred over \$18,750 (125 hours at a statewide average of \$150/hour) in staff costs associated with the investigation and enforcement of the violations alleged herein. While this amount could be added to the penalty, the Prosecution Team, in its discretion, is not adding this amount to the total proposed liability.

Step 8 – Economic Benefit of Non-Compliance

⁵ <http://www.recology.com/index.php/recology-our-story>

⁶ <http://www.sfexaminer.com/sanfrancisco/proposed-44m-recology-contract-would-increase-city-departments-trash-pickup-costs/Content?oid=2912661>

⁷ [http://www.boarddocs.com/ca/com/Board.nsf/files/9NUUML7C2AFA/\\$file/Item13-attachmentrecology.pdf](http://www.boarddocs.com/ca/com/Board.nsf/files/9NUUML7C2AFA/$file/Item13-attachmentrecology.pdf)

Pursuant to the Enforcement Policy, administrative civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation plus ten percent. The economic benefit gained by non-compliance has been calculated using the US EPA's BEN model.

Pursuant to the Amended CAO, the Discharger was required to have a fully operational leachate collection/storage/disposal system, designed for all rainfall events up to and including a 25-year, 24-hour storm, by 1 October 2014. The Discharger has accrued an economic benefit since that date by failing to install an adequate system that complies with the requirements of the Amended CAO. As required by the Water Code section 13267 Order, the Discharger submitted invoices for the improvements (i.e., tanks, pumps, electrical, etc) it has installed at the compost area since 1 October 2014. These invoices submitted by the Discharger have been used to determine a partial economic benefit through approximately 16 December 2014. With the information provided by the Discharger (consisting mostly of invoices showing costs to rent and mobilize additional Baker Tanks) at the time the Complaint was issued an extremely conservative estimate of the minimum economic benefit is calculated to be \$42,903.

An administrative subpoena was issued concurrently with this ACL Complaint, and required the Discharger to produce additional information to more completely determine the economic benefit of non-compliance. For example, the Discharger continued to make a profit while accepting green waste and wood waste, and continued to make a profit selling the compost it produces. The Discharger could have elected to (a) remove all green waste, wood waste, and compost from its facility until it could comply with the CAO, or (b) reduce the foot-print of the compost pad (thereby reducing the volume of these products) to a size its leachate collection system could more adequately handle. However, the Discharger chose not to, and continued to profit while in violation of the Amended CAO. In response to the administrative subpoena, the Discharger submitted additional information regarding its benefit of noncompliance. Although the Prosecution Team did not quantify the Discharger's additional benefit of noncompliance based on this information, the estimate of \$42,903 in economic benefit is still a conservative estimate given some of the information regarding income, profits, and staff costs. Therefore, a conservative estimate of the minimum civil liability which must be assessed pursuant to the Enforcement Policy is \$42,903 plus 10%, or \$47,193.

Step 9 – Maximum and Minimum Liability Amounts

Minimum Liability Amount: The conservative estimate of economic benefit plus 10% = \$47,193

Maximum Liability Amount: The maximum administrative liability amount is the maximum amount allowed by Water Code section 13350, which is \$5,000 per day of violation. The maximum liability for this matter is **\$560,000** (\$5,000 x 112 days).

Step 10 – Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the alleged violations is **\$440,440**. This liability falls within the statutory maximum and minimum liability amounts.