

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0542

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

WILLIAM AND MARIA EGLESTON,
MERCED COUNTY

This Administrative Civil Liability (ACL) Complaint is issued pursuant to California Water Code¹ section 13323 to William & Maria Egleston, (Dischargers) for failing to submit a Report of Waste Discharge (RoWD) required under Water Code section 13260.

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (hereafter Central Valley Water Board or Board) alleges the following:

BACKGROUND

1. The discharge of irrigation return flows or storm water from irrigated lands in the Central Valley Region may contribute, or have the potential to contribute waste to ground and/or surface waters. The term "waste" is broadly defined in California Water Code section 13050, subdivision (d), and includes runoff of sediment or agricultural chemicals. The term "waters of the state" includes all surface water and groundwater within the state. (Wat. Code, § 13050(e).) The Central Valley Water Board is required to regulate discharges to waters of the state. (Wat. Code, § 13263.)
2. Attachment E of the Waste Discharge Requirements General Order for Discharges from Irrigated Lands within the Central Valley Region for Dischargers not Participating in a Third-Party Group (Order R5-2013-0100) and Attachment E of the Waste Discharge Requirements General Order for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (Order R5-2012-0116-R3) define "irrigated lands" as "[l]and irrigated to produce crops or pasture for commercial purposes; nurseries; and privately and publicly managed wetlands."
3. Central Valley Water Board staff developed a list of landowners in Merced County, including the Dischargers, which were likely to be discharging wastewater from irrigated lands to waters of the state and did not have regulatory coverage under waste discharge requirements (i.e., permits) or waivers of waste discharge requirements.
4. In developing this list, Central Valley Water Board staff used county assessor data and geographical land use data (i.e., the California Department of Conservation Farmland Mapping and Monitoring Program (FMMP) land use data) to assist in identifying potential discharges of agricultural wastewater to waters of the state and to identify owners and operators of agricultural lands who may not have complied with the Water Code. Both data sets were used to develop lists of parcels for which Water Code section 13260

¹ All references to the Water Code refer to the California Water Code unless otherwise noted.

Directive Letters were issued requiring landowners to obtain regulatory coverage for lands irrigated for a commercial purpose.

5. Evaluation of county assessor and FMMP data indicates that the Dischargers own 19.5 acres of agricultural land, as identified as Merced County Assessor's Parcel Number (APN) 056-040-049.
6. On 6 February 2013 and 18 April 2013, the Central Valley Water Board issued notices to the Dischargers describing new water quality regulations and options available to comply with the regulations. Copies of the notices are provided as Attachment A.
7. In 2013, the Dischargers enrolled in the East San Joaquin Water Quality Coalition (Coalition). In July 2014, the Dischargers' membership was canceled for failure to pay Coalition dues.
8. On 7 November 2014, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive letter (Directive) to the Dischargers, sent via certified mail. The Directive was sent based on information that the Dischargers' irrigated lands no longer had regulatory coverage. The Directive required the Dischargers to obtain regulatory coverage within 15 calendar days of receipt of the Directive. A copy of the Directive is provided as Attachment B.
9. The Dischargers received the Directive on 8 November 2014. The Dischargers neither obtained regulatory coverage by 23 November 2014 nor contacted the Board. A copy of the certified mail receipt for the Directive is included with the Directive in Attachment B.
10. Because the Dischargers failed to respond by the deadline specified in the Directive, a Notice of Violation (NOV) was sent to the Dischargers via certified mail on 8 January 2015. The Dischargers received the NOV on 10 January 2015. A copy of the NOV and the certified mail receipt are provided as Attachment C.
11. On 13 January 2015, the Dischargers submitted a Notice of Intent (NOI) to join the Coalition and a \$200 administrative fee to the Board. However, the Dischargers did not obtain regulatory coverage by joining a Coalition or other means. A copy of the NOI is provided as Attachment D.
12. On 17 December 2015, Board staff conducted a field inspection of the Dischargers' property at Merced County APN 056-040-049, and found evidence of land irrigated for a commercial purpose based on the type of crop, almonds, and the size of the operation, 19.5 acres. A copy of the inspection report is provided as Attachment E.
13. On 12 January 2016, Board staff contacted the Dischargers to discuss the impending ACL and a proposed penalty. Staff explained that the Dischargers should promptly obtain regulatory coverage or face a potential ACL Complaint. A copy of Record of Communication is provided as Attachment F.

14. On 5 February 2016, Board staff sent the Dischargers a notification letter via certified mail that an ACL Complaint would be issued if they did not obtain regulatory coverage and initiate settlement discussions by 24 February 2016. A copy of this “pre-ACL letter” is provided as Attachment G.
15. The Dischargers received the pre-ACL letter on 8 February 2016. The Dischargers contacted Board staff in response to the pre-ACL letter, but a settlement was not reached. A copy of the certified mail receipt for the pre-ACL letter is included with Attachment G.
16. On 28 March 2016, the Dischargers re-enrolled in the Coalition and paid the Coalition dues and back dues, thus came into compliance with the Directive. A copy of the email confirming the Dischargers’ Coalition membership is provided as Attachment H.

ALLEGED VIOLATIONS

17. The Dischargers failed to timely obtain Coalition membership or submit a RoWD as required by Water Code section 13260. The Directive issued to the Dischargers required either submittal of a RoWD, or in lieu of submitting a RoWD, submittal of a Notice of Intent (NOI) to enroll in the Coalition. The required RoWD was 491 days past due when the Dischargers obtained regulatory coverage.

REGULATORY CONSIDERATIONS

18. The Central Valley Water Board’s authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (Water Code Division 7).
19. Water Code section 13260, subdivision (a), requires that any “person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system,” shall file with the appropriate regional board a report of waste discharge containing such information and data as may be required by the regional board. The Central Valley Regional Board implements Water Code section 13260 in the area where the Dischargers’ lands are located.
20. Pursuant to Water Code section 13261, subdivision (a), “[a] person who fails to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).”
21. Water Code section 13261, subdivision (b)(1), states:

Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount not exceeding one thousand dollars (\$1,000) for each day in which the

violation occurs. Civil liability shall not be imposed by the regional board pursuant to this section if the state board has imposed liability against the same person for the same violation.

22. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Central Valley Water Board shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
23. 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 an administrative civil liability as outlined in Water Code section 13327.
24. This proposed administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment I. The proposed administrative civil liability takes into account such factors as the Dischargers' culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
25. **Maximum and Minimum Penalties.** As described above, the statutory maximum under Water Code section 13261, subdivision (b)(1) is \$1,000 per day of violation. The Dischargers were out of compliance for 491 days, thus resulting in a maximum penalty of \$491,000. The Enforcement Policy recommends that the minimum liability imposed be at least ten percent higher than the economic benefit so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Dischargers resulting from the failure to timely enroll under Order R5-2012-0116-R3 is \$9 (see Attachment I for how this was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$9.90).
26. Notwithstanding the issuance of this ACL Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may subsequently occur.
27. Issuance of this ACL Complaint is an enforcement action, and is therefore 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, section 15321, subdivision (a)(2).

WILLIAM AND MARIA EGLESTON ARE HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Dischargers be assessed an administrative civil liability in the amount of **twenty two thousand twenty two dollars (\$22,022)**. The amount of the proposed liability is based upon a review of the factors cited in the Enforcement Policy. The calculation of the proposed penalty amount is explained in Attachment I.
2. A hearing on this matter will be conducted before a hearing panel of the Central Valley Water Board on **3/4 November 2016**, unless the Dischargers do any of the following by **24 August 2016**.
 - a) The Dischargers waive the right to a hearing by completing the waiver form provided as Attachment J (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with full payment of the proposed civil liability of **twenty two thousand twenty two dollars (\$22,022)**. The check must be payable to the State Water Pollution Cleanup and Abatement Account and sent to State Water Resources Control Board, Division of Administrative Services, Accounting Branch, P.O. Box 1888, Sacramento, CA 95814 with a copy of the check mailed to the Central Valley Water Board at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670, Attn: Brett Stevens; OR
 - b) The hearing panel agrees to postpone any necessary hearing after the Dischargers request to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returns it to the Central Valley Water Board along with a letter describing the issues to be discussed; OR
 - c) The hearing panel agrees to postpone any necessary hearing after the Dischargers request a delay by checking the box next to Option 3 on the attached waiver form, and returns it to the board along with a letter describing the issues to be discussed.
3. The hearing will be governed by the Hearing Procedure, which is provided as Attachment K. During the hearing, the hearing panel may choose to recommend that the Central Valley Water Board affirm, reject, or modify the proposed ACL, which may include raising the monetary value of the ACL, or whether to recommend referral of the matter to the Attorney General for recovery of judicial civil liability.

4. The Assistant Executive Officer reserves the right to amend the proposed amount of administrative civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal, and expert witness costs) incurred after the date of the issuance of this ACL Complaint, and through completion of the hearing.

[Original signed by]

Andrew Altevogt, Assistant Executive Officer

8/4/2016

(Date)

Attachment A: 6 February 2013 and 18 April 2013 Outreach Notices

Attachment B: California Water Code section 13260 Directive

Attachment C: Notice of Violation for Failure to respond to the Directive

Attachment D: Notice of Intent

Attachment E: Inspection Report

Attachment F: 12 January 2016 Record of Communication

Attachment G: Pre-ACL Letter

Attachment H: 23 June 2016 Email between the Central Valley Water Board and the East San Joaquin Water Quality Coalition

Attachment I: Calculation of Penalty per SWRCB Water Quality Enforcement Policy

Attachment J: Hearing Waiver Form

Attachment K: Hearing Procedure

Attachment L: ACL Fact Sheet