

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

**MEETING OF SEPTEMBER 14-15, 2011
KINGS BEACH**

- ITEM:** 1
- SUBJECT:** **ADMINISTRATIVE CIVIL LIABILITY PENALTY
CALCULATOR DEMONSTRATION**
- CHRONOLOGY:**
- | | |
|-------------------|---|
| November 17, 2009 | Water Quality Enforcement Policy adopted. |
| May 20, 2010 | Water Quality Enforcement Policy becomes effective. |
- ISSUE:** None
- DISCUSSION:**
- In November 2009, the State Water Resources Control Board adopted the Water Quality Enforcement Policy, which became effective on May 20, 2010. The 2009 Enforcement Policy replaced the 2002 Enforcement Policy. One of the new elements of the 2009 Enforcement Policy is the inclusion of an administrative civil liability “penalty calculator” and associated procedures for its use. The penalty calculator and its procedures were developed to provide a fair, consistent, and transparent methodology to assessing liabilities. The methodology is based upon the factors the Water Board must, pursuant to the Water Code, consider when determining the amount of liability to assess.
- The Lahontan Water Board will be considering a number of administrative civil liability complaints in the upcoming months. It is important that the Water Board understands the general principles behind the penalty calculator and how to use the penalty calculator. The Water Board will be responsible for evaluating its Prosecution Team’s and Advisory Team’s use of the penalty calculator, a Discharger’s use of the penalty calculator, and be able to use the penalty calculator itself.
- Section VI of the Enforcement Policy discusses the penalty calculator methodology in depth. Section VI is provided in Enclosure No. 1. Enclosures No. 2 – No. 4 provide specific examples of how other Regional Water Boards have used the penalty calculator. The three examples involve:

Example 1: Sanitary sewer overflow with a discharge to waters of the United States (Region 2)

Example 2: Failure to submit technical reports (3) required by a Cleanup and Abatement Order (Region 4)

Example 3: Failure to submit a technical report where the Water Board increased the liability following the public hearing. (Region 4)

RECOMMENDATIONS: This is an information item only; no Water Board action will be taken at the conclusion of this meeting.

| ENCLOSURE | Item | Bates Number |
|------------------|--|----------------------------|
| 1 | 2010 Enforcement Policy, Section VI | 9-3 |
| 2 | ACL Complaint No. R2-2011-0006 | 9-19 |
| 3 | ACL Complaint No. R4-2011-0094 | 9-30 |
| 4 | Part 1 – ACL Complaint No. R4-2010-0115 Part 2 – ACL Order No. R4-2010-0115 | 9-53 9-65 |

ENCLOSURE 1

any investigation and the Office of Enforcement will seek input from the Regional Water Board enforcement staff in the development of any resulting enforcement action. Such action may be brought before the State Water Board or the Regional Water Board, as may be deemed appropriate for the particular action. The decision as to where to bring the enforcement action will be discussed with the affected Regional Water Board enforcement staff. Enforcement actions requiring compliance monitoring or long-term regulatory follow-up will generally be brought before the appropriate Regional Water Board.

V. COORDINATION WITH OTHER REGULATORY AGENCIES

A. Hazardous Waste Facilities

At hazardous waste facilities where the Regional Water Board is the lead agency for corrective action oversight, the Regional Water Board shall consult with Department of Toxics Substance Control (DTSC) to ensure, among other things, that corrective action is at least equivalent to the requirements of the Federal Resource, Conservation, and Recovery Act (RCRA).

B. Oil Spills

The Water Boards will consult and cooperate with the Office of Spill Prevention and Response at the Department of Fish and Game (OSPR) for any oil spill involving waters under the jurisdiction of OSPR.

C. General

The Water Boards will work cooperatively with other local, state, regional, and federal agencies when violations, for which the agency itself is not responsible, occur on lands owned or managed by the agency. Where appropriate, the Water Boards will also coordinate enforcement actions with other agencies that have concurrent enforcement authority.

VI. MONETARY ASSESSMENTS IN ADMINISTRATIVE CIVIL LIABILITY (ACL) ACTIONS

A. Penalty Calculation Methodology

As a general matter, where, as in the California Water Code, a civil penalty structure has been devised to address environmental violations, civil penalties do not depend on proof of actual damages to the environment. Courts in reviewing similar environmental protection statutes have held that a plaintiff need not prove a loss before recovering a penalty; instead, the defendant must demonstrate that the penalty should be less than the statutory maximum. In certain cases, a strong argument can be made that consideration of the statutory factors can support the statutory maximum as an appropriate penalty for water quality violations, in the absence of any other mitigating evidence. Moreover, as discussed below, the Porter-Cologne Act requires that certain civil liabilities be set at a level that accounts for any "economic benefit or savings" violators gained through their violations. (Wat. Code, § 13385, subd. (e).) Economic benefit or savings is a factor to be considered in determining the amount of other civil liabilities. (Wat. Code, § 13327.) The Water Boards have powerful liability provisions at their disposal which the Legislature and the public expect them to fairly and consistently implement for maximum enforcement impact to address, correct, and deter water quality violations.

any investigation and the Office of Enforcement will seek input from the Regional Water Board enforcement staff in the development of any resulting enforcement action. Such action may be brought before the State Water Board or the Regional Water Board, as may be deemed appropriate for the particular action. The decision as to where to bring the enforcement action will be discussed with the affected Regional Water Board enforcement staff. Enforcement actions requiring compliance monitoring or long-term regulatory follow-up will generally be brought before the appropriate Regional Water Board.

V. COORDINATION WITH OTHER REGULATORY AGENCIES

A. Hazardous Waste Facilities

At hazardous waste facilities where the Regional Water Board is the lead agency for corrective action oversight, the Regional Water Board shall consult with Department of Toxic Substances Control (DTSC) to ensure, among other things, that corrective action is at least equivalent to the requirements of the Federal Resource, Conservation, and Recovery Act (RCRA).

B. Oil Spills

The Water Boards will consult and cooperate with the Office of Spill Prevention and Response at the Department of Fish and Game (OSPR) for any oil spill involving waters under the jurisdiction of OSPR.

C. General

The Water Boards will work cooperatively with other local, state, regional, and federal agencies when violations, for which the agency itself is not responsible, occur on lands owned or managed by the agency. Where appropriate, the Water Boards will also coordinate enforcement actions with other agencies that have concurrent enforcement authority.

VI. MONETARY ASSESSMENTS IN ADMINISTRATIVE CIVIL LIABILITY (ACL) ACTIONS

A. Penalty Calculation Methodology

As a general matter, where, as in the California Water Code, a civil penalty structure has been devised to address environmental violations, civil penalties do not depend on proof of actual damages to the environment. Courts in reviewing similar environmental protection statutes have held that a plaintiff need not prove a loss before recovering a penalty; instead, the defendant must demonstrate that the penalty should be less than the statutory maximum. In certain cases, a strong argument can be made that consideration of the statutory factors can support the statutory maximum as an appropriate penalty for water quality violations, in the absence of any other mitigating evidence. Moreover, as discussed below, the Porter-Cologne Act requires that certain civil liabilities be set at a level that accounts for any "economic benefit or savings" violators gained through their violations. (Wat. Code, § 13385, subd. (e).) Economic benefit or savings is a factor to be considered in determining the amount of other civil liabilities. (Wat. Code, § 13327.) The Water Boards have powerful liability provisions at their disposal which the Legislature and the public expect them to fairly and consistently implement for maximum enforcement impact to address, correct, and deter water quality violations.

While it is a goal of this Policy to establish broad consistency in the Water Boards' approach to enforcement, the Policy recognizes that, with respect to liability determinations, each Regional Water Board, and each specific case, is somewhat unique. The goal of this section is to provide a consistent approach and analysis of factors to determine administrative civil liability. Where violations are standard and routine, a consistent outcome can be reasonably expected using this Policy. In more complex matters, however, the need to assess all of the applicable factors in liability determinations may yield different outcomes in cases that may have many similar facts.

Liabilities imposed by the Water Boards are an important part of the Water Boards' enforcement authority. Accordingly, any assessment of administrative civil liability, whether negotiated pursuant to a settlement agreement or imposed after an administrative adjudication, should:

- Be assessed in a fair and consistent manner;
- Fully eliminate any economic advantage obtained from noncompliance;¹
- Fully eliminate any unfair competitive advantage obtained from noncompliance;
- Bear a reasonable relationship to the gravity of the violation and the harm to beneficial uses or regulatory program resulting from the violation;
- Deter the specific person(s) identified in the ACL from committing further violations; and
- Deter similarly situated person(s) in the regulated community from committing the same or similar violations.

The liability calculation process set forth in this chapter provides the decision-maker with a methodology for arriving at a liability amount consistent with these objectives. This process is applicable to determining administratively-adjudicated assessments as well as those obtained through settlement. In reviewing a petition challenging the use of this methodology by a Regional Water Board, the State Water Board will generally defer to the decisions made by the Regional Water Boards in calculating the liability amount unless it is demonstrated that the Regional Water Board made a clear factual mistake or error of law, or that it abused its discretion.

The following provisions apply to all discretionary administrative civil liabilities (ACLs). Mandatory Minimum Penalties (MMPs) required pursuant to California Water Code section 13385, subdivisions (h) and (i), are discussed in Chapter VII.

General Approach

A brief summary of each step is provided immediately below. A more complete discussion of each step is presented later in this section.

Step 1. *Potential for Harm for Discharge Violations* – Calculate Potential for Harm considering: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement.

¹ When liability is imposed under California Water Code § 13385, Water Boards are statutorily obligated to recover, at a minimum, all economic benefit to the violator as a result of the violation.

- Step 2.** *Per Gallon and Per Day Assessments for Discharge Violations* – For discharges resulting in violations, use Table 1 and/or Table 2 to determine Per Gallon and/or Per Day Assessments. Depending on the particular language of the ACL statute being used, either or both tables may be used. Multiply these factors by per gallon and/or per day amounts as described below. Where allowed by code, both amounts should be determined and added together. This becomes the initial amount of the ACL for the discharge violations.
- Step 3.** *Per Day Assessments for non-Discharge Violations* – For non-discharge violations, use Table 3 to determine per day assessments. Multiply these factors by the per day amount as described below. Where allowed by the California Water Code, amounts for these violations should be added to amounts (if any) for discharge violations from Step 2, above. This becomes the initial amount of the ACL for the non-discharge violations.
- Step 4.** *Adjustment Factors* – Adjust the initial amounts for each violation by factors addressing the violator’s conduct, multiple instances of the same violation, and multiple day violations.
- Step 5.** *Total Base Liability Amount* – Add the adjusted amounts for each violation from Step 4.

Thereafter, the Total Base Liability amount may be adjusted, based on consideration of the following:

- Step 6.** *Ability to Pay and Ability to Continue in Business* – If the ACL exceeds these amounts, it may be adjusted downward provided express findings are made to justify this.
- Step 7.** *Other Factors as Justice May Require* – Determine if there are additional factors that should be considered that would justify an increase or a reduction in the Total Base Liability amount. These factors must be documented in the ACL Complaint. One of these factors is the staff costs of investigating the violations and issuing the ACL. The staff costs should be added to the amount of the ACL.
- Step 8.** *Economic Benefit* – The economic benefit of the violations must be determined based on the best available information, and the amount of the ACL should exceed this amount. (Note that the Economic Benefit is a statutory minimum for ACLs issued pursuant to California Water Code section 13385.)
- Step 9.** *Maximum and Minimum Liability Amounts* - Determine the statutory maximum and minimum amounts of the ACL, if any. Adjust the ACL to ensure it is within these limits.
- Step 10.** *Final Liability Amount* – The final liability amount will be assessed after consideration of the above factors. The final liability amount and significant considerations regarding the liability amount must be discussed in the ACL Complaint and in any order imposing liability.

STEP 1 - Potential for Harm for Discharge Violations

Calculating this factor is the initial step for discharge violations. Begin by determining the actual or threatened impact to beneficial uses caused by the violation using a three-factor scoring

system to quantify: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement for each violation or group of violations.

Factor 1: Harm or Potential Harm to Beneficial Uses

The evaluation of the potential harm to beneficial uses factor considers the harm that may result from exposure to the pollutants or contaminants in the illegal discharge, in light of the statutory factors of the nature, circumstances, extent and gravity of the violation or violations. The score evaluates direct or indirect harm or potential for harm from the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm is negligible (0), minor (1), below moderate (2), moderate (3), above moderate (4), or major (5).

- 0 = Negligible - no actual or potential harm to beneficial uses.
- 1 = Minor - low threat to beneficial uses (i.e., no observed impacts but potential impacts to beneficial uses with no appreciable harm).
- 2 = Below moderate – less than moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor).
- 3 = 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).
- 4 = Above moderate – more than moderate threat to beneficial uses (i.e., impacts are observed or likely substantial, temporary restrictions on beneficial uses (e.g., less than 5 days), and human or ecological health concerns).
- 5 = Major - high threat to beneficial uses (i.e., significant impacts to aquatic life or human health, long term restrictions on beneficial uses (e.g., more than five days), high potential for chronic effects to human or ecological health).

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge

The characteristics of this discharge factor are scored based on the physical, chemical, biological, and/or thermal nature of the discharge, waste, fill, or material involved in the violation or violations. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material, as outlined below. For purposes of this Policy, "potential receptors" are those identified considering human, environmental and ecosystem health exposure pathways.

- 0 = Discharged material poses a negligible risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material are benign and will not impact potential receptors).
- 1 = Discharged material poses only minor risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material are relatively benign or are not likely to harm potential receptors).

- 2 = Discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection).
- 3 = Discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors and /or there is substantial concern regarding receptor protection).
- 4 = 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).

Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned for this factor if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the violator.

Final Score – “Potential for Harm”

The scores for the factors are then added to provide a Potential for Harm score for each violation or group of violations. The total score is used in the “Potential for Harm” axis for the Penalty Factor in Tables 1 and 2. The maximum score is 10 and the minimum score is 0.

STEP 2 - Assessments for Discharge Violations

For violations of NPDES permit effluent limitations, the base liability should be established by calculating the mandatory penalty required under Water Code section 13385(h) and (i). The mandatory penalty should be adjusted upward where the facts and circumstances of the violation warrant a higher liability.

This step addresses per gallon and per day assessments for discharge violations. Generally, it is intended that effluent limit violations be addressed on a per day basis only. Where deemed appropriate, such as for a large scale spill or release, both per gallon and per day assessments may be considered.

Per Gallon Assessments for Discharge Violations

Where there is a discharge, the Water Boards shall determine an initial liability amount on a per gallon basis using on the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 1 below to determine a Per Gallon Factor for the discharge. Except for certain high-volume discharges discussed below, the per gallon assessment would then be the Per Gallon Factor multiplied by the number of gallons subject to penalty multiplied by the maximum per gallon penalty amount allowed under the California Water Code.

TABLE 1 - Per Gallon Factor for Discharges

| Deviation from Requirement | Potential for Harm | | | | | | | | | |
|----------------------------|--------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Minor | 0.005 | 0.007 | 0.009 | 0.011 | 0.060 | 0.080 | 0.100 | 0.250 | 0.300 | 0.350 |
| Moderate | 0.007 | 0.010 | 0.013 | 0.016 | 0.100 | 0.150 | 0.200 | 0.400 | 0.500 | 0.600 |
| Major | 0.010 | 0.015 | 0.020 | 0.025 | 0.150 | 0.220 | 0.310 | 0.600 | 0.800 | 1.000 |

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement (effluent limitation, prohibition, monitoring requirement, construction deadline, etc.) that was violated. The categories for **Deviation from Requirement** in Table 1 are defined as follows:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of its adverse impact on the effectiveness of the most significant requirement.

High Volume Discharges

The Water Boards shall apply the above per gallon factor to the maximum per gallon amounts allowed under statute for the violations involved. Since the volume of sewage spills and releases of stormwater from construction sites and municipalities can be very large for sewage spills and releases of municipal stormwater or stormwater from construction sites, a maximum amount of \$2.00 per gallon should be used with the above factor to determine the per gallon amount for sewage spills and stormwater. Similarly, for releases of recycled water that has been treated for reuse, a maximum amount of \$1.00 per gallon should be used with the above factor. Where reducing these maximum amounts results in an inappropriately small penalty, such as dry weather discharges or small volume discharges that impact beneficial uses, a higher amount, up to the maximum per gallon amount, may be used.

Per Day Assessments for Discharge Violations

Where there is a discharge, the Water Boards shall determine an initial liability factor per day based on the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 2, below, to determine a Per Day Factor for the violation. The per day assessment would then be the Per Day Factor multiplied by the maximum per day amount allowed under the California Water Code. Generally, it is intended that effluent limit violations be addressed on a per day basis. Where deemed appropriate, such

as for a large scale spill or release, it is intended that Table 2 be used in conjunction with Table 1, so that both per gallon and per day amounts be considered under Water Code section 13385. Where there is a violation of the permit not related to a discharge incident, Step 3/Table 3 below should be used instead.

TABLE 2 - Per Day Factor for Discharges

| Deviation from Requirement | Potential for Harm | | | | | | | | | |
|----------------------------|--------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Minor | 0.005 | 0.007 | 0.009 | 0.011 | 0.060 | 0.080 | 0.100 | 0.250 | 0.300 | 0.350 |
| Moderate | 0.007 | 0.010 | 0.013 | 0.016 | 0.100 | 0.150 | 0.200 | 0.400 | 0.500 | 0.600 |
| Major | 0.010 | 0.015 | 0.020 | 0.025 | 0.150 | 0.220 | 0.310 | 0.600 | 0.800 | 1.000 |

The categories for **Deviation from Requirement** in Table 2 are defined as follows:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of the adverse impact on the effectiveness of the most significant requirement.

The Water Boards shall apply the above per day factor to the maximum per day amounts allowed under statute for the violations involved. Where allowed by code, both the per gallon and the per day amounts should be determined and added together. This becomes the initial amount of the ACL for the discharge violations.

STEP 3 - Per Day Assessments for Non-Discharge Violations

The Water Boards shall calculate an initial liability factor for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. These violations include, but are not limited to, the failure to conduct routine monitoring and reporting, the failure to provide required information, and the failure to prepare required plans. While these violations may not directly or immediately impact beneficial uses, they harm or undermine the regulatory program. The Water Boards shall use the matrix set forth below to determine the initial liability factor for each violation. The per day assessment would then be the Per Day Factor multiplied by the maximum per day amount allowed under the California Water Code. For multiple day violations, please refer to the Adjustment Factors in Step 4, below.

Table 3 shall be used to determine the initial penalty factor for a violation. The Water Boards should select a penalty factor from the range provided in the matrix cell that corresponds to the appropriate Potential for Harm and the Deviation from Requirement categories. The numbers in parenthesis in each cell of the matrix are the midpoints of the range.

TABLE 3 - Per Day Factor

| Deviation from Requirement | Potential for Harm | | |
|----------------------------|--------------------|---------------|---------------|
| | Minor | Moderate | Major |
| Minor | 0.1 (0.15) | 0.2 (0.25) | 0.3 (0.35) |
| | 0.2 | 0.3 | 0.4 |
| Moderate | 0.2 (0.25) | 0.3 (0.35) | 0.4 (0.55) |
| | 0.3 | 0.4 | 0.7 |
| Major | 0.3 (0.35) | 0.4 (0.55) | 0.7 (0.85) |
| | 0.4 | 0.7 | 1 |

The categories for **Potential for Harm** in Table 3 are:

Minor – The characteristics of the violation present a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.

Moderate – 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.

Major – The characteristics of the violation present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Additionally, non-discharge violations involving particularly sensitive habitats should be considered major.

The categories for **Deviation from Requirement** in Table 3 are:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of the adverse impact on the effectiveness of the most significant requirement.

For any given requirement, the Deviation from Requirements may vary. For example, if a facility does not have a required response plan or has not submitted a required monitoring report, the deviation would be major. If a facility has a prepared a required plan or submitted the required monitoring report, but significant elements are omitted or missing, the deviation would be moderate. If a facility has a required plan or submitted the required monitoring report with only minor elements missing, the deviation would be minor.

STEP 4 – Adjustment Factors

Violator's Conduct Factors

There are three additional factors that should be considered for modification of the amount of the initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. Not all factors will apply in every liability assessment.

TABLE 4 – Violator's Conduct Factors

| Factor | Adjustment |
|-------------------------|--|
| Culpability | Discharger's degree of culpability regarding the violation. Higher liabilities should result from intentional or negligent violations than for accidental, non-negligent violations. A first step is to identify any performance standards (or, in their absence, prevailing industry practices) in the context of the violation. The test is what a reasonable and prudent person would have done or not done under similar circumstances. Adjustment should result in a multiplier between 0.5 to 1.5 , with the lower multiplier for accidental incidents, and higher multiplier for intentional or negligent behavior. |
| Cleanup and Cooperation | Extent to which the discharger voluntarily cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken. 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, and higher multiplier where this is absent. |
| History of Violations | Prior history of violations. Where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. |

After each of the above 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.

Multiple Violations Resulting From the Same Incident

By statute, certain situations that involve multiple violations are treated as a single violation per day, such as a single operational upset that leads to simultaneous violations of more than one pollutant parameter. (Water Code § 13385, sub. (f)(1).) For situations not addressed by statute, a single base liability amount can also be assessed for multiple violations at the discretion of the Water Boards, under the following circumstances:

- a. The facility has violated the same requirement at one or more locations within the facility;
- b. A single operational upset where violations occur on multiple days;
- c. The violation continues for more than one day;

- d. When violations are not independent of one another or are not substantially distinguishable. For such violations, the Water Boards may consider the extent of the violation in terms of the most egregious violation;
- e. A single act may violate multiple requirements, and therefore constitute multiple violations. For example, a construction dewatering discharge to a dewatering basin located on a gravel bar next to stream may violate a requirement that mandates the use of best management practices (BMPs) for sediment and turbidity control, a requirement prohibiting the discharge of soil silt or other organic matter to waters of the State, and a requirement that temporary sedimentation basins be located at least 100 feet from a stream channel. Such an act would constitute three distinct violations that may be addressed with a single base liability amount.

If the violations do not fit the above categories, each instance of the same violation shall be calculated as a separate violation.

Except where statutorily required, multiple violations shall not be grouped and considered as a single base liability amount when those multiple violations each result in a distinguishable economic benefit to the violator.

Multiple Day Violations

For violations that are assessed a civil liability on a per day basis, the initial liability amount should be assessed for each day up to thirty (30) days. For violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Water Board must make express findings that the violation:

- a. Is not causing daily detrimental impacts to the environment or the regulatory program;
- b. Results in no economic benefit from the illegal conduct that can be measured on a daily basis; or,
- c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

If one of the above findings is made, an alternate approach to penalty calculation for multiple day violations may be used. In these cases, the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment for each thirty (30) days of violation. For example, a violation lasting sixty-two (62) days would accrue a total of 8 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, and 60. Similarly, a violation lasting ninety-nine (99) days would accrue a total of 9 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, and 90.

STEP 5 – Determination of Total Base Liability Amount

The Total Base Liability Amount will be determined by adding the amounts above for each violation, though this may be adjusted for multiple day violations as noted above. Depending on the statute controlling the liability assessment for a violation, the liability can be assessed as either a per day penalty, a per gallon penalty, or both.

STEP 6 – Ability to Pay and Ability to Continue in Business

If the Water Boards have sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business.

The ability of a discharger to pay an ACL is determined by its revenues and assets. In most cases, it is in the public interest for the discharger to continue in business and bring its operations into compliance. If there is strong evidence that an ACL would result in widespread hardship to the service population or undue hardship to the discharger, the amount of the assessment may be reduced on the grounds of ability to pay. For a violation addressed pursuant to California Water Code section 13385, the adjustment for ability to pay and ability to continue in business can not reduce the liability to less than the economic benefit amount.

If staff anticipates that the discharger's ability to pay or ability to continue in business will be a contested issue in the proceeding, staff should conduct a simple preliminary asset search prior to issuing the ACL complaint. Staff should submit a summary of the results (typically as a finding in the Complaint or as part of staff's initial transmittal of evidence to the discharger), in order to put some evidence about these factors into the record for the proceeding and to give the discharger an opportunity to submit additional financial evidence if it chooses. If staff does not put any financial evidence into the record initially and the discharger later contests the issue, staff may then either choose to rebut any financial evidence submitted by the discharger, or submit some financial evidence and provide an opportunity for the discharger to submit its own rebuttal evidence. In some cases, this may necessitate a continuance of the proceeding to provide the discharger with a reasonable opportunity to rebut the staff's evidence. As a general practice, in order to maintain the transparency and legitimacy of the Water Boards' enforcement programs, any financial evidence that the discharger chooses to submit in an enforcement proceeding will generally be treated as a public record.

STEP 7 – Other Factors As Justice May Require

If the Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this. Examples of circumstances warranting an adjustment under this step are:

- a. The discharger has provided, or Water Board staff has identified, other pertinent information not previously considered that indicates a higher or lower amount is justified.
- b. A consideration of issues of environmental justice indicates that the amount would have a disproportionate impact on a particular disadvantaged group.
- c. The calculated amount is entirely disproportionate to assessments for similar conduct made in the recent past using the same Enforcement Policy.

Costs of Investigation and Enforcement Adjustment

The costs of investigation and enforcement are "other factors as justice may require", and should be added to the liability amount. These costs may include the cost of investigating the violation, preparing the enforcement action, participating in settlement negotiations, and putting on a hearing, including any expert witness expenses. Such costs are the total costs incurred by

the Water Boards enforcement or prosecution staff, including legal costs that are reasonably attributable to the enforcement action. Costs include the total financial impact on the staff of the Water Board, not just wages, and should include benefits and other indirect overhead costs.

STEP 8 – Economic Benefit

The Economic Benefit Amount shall be estimated for every violation. Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation. In cases where the violation occurred because the discharger postponed improvements to a treatment system, failed to implement adequate control measures (such as BMPs), or did not take other measures needed to prevent the violations, the economic benefit may be substantial. Economic benefit should be calculated as follows:

- a. Determine those actions required to comply with a permit or order of the Water Boards, an enforcement order, or an approved facility plan, or that were necessary in the exercise of reasonable care, to prevent a violation of the Water Code. Needed actions may have been such things as capital improvements to the discharger's treatment system, implementation of adequate BMPs, or the introduction of procedures to improve management of the treatment system.
- b. Determine when and/or how often these actions should have been taken as specified in the order or approved facility plan, or as necessary to exercise reasonable care, in order to prevent the violation.
- c. Estimate the type and cost of these actions. There are two types of costs that should be considered; delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner (e.g., for capital improvements such as plant upgrades and collection system improvements, training, development of procedures and practices) but that the discharger is still obligated to perform. Avoided costs include expenditures for equipment or services that the discharger should have incurred to avoid the incident of noncompliance, but that are no longer required. Avoided costs also include ongoing costs such as needed additional staffing from the time determined under step "b" to the present, treatment or disposal costs for waste that cannot be cleaned up, and the cost of effective erosion control measures that were not implemented as required.
- d. Calculate the present value of the economic benefit. The economic benefit is equal to the present value of the avoided costs plus the "interest" on delayed costs. This calculation reflects the fact that the discharger has had the use of the money that should have been used to avoid the instance of noncompliance. This calculation should be done using the USEPA's BEN² computer program (the most recent

² USEPA developed the BEN model to calculate the economic benefit a violator derives from delaying and/or avoiding compliance with environmental statutes. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, a defendant avoids the costs associated with obtaining additional funds for environmental compliance. BEN calculates the economic benefits gained from delaying and avoiding required environmental expenditures such as capital investments, one-time non-depreciable expenditures, and annual operation and maintenance costs.

BEN uses standard financial cash flow and net present value analysis techniques based on generally accepted financial principles. First, BEN calculates the costs of complying on time and of complying late adjusted for inflation and tax deductibility. To compare the on time and delayed compliance costs in a common measure, BEN calculates the present value of both streams of costs, or "cash flows," as of the date of initial noncompliance. BEN derives these values by discounting the annual cash flows at an
(Continued)

version is accessible at <http://www.waterboards.ca.gov/plnspols/docs/wqplans/benmanual.pdf>) unless the Water Board determines, or the discharger demonstrates to the satisfaction of the Water Board, that, based on case-specific factors, an alternate method is more appropriate for a particular situation. However, in more complex cases, such as where the economic benefit may include revenues from continuing production when equipment used to treat discharges should have been shut down for repair or replacement, the total economic benefit should be determined by experts available from the Office of Research Planning and Performance or outside experts retained by the enforcement staff.

- e. Determine whether the discharger has gained any other economic benefits. These may include income from continuing production when equipment used to treat discharges should have been shut down for repair or replacement.

The Water Boards should not adjust the economic benefit for expenditures by the discharger to abate the effects of the unauthorized conduct or discharge, or the costs to come into or return to compliance. In fact, the costs of abatement may be a factor that demonstrates the economic extent of the harm from the violation and, therefore, may be a factor in upwardly adjusting any monetary liability as a benefit from noncompliance. The discharger's conduct relating to abatement is appropriately considered under "cleanup and cooperation" liability factor.

The Economic Benefit Amount should be compared to the adjusted Total Base Liability Amount. The adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

STEP 9 – Maximum and Minimum Liability Amounts

For all violations, the statute sets a maximum liability amount that may be assessed for each violation. For some violations, the statute also requires the assessment of a liability at no less than a specified amount. The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed, and shall be described in any ACL complaint and in any order imposing liability. Where the amount proposed for a particular violation exceeds to statutory maximum, the amount must be reduced to that maximum. Similarly, the minimum statutory amount may require raising the amount being proposed unless there is a specific provision that allows assessment below the minimum. In such cases, the reasons for assigning a liability amount below this minimum must be documented in the resolution adopting the ACL.

STEP 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts.

The administrative record must reflect how the Water Board arrived at the final liability amount. In particular, where adjustments are made to the initial amount proposed in the ACL complaint, the record should clearly reflect the Water Board's considerations, as the staff report or complaint may not reflect those considerations, or for any adjustments that are made at hearing

average of the cost of capital throughout this time period. BEN can then subtract the delayed-case present value from the on-time-case present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds this initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance.

that are different from those recommended in the ACL complaint or that further support the final liability amount in the administrative civil liability order.

B. Settlement Considerations

The liabilities resulting from the above methodology are for adoption by the Water Boards after formal administrative proceedings. The calculated liabilities may be adjusted as a result of settlement negotiations with a violator. It is not the goal of the Enforcement Policy to address the full range of considerations that should be entertained as part of a settlement. It is appropriate to adjust the administrative civil liabilities calculated pursuant to the methodology in consideration of hearing and/or litigation risks including: equitable factors, mitigating circumstances, evidentiary issues, or other weaknesses in the enforcement action that the prosecution reasonably believes may adversely affect the team's ability to obtain the calculated liability from the administrative hearing body. Ordinarily, these factors will not be fully known until after the issuance of an administrative civil liability complaint or through pre-filing settlement negotiations with an alleged violator. These factors shall be generally identified in any settlement of an administrative civil liability that seeks approval by a Water Board or its designated representative.

Factors that should not affect the amount of the calculated civil liability sought from a violator in settlement include, but are not limited to, the following:

1. A general desire to avoid hearing or minimize enforcement costs;
2. A belief that members of a Water Board will not support a proposed liability before that Water Board has considered the specific merits of the enforcement case or a similar case;
3. A desire to avoid controversial matters;
4. The fact that the initiation of the enforcement action is not as timely as it might have been under ideal circumstances (timeliness of the action as it affects the ability to present evidence or other timeliness considerations are properly considered); or
5. The fact that a water body affected by the violation is already polluted or impaired.

Except as specifically addressed in this Policy, nothing in this Policy is intended to limit the use of Government Code 11415.60

C. Other Administrative Civil Liability Settlement Components

In addition to a reduction of administrative civil liabilities, a settlement can result in the permanent suspension of a portion of the liability in exchange for the performance of a Supplemental Environmental Project (see the State Water Board's Water Quality Control Policy on Supplemental Environmental Projects) or an Enhanced Compliance Action (see Section IX).

As far as the scope of the settlement is involved, the settlement resolves only the claims that are made or could have been made based on the specific facts alleged in the ACL complaint. A settlement shall never include the release of any unknown claims or a waiver of rights under Civil Code section 1542.

ENCLOSURE 2

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the matter of:

City of Redwood City
Redwood Shores Sanitary Sewer
Overflow

COMPLAINT NO. R2-2011-0006
FOR
ADMINISTRATIVE CIVIL LIABILITY

Violations of the Clean Water Act
Section 301 and Order No. 2006-
0003-DWQ Statewide General Waste
Discharger Requirements for
Sanitary Sewer Systems

SSO Event ID: 756498

THE CITY OF REDWOOD CITY IS HEREBY GIVEN NOTICE THAT:

1. The City of Redwood City (City) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) may impose civil liability pursuant to section 13385 of the California Water Code (Water Code).
2. This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.

WASTE DISCHARGE REQUIREMENTS

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. Section 301 of the Clean Water Act prohibits any person from discharging any pollutant into waters of the United States unless that person has complied with all permitting requirements under the Clean Water Act.
4. The City owns and operates a sanitary sewer collection system (collection system) consisting of approximately 197 miles of gravity sewer pipeline, 12 miles of force main, and 31 pump/lift stations. Wastewater collected by the City's collection system is conveyed to the South Bayside System Authority for treatment and disposal.
5. The City is required to operate and maintain its collection system in compliance with State Water Resources Control Board Order No. 2006-

Water Quality Enforcement Policy instructs the Regional Water Boards to assess liability at least 10 percent higher than the economic benefit amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. Accordingly, the minimum administrative civil liability for the City's SSO is \$31,185.

PROPOSED LIABILITY

12. The amount of discretionary assessment proposed is based upon consideration of factors contained in Water Code section 13327. Section 13327 specifies the factors that the Regional 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 matters as justice may require.
13. Based on the penalty calculation methodology set forth in section VI of the Water Quality Enforcement Policy, the Regional Water Board should impose administrative civil liability against the City in the amount of \$95,600 for the discharge of untreated sewage to Redwood Shores Lagoon on August 25, 2010.

Dated this 14th day of February 2011



Thomas E. Mumley
Assistant Executive Officer

Signed pursuant to the authority delegated
by the Executive Officer to the Assistant
Executive Officer.

Attachment: Technical Analysis

CIWQS: Reg Measure ID: 377307
Place ID: 630966
Party ID: 37027
Violation IDs: 880176

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

TECHNICAL ANALYSIS

**Proposed Administrative Civil Liability
Contained in Complaint No. R2-2011-0006
City of Redwood City**

**Noncompliance with
California State Water Resources Control Board
Order No. 2006-0003 DWQ
Statewide General Waste Discharge Requirements for Sanitary Sewer Systems**

February 4, 2011

By

**Michael Chee
Water Resources Control Engineer
NPDES Wastewater Division**

B. VIOLATIONS SUBJECT TO THE COMPLAINT

The City is required to operate and maintain its collection system in compliance with requirements of Clean Water Act section 301 and the Sewer System Order, as amended.

Clean Water Act section 301 and Prohibition C.1 of the Sewer System Order form the bases for assessing administrative civil liability pursuant to California Water Code (Water Code) section 13385. Section 301 makes it unlawful for any person to discharge any pollutant to waters of the United States unless that person has complied with all permitting requirements under the Clean Water Act. Prohibition C.1 of the Sewer System Order provides, in relevant part, that it is unlawful for any person to discharge untreated wastewater to waters of the United States. The City discharged 57,107 gallons of untreated wastewater to the Redwood Shores Lagoon, a water of the United States. Therefore, the City is in violation of both the Clean Water Act section 301 and Prohibition C.1 of the Sewer System Order.

C. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

Administrative civil liability 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), civil liability may be imposed administratively by the Regional Water Board in an amount not to exceed the sum of both of the following:

- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs; and
- (2) 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, 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.

Water Code section 13327 requires the Regional Water Board to consider several factors when determining the amount of civil liability to impose administratively. These factors include: "...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 that justice may require."

The 2009 State Water Resources Control Board Water Quality Enforcement Policy (amended November 2009 and approved by the Office of Administrative Law on

3 = 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 beneficial uses of Redwood Shores Lagoon are contact and non-contact water recreation and estuarine habitat. Examples of contact water recreation are wading, swimming, windsurfing, and fishing. Additionally, examples of non-contact water recreation are picnicking, sunbathing, hiking, boating, kayaking, sightseeing, and aesthetic enjoyment. Examples of estuarine habitat are feeding and resting for waterfowl and migratory birds.

Redwood Shores Lagoon was closed to public recreation from August 25, 2010, the date of the SSO, until September 7, 2010. Based on water quality sampling, the San Mateo County Health Supervisor concluded that the Lagoon's public access areas could have been re-opened on September 2, 2010. Unfortunately, a plane crashed into the Lagoon on September 2, 2010, delaying re-opening. Since the City posted health warning signs along the affected water areas as a result of the SSO discharging to the Lagoon, the beneficial uses have been impacted as the public's use has been limited. The SSO caused the public loss of contact and non-contact recreation beneficial uses for 9 days during the summer, the time at which the public's use of the Lagoon is at its highest. Due to temporary/long-term restriction of beneficial uses, the Enforcement Policy states Water Boards should use Harm Factor 5. In this case even though beneficial uses were restricted for over 5 days, the Regional Water Board Prosecution Team used Harm Factor 3. The City closed the Lagoon's tide gates to contain the SSO to significantly limit the aerial extent of the use restrictions. Had the City kept the tide gates open, the SSO would have more quickly dispersed, resulting in fewer days of beneficial use restrictions but a larger area would have been impacted.

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

The toxicity of this SSO poses an above-moderate risk due to its full strength chemical makeup. The degree of toxicity of raw untreated sewage cannot be accurately quantified. An SSO would be expected to have a deleterious effect on the environment. Raw sewage typically has elevated concentrations of biochemical oxygen demand, total suspended solids, oil and grease, ammonia, high levels of viruses and bacteria, trash and toxic pollutants (such as heavy metals, pesticides, personal care products, and pharmaceuticals). These pollutants exert varying levels of impact on water quality, and as such, will adversely affect beneficial uses of receiving waters to different extents, depending, in part on whether the SSO occurs during dry weather conditions.

this volume from being part of the SSO. Thus, of the 1,058,500 gal of sewage that could have escaped, the City prevented 1,001,400 gal from entering the Lagoon (or 95 percent "recovery"). Because more than 50% of this SSO discharge is susceptible to cleanup and abatement, a score of 0 is assigned to this factor.

2. Step 2: Assessments for Discharge Violations

a. Extent of Deviation from Requirement

The discharge of 57,107 gallons of untreated sewage is a major deviation from required standards (Discharge Prohibition C.1). Accordingly, using the Potential for harm score of 6 (six) and "Table 1 – Per Gallon Factor for Discharges" of the Enforcement Policy, the per-gallon deviation factor is **0.22**.

The penalty calculation methodology defines a major deviation as:

The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

The SSO rendered the Prohibition on discharging untreated sewage to waters of the United States ineffective in its essential functions because the Prohibition would be effective only if no SSO had occurred.

b. Initial Amount of the ACL

Calculating the initial base amount of the ACL for the discharge is achieved under the Enforcement Policy by multiplying:

$$\begin{aligned} & \text{(Per Gallon Deviation Factor } \mathbf{0.22}) \times \text{(56,107 Gallons)} \times \text{(Maximum Liability} \\ & \quad \text{per Gallon } \mathbf{\$10}) \\ & \quad \mathbf{(\$123,435)} \\ & \quad + \\ & \text{(Per Day Deviation Factor } \mathbf{0.22}) \times \text{(Days of Violation } \mathbf{2}) \times \text{(Maximum Liability} \\ & \quad \text{per Day } \mathbf{\$10,000}) \\ & \quad \mathbf{(\$4,400)} \\ & = \text{(Initial ACL Amount)} \\ & \quad \mathbf{\$127,835} \end{aligned}$$

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

Non-discharge violations are not alleged in the Complaint.

(These county sewer rates are based on the database maintained by the Bay Area Clean Water Agencies as of December 30, 2010.)

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 **0.75** has been selected.

During the initial hours of the SSO event, the City placed sandbags and sock tubing absorbents to contain any sewage that escaped the force main in the parking lot area, and to preclude further sewage from reaching residents' garages or the storm drain system that leads to the Lagoon. The City also immediately closed the tide gates between the Lagoon and San Francisco Bay so as to isolate the Lagoon waters and minimize the impact of the SSO.

The City cleaned up the affected garages where sewage flowed from the failed pipe, and restored the parking area and landscaping affected by the pipeline failure and repair work.

By implementing its diversion plan, the City prevented the SSO from being much larger in volume than it could have been and greatly reduced the potential resulting environmental impacts. The City diverted 963,600 gallons of incoming sewage to PS 10. The plan included procuring several vacuum and tanker trucks to collect and transport sewage to SBSA's treatment facility.

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. From May 2, 2007, through December 30, 2010, the City has had 59 SSOs. In this case, a multiplier of 1 was selected because the cause of this SSO was unique and the City has not had similar types of SSOs. The City's history of violations is set forth in Tables A through E, below. As shown in Table A, the City's median SSO rate is better for the years prior to the incident than the median rate for comparable collection systems having 100 or more miles of collection system pipe.

5. Step 5: Determination of Total Base Liability Amount

The Total Base Liability amount of **\$95,876** is determined by multiplying the initial liability amount for the violation by the adjustment factors in section 4.

Accordingly, the Total Base Liability amount for the violations is calculated by multiplying the initial liability amount by the adjustment factors:

$$\begin{aligned} & (\text{Initial Liability Amount}) \times (\text{Culpability}) \times (\text{History of Violations}) \times (\text{Cleanup}) = \\ & (\$127,835) \times (1) \times (1) \times (0.75) = \$95,876 \end{aligned}$$

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

The Enforcement Policy provides that if the Regional 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 City's fiscal year 2010-2011 (FY2010-11) collection system operation and maintenance budget is \$6,166,626. The City has additional funds of \$2,000,000 and \$3,065,000 being allocated in FY2010-11 to its capital improvement program and a sewer fund reserve (including emergency response funds), respectively. Regional Water Board Prosecution Staff believes the proposed civil liability will not affect the City's ability to continue operation and maintenance of its collection system.

Accordingly, this penalty factor in this step is neutral and does not weigh either for or against adjustment of the Total Base Liability.

7. Step 7: Other Factors as Justice May Require

The Enforcement Policy provides that if the Regional 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 finding are made to justify this. In addition, the costs of investigation should be added to the liability amount according to the Enforcement Policy.

The City has encouraged its employees to pursue California Water Environment Association (CWEA) collection system certification and pays all costs associated with collection system staff obtaining and/or maintaining their CWEA certification. Beginning in 2010, City job announcements for wastewater positions state that CWEA grade certifications are "desirable" or must be obtained within a specified timeframe. As of December 2010, 15 collection system staff of the City's 19.4

August 25, 2010, SSO is \$20,000 for the two days of violation, plus \$561,070 for the 57,107 gallons spilled, but not cleaned up, less the 1,000 gallon statutory credit, for a total maximum potential administrative civil liability of \$581,070.

The 2009 Enforcement Policy requires that:

"The adjusted Total Base Liability shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations."

Therefore, the minimum liability amount the Regional Water Board may assess is **\$31,185**. The recommended liability falls within the allowable statutory range for minimum and maximum amounts.

10. Step 10: Final Liability Amount

The total proposed civil liability in this matter is \$95,626, which corresponds to approximately \$1.67 per gallon.

The proposed amount of civil liability attributed to the discharge of 57,107 gallons of untreated sewage in violation of the Sewer System Order, Prohibition C.1 was determined by taking into consideration the factors in Water Code sections 13327 and 13385(c), and the penalty calculation methodology in the 2009 Enforcement Policy.

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

- a. The discharge of raw sewage into waters of the United States adversely affected beneficial uses of Redwood Shores Lagoon, including contact recreation and non-contact water recreation.
- b. The high degree of toxicity in untreated sewage posed a threat to beneficial uses.
- c. The proposed civil liability assessment is sufficient to recover costs incurred by the Regional Water Board Prosecution Staff, and it serves as deterrent for future negligent violations.

Instructions

1. Select Potential Harm for Discharge Violations
2. Select Characteristics of the Discharge
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Standard
5. Click "Determine Harm & per Gallon/Day..."
6. Enter Values into the Yellow highlighted fields

Select Item 1 = Moderate
 Select Item 2 = Discharged material poses above moderate
 Select Item 3 = 50% of Discharge Susceptible to Cleanup or A
 Select Item 4 = Major

Select Item 1 = Potential Harm for Discharge Violations
 Select Item 2 = Characteristics of the Discharge
 Select Item 3 = Susceptibility of Cleanup or Abatement
 Select Item 4 = Deviation from Requirement

Discharger Name/ID: City of Redwood City

| | | Violation 1: August 25, 2010, SSO | | Violation 2 | |
|---|--|---|----------------|----------------|----------|
| Discharge Violations | Step 1 | Potential Harm Factor (Generated from Button) | 6 | | |
| | Step 2 | Per Gallon Factor (Generated from Button) | 0.22 | | |
| | | Gallons | 56,107 | | |
| | | Statutory / Adjusted Max per Gallon (\$) | 10.00 | | |
| | Total | | | \$ 123,435 | \$ - |
| Discharge Violations | Step 3 | Per Day Factor (Generated from Button) | 0.22 | | |
| | Step 2 | Days | 2 | | |
| | | Statutory Max per Day | 10000.00 | | |
| | | Total | | | \$ 4,400 |
| | Non-Discharge Violations | Step 3 | Per Day Factor | | |
| Days | | | | | |
| Statutory Max per Day | | | | | |
| Total | | | | \$ - | \$ - |
| Initial Amount of the ACL | | | | \$ 127,835.40 | \$ - |
| Add'l Factors | Step 4 | Culpability | 1 | \$ - | \$ - |
| | | Cleanup and Cooperation | 0.75 | \$ (31,958.85) | \$ - |
| | | History of Violations | 1 | \$ - | \$ - |
| | Total | | | \$ 95,876.55 | \$ - |
| Step 5 Total Base Liability Amount | | | | \$ 95,876.55 | |
| Step 6 | Ability to Pay & to Continue in Business | 1 | \$ 95,876.55 | | |
| Step 7 | Other Factors as Justice May Require | \$10,000 | \$ 85,876.55 | | |
| | Staff Costs | \$ 9,750 | \$ 95,626.55 | | |
| Step 8 | Economic Benefit | \$ 31,185 | \$ 95,626.55 | | |
| Step 9 | Minimum Liability Amount | | | | |
| | Maximum Liability Amount | \$ 581,070 | | | |
| Step 10 Final Liability Amount | | | | \$ 95,626.55 | |

Penalty Day Range Generator

Start Date of Violation=

End Date of Violation=

Maximum Days Fined (Steps 2 & 3) = Days

Minimum Days Fined (Steps 2 & 3) = Days

ENCLOSURE 3



**California Regional Water Quality Control Board
Los Angeles Region**

320 West Fourth Street, Suite 200, Los Angeles, California 90013
(213) 576-6600 • Fax (213) 576-6640
<http://www.waterboards.ca.gov/losangeles>



Linda S. Adams
Acting Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

July 11, 2011

Mr. Michael Kim
Lynwood Dairy
12306 S. Atlantic Avenue
Lynwood, CA 90262

VIA EMAIL & CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7005 1820 0001 2683 7099

T & T Family Trust
c/o Mr. Thomas I. Hwang
& Mrs. Young H. Hwang
136 South La Peer Drive
Beverly Hills, California 90211-2616

VIA EMAIL & CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7005 1820 0001 2683 7327

COMPLAINT NO. R4-2011-0094 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST MR. MICHAEL KIM AND THE T & T FAMILY TRUST REGARDING FAILURE TO COMPLY WITH CLEANUP AND ABATEMENT ORDER FOR THE PROPERTY LOCATED AT 12306 S. ATLANTIC AVENUE, LYNWOOD, CALIFORNIA (LYNWOOD DAIRY: UST FILE R-02653).

Dear Messrs. Michael Kim, Thomas I. Hwang and Mrs. Young H. Hwang:

Enclosed is Complaint No. R4-2011-0094 for Administrative Civil Liability in the amount of \$118,710 against Mr. Michael Kim, and the T & T Family Trust, Thomas I. Hwang and Young H. Hwang (Trustees) (hereinafter Respondents) for certain alleged violations of Cleanup and Abatement Order No. R4-2008-0001. Also enclosed are the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) Notice of Public Hearing and Administrative Civil Liability Fact Sheet for this matter.

Unless waived, a hearing before the Regional Board or a Regional Board Hearing Panel (Hearing Panel) will be held on this Complaint pursuant to California Water Code §§ 13228.14 and 13323. Should the Respondents choose to waive their right to a hearing, an authorized agent must sign the waiver form attached and return it to the Regional Board by 5:00 pm on August 10, 2011. If we do not receive the waiver and full payment of the penalty by August 10, 2011, this matter will be heard before the Regional Board or Hearing Panel. An agenda containing the date, time, and location of the hearing will be mailed to you prior to the hearing date.

California Environmental Protection Agency



Recycled Paper

If you have any questions, please contact Mr. David Boyers, Staff Counsel III Supervisor, State Water Resources Control Board Office of Enforcement, at (916) 341-5276 or dboyers@waterboards.ca.gov

Sincerely,



Paula Rasmussen, Chief
Compliance and Enforcement Section

- Attachments:
1. Administrative Civil Liability Complaint No. R4-2011-0094 and Waiver Form
 2. Notice of Public Hearing
 3. Administrative Civil Liability Fact Sheet

cc: Mr. David Boyers, State Water Resources Control Board, Office of Enforcement
Ms. Sarah Olinger, Office of the Chief Counsel, State Water Resources Control Board
Mr. Samuel Unger, Los Angeles Regional Water Quality Control Board
Ms. Kathy Jundt, State Water Resources Control Board,
Underground Storage Tank Cleanup Fund
Mr. Tim Smith, Los Angeles County Department of Public Works, Environmental Programs Division

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

**Mr. Michael Kim and the
T & T Family Trust, Mr. Thomas I.
Hwang and Mrs. Young H. Hwang
(Trustees)**

**Complaint No. R4-2011-0094
For
Administrative Civil Liability**

**Violations of Cleanup and Abatement Order
No. R4-2008-0001
(as amended March 15, 2010)**

July 11, 2011

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Mr. Michael Kim, and the T & T Family Trust, Thomas I. Hwang and Young H. Hwang (Trustees) (collectively Respondents) are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) may impose civil liability pursuant to Water Code section 13350.
2. Unless waived, a hearing on this matter will be held before the Los Angeles Water Board, or a panel of Los Angeles Water Board members, within 90 days following issuance of this Complaint. Respondents, or their representative(s), will have an opportunity to address and contest the allegations in this Complaint and the proposed imposition of administrative civil liability.
3. At the hearing, the Los Angeles Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.

BACKGROUND

4. Lynwood Dairy and Gasoline Station (Site) is located at 12306 South Atlantic Avenue, City of Lynwood. Mr. Michael Kim has operated the Site since approximately February, 2000. T & T Family Trust is the property owner of the Site.
5. On January 25, 2008, the Los Angeles Water Board issued Cleanup and Abatement Order No. R4-2008-0001 (Order) to Mr. Michael Kim and "Lynwood Dairy," requiring the cleanup and abatement of contaminated soil, soil gas and groundwater pollution caused by the release of petroleum hydrocarbons from three underground storage tanks (UST) once located at the Site. On March 15, 2010, the Los Angeles Water Board amended the Order to remove "Lynwood Dairy" as a responsible party and added the T & T Family Trust. The amended Order made the following pertinent findings regarding the Site:
 - a) On June 21, 2000, one 8,000-gallon UST, one 6,000-gallon UST and one 4,000-gallon UST were removed. Soil samples were collected beneath the tank excavation pit and dispenser areas. The soil samples analytical results indicated

the maximum concentrations of total petroleum hydrocarbons as gasoline (TPHg) at 6,040 mg/kg, benzene at 30,000 µg/kg, and MTBE at 139,000 µg/kg.

- b) The Site overlies an aquifer used as a community water supply and the distance to the closest municipal well or domestic supply well (No. 03S13W13F04S) is approximately 2,450 feet from the Site.
 - c) Based on information from adjacent sites, depth to groundwater is approximately 60 feet below ground surface (bgs) in the area.
6. The amended Order directed the Respondents to take certain actions to assess, monitor, report, clean up and abate the effects of gasoline discharged to soil and groundwater. The Los Angeles Water Board specifically warned the Respondents that failure to comply with the terms of the Order would result in the imposition of administrative civil liability.

ALLEGATIONS

PART 1: Requirement B.

CONDUCT SITE INVESTIGATIONS TO ASSESS SOIL, SOIL GAS AND GROUNDWATER CONTAMINATION

7. Requirement B on Page 6 of Cleanup and Abatement Order No. R4-2008-0001, as amended March 15, 2010, directs the Respondents to develop and submit by **May 15, 2010**, a workplan to conduct soil, soil gas and/or groundwater investigations necessary to fully define the extent of soil, soil gas and groundwater contamination.
8. Respondents submitted the required workplan on July 7, 2010, 53 days past the due date of May 15, 2010.
9. Pursuant to Water Code section 13350, the Los Angeles Water Board may impose liability up to \$5,000 for each day of violation.
10. Water Code section 13327 specifies factors that the Los Angeles Water Board shall consider in establishing the appropriate amount of civil liability under Water Code section 13350. The Water Quality Enforcement Policy (Enforcement Policy) adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to the factors in Water Code section 13327.
11. Attachment A to this Order indicates the proposed civil liability for the violations described in Part 1, above, derived from the use of the penalty methodology in the Enforcement Policy.
12. As described in Attachment A, the proposed liability for the violations described in Part 1, above, is \$6,300.

PART 2: Requirement C

CONDUCT CORRECTIVE ACTIONS TO MITIGATE SOIL, SOIL GAS AND GROUNDWATER CONTAMINATION

13. Requirement C on Page 6 of Cleanup and Abatement Order No. R4 2008-0001 requires that Respondents develop and submit, by **May 15, 2010**, an interim remedial action plan to evaluate and propose the most viable interim remedial alternatives to mitigate the soil, soil gas and/or groundwater contamination.
14. Respondents have failed to submit the interim remedial action plan in accordance with Requirement C. In a letter dated September 9, 2010, the Los Angeles Water Board notified the Respondents of the violation and warned of the potential for the imposition of administrative civil liability.
15. To date, Respondents have been in violation of Requirement C for **423 days** (May 15, 2010 – July 11, 2011).
16. Pursuant to Water Code section 13350, the Los Angeles Water Board may impose liability up to **\$5,000** for each day of violation.
17. Water Code section 13327 specifies factors that the Los Angeles Water Board shall consider in establishing the appropriate amount of civil liability under Water Code section 13350. The Enforcement Policy adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to the factors in Water Code section 13327.
18. Attachment B to this Order indicates the proposed civil liability for the violations described in Part 2, above, derived from the use of the penalty methodology in the Enforcement Policy.
19. As described in Attachment B, the proposed liability for the violations described in Part 2, above, is **\$189,750**.

Part 3: Requirement D

CONDUCT GROUNDWATER MONITORING AND REPORTING

20. Requirement D on Page 6 of Cleanup and Abatement Order No. R4-2008-0001 requires that the Respondents submit quarterly groundwater monitoring reports, with the first report due June 15, 2010, and describes what information the reports must contain.
21. The Respondents have failed to install any groundwater monitoring wells and submit any quarterly groundwater monitoring reports in accordance with Requirement D. In a letter dated September 9, 2010, the Los Angeles Water Board notified the Respondents of the violation and warned of the potential for the imposition of administrative civil liability.
22. To date, Respondents have been in violation of Requirement D for 362 days. (July 15, 2010 – June 24, 2011)
23. The groundwater monitoring reports are required in order to determine impacts to water quality caused by past operations at the site in order to facilitate remediation efforts in accordance with Water Code section 13304. Pursuant to Water Code section 13350, the Los Angeles Water Board may impose liability up to \$5,000 for each day of violation.
24. Water Code section 13327 specifies factors that the Los Angeles Water Board shall consider in establishing the appropriate amount of civil liability under Water Code section 13350. The Enforcement Policy adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to the factors in Water Code section 13327.
25. Attachment C to this Order indicates the proposed civil liability for the violations described in Part 3, above, derived from the use of the penalty methodology in the Enforcement Policy.
26. As described in Attachments C, the proposed liability for the violations described in Part 3, above, is **\$165,000**.

MAXIMUM LIABILITY

27. Pursuant to Water Code section 13350, the maximum administrative civil liability which could be imposed by the Los Angeles Water Board for failing to comply with requirements of Cleanup and Abatement Order No. R4-2008-0001 is five thousand dollars (\$5,000) for each day in which the violation occurs.

As shown in the table below, the maximum liability that may be imposed for the violations described in Parts 1 through 3, above, is four million one hundred ninety thousand dollars (**\$4,190,000**).

| Part | Requirement | Days of Violation | Maximum Potential Liability |
|-------------|---|--------------------------|------------------------------------|
| Part 1 | Submit a Workplan for site investigations to assess soil, soil gas and groundwater contamination | 53 | \$265,000 |
| Part 2 | Submit Interim Remediation Action Plan (RAP) to mitigate soil, soil gas and groundwater contamination | 423 | \$2,115,000 |
| Part 3 | Submit Quarterly groundwater monitoring reports | 362 | \$1,810,000 |
| | | TOTAL | \$4,190,000 |

MINIMUM LIABILITY

28. Pursuant to the Enforcement Policy, the minimum administrative civil liability that shall be imposed by the Los Angeles Water Board is the amount of economic benefit derived from the violations, plus 10 percent. The economic benefit for the violations is the estimated cost to produce the required technical reports. According to the last estimate established by the State Water Resources Control Board UST Cleanup Fund, and based on current industry cost and historical costs to prepare similar technical reports, it is estimated that the cost to develop the required workplan and RAP is \$5,000 per report and the cost to develop and submit the 4 delinquent quarterly groundwater monitoring reports, as outlined in Cleanup and Abatement Order No. R4-2008-0001 is \$7,000 per report. Therefore, the cumulative economic benefit of not producing the reports is approximately \$38,000. The minimum liability is the economic benefit amount, plus 10 percent, or forty one thousand eight hundred dollars (\$41,800).

PROPOSED LIABILITY

29. As described in Attachments A through C, the combined liability for the violations associated with Parts 1 through 3, is \$361,050. Given the considerations described in Attachment AA however, it is recommended that the Los Angeles Water Board impose civil liability against the Respondents in the lesser amount of **\$118,710**. If the Respondents elect to contest this matter, the recommended liability may increase to recover additional necessary staff costs.

Dated this 11th day of July, 2011.


PAULA RASMUSSEN, Chief
Compliance and Enforcement Section

ATTACHMENT A

Calculation of Liability for Violations Described in Part 1:

1. Step 1 – Potential for Harm for Discharge Violations

The failure to timely develop and submit a workplan in accordance with Requirement B is a “non-discharge violation.” Therefore this step does not apply.

2. Step 2 – Assessments for Discharge Violations

The failure to timely develop and submit a workplan in accordance with Requirement B is a “non-discharge violation.” Therefore this step does not apply.

3. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy’s penalty calculation methodology directs the Los Angeles Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is minor because the failure by the Respondents to timely submit the *Site Assessment Workplan* outlining how they would conduct soil, soil gas and groundwater investigations to fully define the extent of gasoline contamination did not result in an appreciable increase in the threat to human health and beneficial uses. In this case, the report was 53 days late.

The Extent of Deviation from applicable requirements is minor because the site assessment workplan was ultimately submitted, 53 days late.

Using “TABLE 3 – Per-day Factor” and applying a Potential for Harm of minor and an Extent of Deviation of minor results in a factor of 0.15. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.15) \times (53 \text{ days of violation}) \times (\$5,000) = \$39,750$$

4. Step 4 – Adjustment Factors

a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Los Angeles Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to timely submit a workplan as required by Requirement B lasted 53 days.

The continuance of the violation is not resulting in a daily economic benefit; therefore an adjustment can be made.

The prosecution team recommends the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30 days of violation. This results in the consideration of 7 days in violation.

This results in a Revised Initial Base Liability as follows:

$$\text{Revised Initial Base Liability} = (0.15) \times (7 \text{ days of violation}) \times (\$5,000) = \mathbf{\$5,250}$$

The Enforcement Policy also 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 cleanup 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.

b. 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 1.0 has been selected. Although the workplan was not submitted by the due date required, it was eventually submitted.

c. 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.

Though this is a non-discharge violation, the Respondents have been historically slow to comply with Regional Board directives since the original California Water Code section 13267 Order was issued in 2001. The Respondents have been in violation of the original California Water Code section 13267 Order to submit the same workplan since its original due date of May 31, 2001. Since the three UST extractions in 2000 and the discovery of contaminated soil, no site assessment work has been performed making it very difficult for the Regional Board to evaluate the exposure risks to human health and beneficial uses (i.e. drinking water resources) for over 10 years. No cleanup has occurred at this Site to date. Even though the Los Angeles Regional Board received the required workplan 53 days past the due date and subsequently provided conditional approval of the workplan in a letter dated August 31, 2010, the Respondents have refused to implement the workplan and conduct any correction action. Respondents have shown limited cooperation to assess and clean up the site. Therefore, a multiplier of 1.2 is appropriate.

d. 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 1.0 is proposed because the Respondents, together, do not have a history of violations known to the Los Angeles Water Board. Any history of violations by Mr. Kim associated with the Cleanup and Abatement Order, prior to its amendment on March 15, 2010, is not considered here.

5. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

$$\text{(Revised Initial Liability)} \times \text{(Culpability Multiplier)} \times \text{(Cleanup and Cooperation Multiplier)} \times \text{(History of Violations)} = \text{(Total Base Liability Amount)}$$

$$(\$5,250) \times (1.0) \times (1.2) \times (1.0) = \$6,300$$

6. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

ATTACHMENT B

Calculation of Liability for Violations Described in Part 2:

7. Step 1 - Potential for Harm for Discharge Violations

The failure to develop and submit an interim remedial action plan in accordance with Requirement C is a "non-discharge violation." Therefore this step does not apply.

8. Step 2 - Assessments for Discharge Violations

The failure to develop and submit an interim remedial action plan in accordance with Requirement C is a "non-discharge violation." Therefore this step does not apply.

9. Step 3 - Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs the Los Angeles Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is moderate because the interim remedial action plan is necessary in order to mitigate the effects of the release of petroleum hydrocarbons at the Site. As described in the Complaint, soil samples taken at the time the underground storage tanks were removed indicated the maximum concentrations of TPHg at 6,040 mg/kg, benzene at 30 mg/kg, toluene 124 mg/kg, ethylbenzene 62 mg/kg, total xylenes at 211 mg/kg and MTBE at 139 mg/kg. These values are 5 to over 600 times the Regional Board's soil screening levels (SSLs) for the protection of groundwater quality and municipal (drinking water) beneficial uses. The nearest municipal well is less than one half of a mile downgradient. Furthermore, the un-remediated soil vapors from the former UST area pose a direct health threat to the inhabitants of the adjacent apartment complex, single family homes, Lynwood Dairy employees and patrons.

The Extent of Deviation from applicable requirements is major because the Respondents have disregarded the requirement to submit the interim remedial action plan and therefore the intended effectiveness of the requirement has been undermined.

Using "TABLE 3 - Per Day Factor" and applying a Potential for Harm of moderate and an Extent of Deviation of major results in a factor of 0.55. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.55) \times (423 \text{ days of violation}) \times (\$5,000) = \$1,163,250$$

10. Step 4 – Adjustment Factors

a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Los Angeles Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation.

The failure to develop and submit an interim remedial action plan as required by Requirement C has lasted 423 days, to date.

The continuance of the violation is not resulting in a daily economic benefit; therefore an adjustment can be made.

The prosecution team recommends that an alternate approach to penalty calculation be applied, but that the maximum reduction of days provided by the Enforcement policy is not appropriate because the failure to develop and submit an interim remedial action plan results in a commensurate delay in the implementation of the plan and the cleanup of the Site. The calculation of days of violation shall include the first day of violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment of each 10 days of violation thereafter. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30, 40, 50, 60, 70, 80, 90, 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260, 270, 280, 290, 300, 310, 320, 330, 340, 350, 360, 370, 380, 390, 400, 410 and 420 days of violation. This results in the consideration of 46 days in violation.

This results in a Revised Initial Base Liability as follows:

$$\text{Revised Initial Base Liability} = (0.55) \times (46 \text{ days of violation}) \times (\$5,000) = \$126,500$$

The Enforcement Policy also 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 cleanup 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.

b. 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 1.5 has been selected. In a letter dated September 9, 2010, the Los Angeles Water Board notified the Respondents that failure to submit the interim remedial action plan would result in the imposition of administrative

civil liability. Because the Respondents knew of the requirement to submit the interim remedial action plan and were warned of the consequence for continued non-compliance, their failure to do so is considered intentional misconduct. Therefore, a multiplier of 1.5 is appropriate.

c. 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.

This adjustment was not considered because this is a non-discharge violation. Therefore, a multiplier of 1.0 is appropriate.

d. 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 1.0 is proposed because the Respondents, together, do not have a history of violations known to the Los Angeles Water Board. Any history of violations by Mr. Kim associated with the Cleanup and Abatement Order, prior to its amendment on March 15, 2010, is not considered here.

11. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

$$\text{(Revised Initial Liability)} \times \text{(Culpability Multiplier)} \times \text{(Cleanup and Cooperation Multiplier)} \times \text{(History of Violations)} = \text{(Total Base Liability Amount)}$$

$$(\$126,500) \times (1.5) \times (1.0) \times (1.0) = \$189,750$$

12. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

ATTACHMENT C

Calculation of Liability for Violations Described in Part 3:

13. Step 1 - Potential for Harm for Discharge Violations

The failure to submit quarterly groundwater monitoring and sampling reports as required by Requirement D is a "non-discharge violation." Therefore this step does not apply.

14. Step 2 – Assessments for Discharge Violations

The failure to submit quarterly groundwater monitoring and sampling reports as required by Requirement D is a "non-discharge violation." Therefore this step does not apply.

15. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs the Los Angeles Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is moderate because the failure to submit quarterly groundwater monitoring and sampling reports results in a substantial potential for harm. Quarterly groundwater monitoring data is required to monitor the progress of the corrective actions taken at the site and determine the travel time of the contaminant plume towards the municipal well owned by Park Water Company, ½-mile downgradient. Without these reports, it is very difficult to ensure that cleanup is taking place in order to protect beneficial uses, determine impact or threat posed to water resources and ultimately bring the Site to closure.

The Extent of Deviation from applicable requirements is major because the Respondents have completely disregarded the requirement to submit quarterly groundwater monitoring and sampling reports.

Using "TABLE 3 – Per Day Factor" and applying a Potential for Harm of moderate and an Extent of Deviation of major results in a factor of **0.40**. As a result, the Initial Base Liability is:

Initial Base Liability = (0.55) x (362 days of violation) x (\$5,000) = **\$995,500**

16. Step 4 – Adjustment Factors

a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Los Angeles Water Board may adjust the per-day basis for civil liability if certain findings are made and

provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to submit quarterly groundwater monitoring and sampling reports as required by Order Requirement B has lasted 362 days, to date.

The continuance of the violation is not resulting in a daily economic benefit; therefore an adjustment can be made.

The prosecution team recommends that an alternate approach to penalty calculation be applied, but that the maximum reduction of days provided by the Enforcement policy is not appropriate because the failure to submit quarterly groundwater monitoring and sampling reports impacts the ability to monitor the cleanup progress and the ability to determine the travel time of the contaminant plume towards the municipal well owned by Park Water Company. The calculation of days of violation shall include the first day of violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment of each 10 days of violation thereafter. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30, 40, 50, 60, 70, 80, 90, 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260, 270, 280, 290, 300, 310, 320, 330, 340, 350, and 360 days of violation. This results in the consideration of 40 days in violation.

This results in a Revised Initial Base Liability as follows:

Revised Initial Base Liability = $(0.55) \times (40 \text{ days of violation}) \times (\$5,000) = \mathbf{\$110,000}$

The Enforcement Policy also 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 cleanup 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.

b. 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 1.5 has been selected. In a letter dated September 9, 2010, the Los Angeles Water Board notified the Respondents that failure to submit quarterly groundwater monitoring and sampling reports would result in the imposition of administrative civil liability. Because the Respondents knew of the requirement to submit quarterly groundwater monitoring and sampling reports, and were warned of the consequence for continued non-compliance, their failure to do so is considered intentional misconduct. Therefore, a multiplier of 1.5 is appropriate.

c. 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.

This adjustment was not considered because this is a non-discharge violation. Therefore, a multiplier of 1.0 is appropriate.

d. 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 1.0 is proposed because the Respondents, together, do not have a history of violations known to the Los Angeles Water Board. Any history of violations by Mr. Kim associated with the Cleanup and Abatement Order, prior to its amendment on March 15, 2010, is not considered here.

17. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

$$\text{(Revised Initial Liability)} \times \text{(Culpability Multiplier)} \times \text{(Cleanup and Cooperation Multiplier)} \times \text{(History of Violations)} = \text{(Total Base Liability Amount)}$$

$$(\$110,000) \times (1.5) \times (1.0) \times (1.0) = \$165,000$$

18. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

ATTACHMENT AA

**Application of Steps 6-10 to Combined Total Base Liabilities
Determined in Attachments A through C**

The Combined Total Base Liability Amounts for the violations discussed in Attachments A through C is:

(Total Base Liability for Violations in Part 1) +
(Total Base Liability for Violations in Part 2) +
(Total Base Liability for Violations in Part 3) =

Combined Total Base Liability

\$6,300 + \$189,750 + \$165,000 = \$361,050

Step 6 – Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if the Los Angeles Water Board has sufficient financial information necessary to assess the violator's ability to pay the Combined Total Base Liability or to assess the effect of the Combined Total Base Liability on the violator's ability to continue in business, then the Combined Total Base Liability Amount may be adjusted downward.

The Los Angeles Water Board Prosecution Team has enough information to suggest that the Respondents have the ability to pay the proposed liability, so that the burden of rebutting this presumption shifts to the Respondents. The Respondents own and operate the Lynwood Dairy Gasoline Station in Lynwood, CA and, in addition, the Respondents own property shown in the table below:

| Owner(s) | Assessor's Parcel Number | Property Address | Total Assessed Value | Assessment Year | Land Use |
|--------------------|--------------------------|---|----------------------|-----------------|--------------|
| T & T Family Trust | 7313-030-029 | 1355 W. Willow Street, Long Beach CA 90810 | \$226,930 | 2009 | Retail Store |
| T & T Family Trust | 6077-003-001 | 10804 S. Western Ave., Los Angeles CA 90047 | \$193,662 | 2009 | Retail Store |
| T & T Family Trust | 6015-004-001 | 6400 S. Western Ave., Los Angeles CA 90047 | \$244,654 | 2009 | Retail Store |

| Owner(s) | Assessor's Parcel Number | Property Address | Total Assessed Value | Assessment Year | Land Use |
|--------------------|--------------------------|---|----------------------|-----------------|-------------------------|
| T & T Family Trust | 6016-005-013 | 6401 S. Western Ave., Los Angeles CA 90047 | \$155,697 | 2009 | Auto Repair Service |
| T & T Family Trust | 5075-031-003 | 1818 W. Washington Blvd., Los Angeles CA 90007 | \$138,630 | 2009 | Vacant Lot |
| T & T Family Trust | 5075-031-002 | 1814 W. Washington Blvd. Los Angeles CA 90007 | \$260,759 | 2009 | Cemetery |
| T & T Family Trust | 5075-031-009 | 1923 Raymond Ave., Los Angeles CA 90007 | \$128,265 | 2009 | Parking Lot |
| T & T Family Trust | 5075-031-006 | 1917 Raymond Ave., Los Angeles CA 90007 | \$228,032 | 2009 | Light Industrial |
| T & T Family Trust | 5075-031-014 | 1951 Raymond Ave., Los Angeles CA 90007 | \$114,013 | 2009 | Vacant Residential Lot |
| T & T Family Trust | 5075-031-010 | 1929 Raymond Ave., Los Angeles CA 90007 | \$99,751 | 2009 | Single Family Residence |
| T & T Family Trust | 6002-025-032 | 6101 S. Normandie Ave., Los Angeles CA 90044 | \$127,392 | 2009 | Auto Repair Service |
| T & T Family Trust | 6031-015-031 | 333 E. Rosecrans Ave., Gardena CA 90248 | \$209,303 | 2009 | Service Station |
| T & T Family Trust | 5075-031-022 | 1908 S. Mariposa Ave., Los Angeles CA 90007 | \$407,912 | 2009 | Warehouse |
| T & T Family Trust | 6002-025-004 | Los Angeles | \$173,400 | 2008 | Parking Lot |
| T & T Family Trust | 6077-003-002 | Los Angeles | \$72,252 | 2009 | Parking Lot |
| T & T Family Trust | 4333-001-021 | 136 S. La Peer Dr., Beverly Hills CA 90211 | \$726,505 | 2009 | Single Family Residence |

Given the assets and sources of income described above, and without further information concerning the Respondent's ability to pay, there is no basis to adjust the proposed liability.

19. Step 7 – Other Factors As Justice May Require

Staff has incurred costs of investigation and enforcement for issuing the complaint in the amount of \$46,500. This represents approximately 310 hours of staff time devoted to investigating and

drafting the Complaint at \$150 per hour. These costs should be added to the Combined Total Base Liability amount.

Although Cleanup and Abatement Order R4-2008-0001 was issued pursuant to authority of Water Code 13304, the requirement to produce groundwater monitoring reports, as described in Part 3 of this Complaint, are also authorized pursuant to Water Code section 13267(b)(1), which provides, "in conducting an investigation...the regional board may require that any person who has discharged...waste within its region...shall furnish, under penalty of perjury, technical or monitoring program reports..." Persons who violate the requirement to submit technical or monitoring program reports may be liable for up to \$1,000 per day, in accordance with Water Code section 13268. This is a substantially lesser penalty than the \$5,000 per day liability that may be imposed upon any person who violates the requirements of a cleanup and abatement order under Water code section 13350. Because the requirements to produce technical reports, as described in Parts 1, 2 and 3 of this Complaint, fit squarely within the authority of Water Code section 13267, the amount of liability imposed for this violation should be commensurate with the maximum liability set forth in Water Code section 13268, which is one fifth the maximum liability set forth in Water Code section 13350. Therefore, it is appropriate to reduce the Total Base Liability for violations in Parts 1, 2 and 3 to one fifth of their original amounts, as shown below:

Part 1 (Violation 1) = $\$6,300 / 5 = \$1,260$ (reduction of \$5,040)

Part 2 (Violation 2) = $\$189,750 / 5 = \$37,950$ (reduction of \$151,800)

Part 3 (Violation 3) = $\$165,000 / 5 = \$33,000$ (reduction of \$132,000)

20. Step 8 – Economic Benefit

The Enforcement Policy directs the Los Angeles 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.

The economic benefit for the violations is the estimated cost to produce the required technical reports. According to the last estimate established by the State UST Cleanup Fund, and based on current industry cost and historical cost to prepare similar technical reports, it was estimated that the cost to develop the required workplan and RAP was \$5,000 per report and the cost to submit the 4 delinquent quarterly groundwater monitoring and sampling reports, as outlined in Cleanup and Abatement Order No. R4-2008-0001 was \$7,000 per report. Therefore, the economic benefit for the discharger for not producing the reports is approximately \$38,000.

The adjusted total base liability amount suggested would recover the economic benefit.

Step 9 – Maximum and Minimum Liability Amounts

Statutory Maximum

The Enforcement Policy directs the Los Angeles Water Board to consider the maximum liability amounts set forth in the applicable statutes.

As described in Paragraph 27 of the Complaint, the maximum potential liability for the alleged violations is **\$4,190,000**.

Statutory Minimum

There is no statutory minimum liability for a violation of Water Code section 13350, unless there is a discharge that occurs in conjunction with each day of violation. However, the enforcement policy directs the Regional Water Quality Control Board to recover, at a minimum, ten percent more than the economic benefit. In this case that would be **\$41,800**

21. Step 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. The final liability amount calculation for the violation of failing to pay the annual fee was performed as follows.

(Combined Total Base Liability Amount) + (Staff Costs) +/- (Adjustment for Other Factors as Justice May Require) = (Final Liability Amount)

Final Liability Amount:

$$(\$361,050) + (\$46,500) - (\$5,040) - (\$151,800) - (\$132,000) = \mathbf{\$118,710}$$

Instructions

1. Select Potential Harm for Discharge Violations
2. Select Characteristics of the Discharge
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Standard
5. Click "Determine Harm & per Gallon/Day..."
6. Enter Values into the Yellow highlighted fields

Select Item Potential Harm for Discharge Violations
 Select Item Characteristics of the Discharge
 Select Item Susceptibility of Cleanup or Abatement
 Select Item Deviation from Requirement

Select Item Potential Harm for Discharge Violations
 Select Item Characteristics of the Discharge
 Select Item Susceptibility of Cleanup or Abatement
 Select Item Deviation from Requirement

Select Item Potential Harm for Discharge Violations
 Select Item Characteristics of the Discharge
 Select Item Susceptibility of Cleanup or Abatement
 Select Item Deviation from Requirement

Discharger Name/ID: **Lynwood Dairy**

| | | Violation 1 | | Violation 2 | | Violation 3 | |
|--|---|------------------------------|---------------|-------------|---------------|-------------|---------------|
| Discharge Violations | Step 1 Potential Harm Factor (Generated from Button) | | | | | | |
| | Step 2 Per Gallon Factor (Generated from Button) | | | | | | |
| | Gallons | | | | | | |
| | Statutory / Adjusted Max per Gallon (\$) | | | | | | |
| | Total | | \$ - | | \$ - | | \$ - |
| Discharge Violations | Per Day Factor (Generated from Button) | | | | | | |
| | Days | | | | | | |
| | Statutory Max per Day | | | | | | |
| | Total | | \$ - | | \$ - | | \$ - |
| | Non-Discharge Violations | Step 3 Per Day Factor | 0.15 | | 0.55 | | 0.55 |
| Days | | 7 | | 46 | | 40 | |
| Statutory Max per Day | | \$ 5,000 | | \$ 5,000 | | \$ 5,000 | |
| Total | | | \$ 5,250.00 | | \$ 126,500.00 | | \$ 110,000.00 |
| Initial Amount of the ACL | | | \$ 5,250.00 | | \$ 126,500.00 | | \$ 110,000.00 |
| Add Factors | Step 4 Culpability | 1 | \$ 5,250.00 | 1.5 | \$ 189,750.00 | 1.5 | \$ 165,000.00 |
| | Cleanup and Cooperation | 1.2 | \$ 6,300.00 | 1 | \$ 189,750.00 | 1 | \$ 165,000.00 |
| | History of Violations | 1 | \$ 6,300.00 | 1 | \$ 189,750.00 | 1 | \$ 165,000.00 |
| | Step 5 Total Base Liability Amount | | \$ 361,050.00 | | \$ 407,550.00 | | \$ 361,050.00 |
| Step 6 Ability to Pay & to Continue in Business | 1 | \$ 361,050.00 | | | | | |
| Step 7 Other Factors as Justice May Require | 1 | \$ 361,050.00 | | | | | |
| Staff Costs | \$ 46,500 | \$ 407,550.00 | | | | | |
| Step 8 Economic Benefit | \$ 41,800 | \$ 407,550.00 | | | | | |
| Step 9 Minimum Liability Amount | | | | | | | |
| Maximum Liability Amount | \$ 4,190,000 | | | | | | |
| Step 10 Final Liability Amount | | \$ 407,550.00 | | | | | |

Penalty Day Range Generator

Start Date of Violations: **5/15/10**
 End Date of Violations: **7/6/10**

Maximum Days Fined (Steps 2 & 3) = **53** Days
 Minimum Days Fined (Steps 2 & 3) = **7** Days

**ENCLOSURE 4
(PART 1)**



California Regional Water Quality Control Board Los Angeles Region



Linda S. Adams
Agency Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

July 29, 2010

Mr. William Giamela
Coast United Property Management
8020 Deering Avenue
Canoga Park, California 91304

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM No. 7009 0820 0001 6811 9503

**COMPLAINT NO. R4-2010-0115 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST
COAST UNITED PROPERTY MANAGEMENT FOR THE PROPERTY LOCATED AT 8714
AND 8716 DARBY AVENUE, NORTHRIDGE, CALIFORNIA**

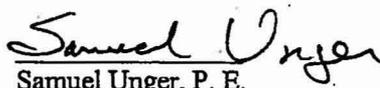
Dear Mr. Giamela:

Enclosed is Complaint No. R4-2010-0115 for Administrative Civil Liability in the amount of \$39,900 against Coast United Property Management (hereinafter Discharger) based on a violation of a California Water Code Section 13267 Investigative Order issued February 20, 2008. Also enclosed is the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) Notice of Public Hearing to Consider an Administrative Civil Liability Complaint for this matter.

Unless waived, a hearing before the Regional Board or a Regional Board Hearing Panel (Hearing Panel) will be held on this Complaint pursuant to California Water Code §§ 13228.14 and 13323. Should the Discharger choose to waive its right to a hearing, an authorized agent must sign the waiver form attached and return it to the Regional Board by 5:00 pm on August 30, 2010. If we do not receive the waiver and full payment of the penalty by August 30, 2010, this matter will be heard before the Regional Board or Hearing Panel. An agenda containing the date, time, and location of the hearing will be mailed to you prior to the hearing date.

If you have any questions regarding this matter, please contact Dr. Angelica Castaneda at (213) 576-6737 or acastaneda@waterboards.ca.gov or Ms. Thizar Tintut-Williams, Unit Chief, at (213) 576 6723 or twilliams@waterboards.ca.gov.

Sincerely,


Samuel Unger, P. E.
Interim Executive Officer

- Attachments: 1. Administrative Civil Liability Complaint No. R4-2010-0115 and Waiver Form
2. Notice of Public Hearing

- cc: Ms. Laura Drabandt, Office of Enforcement, State Water Resources Control Board
Ms. Jennifer Fordyce, Office of Chief Counsel, State Water Resources Control Board
Ms. Deborah Smith, Los Angeles Regional Water Quality Control Board

California Environmental Protection Agency

Recycled Paper

Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:) **Complaint No. R4-2010-0115**
)
Coast United Property Management) **Violation of California Water Code § 13268**

 Also known as)
Coast-United Advertising Co., Inc.)
)

This Complaint is issued to COAST UNITED PROPERTY MANAGEMENT, also known as COAST-UNITED ADVERTISING CO., INC. (Discharger), under authority of California Water Code (CWC) section 13323 to assess administrative civil liability pursuant to CWC section 13268. This Complaint proposes administrative civil liability in the amount of \$39,900 based on a violation of a CWC section 13267 Investigative Order issued February 20, 2008.

The Interim Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) hereby gives notice that:

1. The Discharger owns the property located at 8714 and 8716 Darby Avenue, Northridge, City and County of Los Angeles, California (the Site). Though there are two addresses, the property has one Assessor's Parcel Number (APN), 2769-024-030. Chlorinated volatile organic compounds known to be carcinogens to humans from the soil and groundwater have been detected at the Site in the past, and may have or threaten to detrimentally impact the quality of the waters of the state.
2. The Dischargers are alleged to have violated provisions of the law for which the Regional Board may impose civil liability pursuant to CWC section 13268 from the period from June 30, 2008 through July 29, 2010, the day this Complaint issues. This Complaint proposes to assess \$39,900 in penalties for the violation cited based on the considerations described herein. The deadline for public comments on this Complaint is 5:00 p.m. on **August 30, 2010**.
3. Unless waived, a hearing before a Regional Board Hearing Panel will be held on **October 27, 2010**, at 9:00 a.m. at 320 W. 4th Street, Los Angeles, CA 90013 on the 5th floor at the Public Utilities Commission Hearing Room. The Discharger or its representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of

civil liability by the Regional Board. An agenda will be mailed to the Dischargers approximately ten days before the hearing date.

4. The Dischargers must submit any written evidence and/or information concerning this Complaint to the Regional Board no later than 5:00 p.m. on **September 28, 2010**, for the Hearing Panel's consideration. Any written evidence submitted to the Regional Board after this date and time may not be accepted or responded to in writing.
5. At the hearing, the Hearing Panel will consider whether to affirm, reject, or modify the proposed administrative civil liability, or to refer the matter to the Attorney General, or take other enforcement action.
6. This issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

ALLEGATIONS

7. **Site Location and Description:** The Site is 0.65 acres in a light industrial and residential area. The Site consists of various structures including a one level multi-unit building. There is an asphalt-paved driveway and parking lot area, and a mainly asphalt-paved open yard area. There are residences to the north and east, and light industrial properties across Darby Avenue to the south and west.
8. **Named Discharger:** The Discharger is the responsible party because it owns the Site property. COAST-UNITED ADVERTISING CO., INC owns the Site and, WILLIAM M. GIAMELA is the Agent for Service of Process. COAST-UNITED ADVERTISING CO., INC purchased the Site in 1997 for \$350,000. Though the business names are slightly different, it appears COAST-UNITED ADVERTISING CO., INC and COAST UNITED PROPERTY MANAGEMENT is the same corporation. WILLIAM M. GIAMELA has signed correspondence to the Regional Water Board regarding the Site on behalf of COAST UNITED PROPERTY MANAGEMENT, with the same business address in the letterhead as what is on file with the Secretary of State, 8020 Deering Avenue, Canoga Park, CA.
9. **Regulatory Status:** On February 20, 2008, the Regional Board issued a California Water Code (CWC) section 13267 investigative order (13267 Order) requiring the Discharger to submit two technical reports by March 24, 2008 (an extension was granted to June 30, 2008). The required reports were 1) a Phase I Environmental Site Assessment report containing a history of operations on the Site and identifying potential source areas and chemicals used/stored at the Site, and 2) a technical work plan to completely delineate soil, soil vapor and groundwater contamination. On March 17, 2009, Regional Water Board Executive Officer Tracy J. Egoscue issued a Notice of Violation (NOV) to the Discharger for failing to comply with the 13267 Order. The Discharger has never applied for coverage under any permit with the Regional Water Board.

10. **Site Background:** The Dischargers are suspected of allowing chlorinated volatile organic compounds including tetrachloroethylene (PCE), trichloroethylene (TCE), and 111-trichloroethane (TCA), in the Site's ground water to migrate off the Site and into the community. The 13267 Order sought to identify and delineate the chlorinated volatile organic compounds present on the Site.
- a. The site has been historically used as a circuit board manufacturing facility prior to the Discharger purchasing the property. It had been leased to Scrivner Electronics sometime through 1974, Darby Circuits from 1974 through 1982, and Lai Circuits from 1982 through 1985. The manufacturing operations at the former circuit board facility reportedly used a concrete clarifier and an adjacent pit to discharge various compounds and chemicals used or generated during the production processes. The clarifier was removed prior to 1986.
 - b. In 1986, soil samples collected beneath the former clarifier to a depth of 40 feet below ground surface (bgs) detected PCE, TCA, and TCE. Maximum soil concentrations were 117 milligrams per kilogram (mg/kg), 1,270 mg/kg and 4,580 mg/kg, respectively. High concentrations of copper (20,200 mg/kg) and chromium (8,400 mg/kg) were also detected. The highest concentrations of the chemicals of concern were identified directly beneath and adjacent to a former copper sulfate pit and a former clarifier.
 - c. Tetra Tech, Inc., described in their May, 1989 report titled *Results of Soil and Groundwater Sampling at the Henderson Property, Northridge, California* that they investigated soil and groundwater to determine the vertical extent of contamination beneath the location of the former clarifier. The results confirmed that contaminants had migrated vertically through the soil and impacted the first groundwater below the site. Monitoring well MW-1 was installed adjacent to the clarifier. Groundwater analysis from MW-1 verified that the groundwater beneath the site was contaminated at 1,700 micrograms per liter ($\mu\text{g/L}$) TCA and 6,500 $\mu\text{g/L}$ TCE.
 - d. In January, 1991, the County of Los Angeles Department of Health Services informed the Regional Water Board that the former business Lai Circuits that was on the Site handles acids, bases, solvents and heavy metals. Poor methods of disposal, housekeeping and maintenance led to contaminating the soil with ammonia, solvents and heavy metals. The Department of Health Services closed the business. Initial groundwater samples indicated significant levels of chlorinated organic contamination. The Department of Health Services concluded there was a threat to the quality of the groundwater.
 - e. In October, 1991, the Regional Water Board sought a work plan for a complete site assessment to determine the extent of soil and groundwater contamination from San Chen Lai, the owner of Lai Circuits and the Site at the time.
 - f. According to a letter dated February 10, 1992 from the Office of the District Attorney of the County of Los Angeles to the Regional Board, San Cheng Lai of Lai Circuits in California Superior Court, Los Angeles County, pled no contest to nine felony violations of California Health and Safety Code section 25189.5(b) (improper disposal of hazardous waste), based on his actions that contaminated the Site (Case

number A815565). Mr. Lai was to make payment into a trust account totaling \$100,000 to fund Site cleanup.

- g. The Discharger purchased the Site in 1997.
- h. On February 20, 2008, the Executive Officer of the Regional Water Board issued the 13267 Order requiring the Discharger to submit 1) a Phase I Environmental Site Assessment report to include a complete operational history of the Site and the identification of all potential source areas and chemicals used or stored at the site; and 2) a technical work plan to completely delineate soil, soil vapor and groundwater contamination. The reports were due to the Regional Water Board by March 24, 2008. On March 27, 2008, Mr. William Giamela requested via e-mail a 45-day extension which was granted by letter dated May 12, 2008. The revised due date for the reports was June 30, 2008.
- i. On March 17, 2009, the Executive Officer of the Regional Water Board issued a Notice of Violation for the Discharger's failure to submit the reports required under the 13267 Order. After several communications with Mr. William Giamela, no reports were submitted to the Regional Water Board and staff is not aware of any cleanup activity.
- j. After several phone calls, e-mails, and at least one meeting with Regional Board staff over the past two years since the 13267 Order issued, the Discharger has yet to submit either report.

VIOLATION

- 11. Pursuant to CWC section 13268(a)(1) and (b)(1), any person failing or refusing to furnish technical reports required by a 13267 order may be civilly liable for an amount not to exceed \$1,000 for each day of violation.
- 12. The 13267 Order required the Discharger to submit the Phase I Environmental site assessment report and work plan by March 24, 2008. Three days after the due date, Mr. William Giamela requested a 45-day extension, which was granted, extending the due date to June 30, 2008.
- 13. If this matter proceeds to hearing, the Interim Executive Officer reserves the right to amend the proposed amount of 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 complaint through completion of the hearing.

PROPOSED LIABILITY

14. The State Water Resources Control Board's Water Quality Enforcement Policy (amended November, 2009)¹ establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in CWC section 13327. The liability methodology spreadsheet, Attachment A, is incorporated herein and made a part of this ACL Complaint by this reference. It presents the administrative civil liability derived from the use of the penalty methodology in the Enforcement Policy.
15. **Initial Liability Determination:** The per day factor is 0.4. This factor is determined by a matrix analysis using the potential for harm and the deviation from applicable requirements. The potential for harm is determined to be minor because the requirements the Discharger failed to meet were to submit reports describing the history of operations and chemical use at the Site, and a work plan to delineate the extent of pollution. The failure to submit these reports did not increase the amount of the pollution. The deviation from the requirement to submit reports was major. The Discharger has failed for two years to delineate the pollution, disregarding the 13267 Order other than asking for an extension.
- a. There are 760 days of violation from June 30, 2008 through July 29, 2010. Regional Board staff has determined that the Enforcement Policy's alternative approach to penalty calculation is appropriate. A multiple-day approach is appropriate since the violations result in no economic benefit from the illegal conduct that can be measured on a daily basis. The economic benefit is the cost of having the required reports prepared.
 - b. Following the Enforcement Policy, for violations that last more than 30 days, the liability shall not be less than an amount that is calculated based on an assessment of the initial liability amount for the first day of violation, plus an assessment for each five day period of violations until the 30th day, plus an assessment for each 30 days of violation thereafter. Since the Discharger failed to submit the reports for 760 days, only 31 days worth of violations are accrued based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, 90, etc.
 - c. Applying the per day factor to the number of days of violation yields an initial liability of \$12,400. This is the number of days of violation (31) multiplied by the per day factor (0.4), multiplied by the statutory maximum penalty per day (\$1,000).
16. **Adjustments to Initial Liability Determination:** Based on the following adjustments, the amount revised from the initial liability is \$27,900.
- a. The Discharger's culpability factor is 1.5 based on the Discharger's intentional failure to submit the reports to comply with the 13267 Order. The Discharger was given sufficient notice with the 13267 Order, its extension at the Discharger's request, the Notice of Violation, and multiple e-mail and phone reminders.

¹ The Enforcement Policy may be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

- b. The Discharger's cleanup and cooperation factor is 1.5. Cleanup is not a factor in this matter because the violation is failure to submit reports. The Discharger has not cooperated voluntarily or by complying with the 13267 Order. As of the date of this Complaint, the Discharger has yet to submit either required report despite the ample notification.
 - c. The discharger's history of violations factor is 1 because it is a neutral multiplier. Enforcement staff is not aware of any prior violations.
 - d. Based on these adjustments, the amount revised from the initial liability is \$27,900. This is the initial liability (\$12,400) multiplied by the culpability factor (1.5), multiplied by the cleanup and cooperation factor (1.5), multiplied by the history of violations factor (1).
17. **Total Base Liability Amount:** After considering the adjustment factors, the total base liability amount is calculated at \$27,900.
18. **Ability to Pay and to Continue in Business:** The discharger has the ability to pay the total base liability amount based on 1) the Discharger owns the property and thus has a significant asset, 2) the Discharger leases the property and thus has an income, and 3) a records search indicates that the Discharger is operating at least one, if not multiple, businesses out of its offices located at 8116 and 8020 Deering Park Avenue in Canoga Park, CA 91304 (Coast United Advertising Co., Inc.; Coast United Bench Advertising Company; and Coast United Property Management). Based on the information, the total base liability amount is not adjusted.
19. **Other Factors as Justice May Require:** As of the date of the issuance of this Complaint, enforcement staff has incurred costs of investigation and enforcement in the amount of \$12,000. This represents approximately 80 hours staff time devoted to investigating and drafting the Complaint at \$150 per hour. This amount is added to the total base liability amount, equaling \$39,900. There are no additional factors as justice may require.
20. **Economic Benefit:** The economic benefit estimated for the violation(s) at issue is approximately \$10,000 based on current consulting costs of producing a Phase I Environmental Site Assessment (\$3,000) and a work plan for soil, soil vapor and groundwater assessment (\$7,000). The adjusted total base liability amount of \$39,900 is more than at least 10% higher than the economic benefit amount as required in the Enforcement Policy. Therefore, the liability amount is not adjusted for this factor.
21. **Maximum and Minimum Liability:** The statutory minimum liability is zero and the maximum liability amount for 760 days of violation is \$760,000. The Enforcement Policy requires that the discretionary administrative civil liability must not exceed the maximum liability amount nor be less than the minimum liability amount. There is no need to adjust the proposed liability amount since it is less than the statutory maximum amount.

22. **Final Proposed Liability Amount:** Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed administrative civil liability is \$39,900. Attachment A is a spreadsheet that demonstrates the use of the penalty calculation methodology.



Samuel Unger, P.E.
Interim Executive Officer
Los Angeles Regional Water Quality Control Board

July 29, 2010

Attachment A: Liability Methodology Spreadsheet

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2010-0115

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

I am duly authorized to represent COAST UNITED PROPERTY MANAGEMENT, also known as COAST-UNITED ADVERTISING CO., INC. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R4-2010-0115 (hereinafter the "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 [with the complaint]. 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 the recommended liability.*)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **\$39,900** by check that references "ACL Complaint No. R4-2010-0115" made payable to the "*Cleanup and Abatement Account*". Payment must be received by the Regional Water Board by **August 30, 2010** or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
- 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 the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Interim Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. 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 Regional 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 Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(Print Name and Title)

(Signature)

(Date)

Instructions

1. Select Potential Harm for Discharge Violations
2. Select Characteristics of the Discharge
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Standard
5. Click "Determine Harm & per Gallon/Day..."
6. Enter Values into the Yellow highlighted fields

- Select Item Potential Harm for Discharge Violations
- Select Item Characteristics of the Discharge
- Select Item Susceptibility of Cleanup or Abatement
- Select Item Deviation from Requirement

- Select Item Potential Harm for Discharge Violations
- Select Item Characteristics of the Discharge
- Select Item Susceptibility of Cleanup or Abatement
- Select Item Deviation from Requirement

Discharger Name/ID:

| | | Violation 1 | | Violation 2 | |
|---|--|---|--|--------------|------|
| Discharge Violations | Step 1 | Potential Harm Factor (Generated from Button) | | | |
| | Step 2 | Per Gallon Factor (Generated from Button) | | | |
| | | Gallons | | | |
| | | Statutory / Adjusted Max per Gallon (\$) | | | |
| | Total | | \$ - | | \$ - |
| | Discharge Violations | Step 2 | Per Day Factor (Generated from Button) | 0 | |
| Days | | | | | |
| Statutory Max per Day | | | | | |
| Total | | | \$ - | | \$ - |
| Non-Discharge Violations | | Step 3 | Per Day Factor | 0.4 | |
| | Days | | 31 | | |
| | Statutory Max per Day | | \$ 1,000 | | |
| | Total | | \$ 12,400.00 | | \$ - |
| Initial Amount of the ACL | | | \$ 12,400.00 | | \$ - |
| Add'l Factors | Step 4 | Culpability | 1.5 | \$ 18,600.00 | \$ - |
| | | Cleanup and Cooperation | 1.5 | \$ 27,900.00 | \$ - |
| | | History of Violations | 1 | \$ 27,900.00 | \$ - |
| Step 5 Total Base Liability Amount | | | \$ 27,900.00 | | |
| Step 6 | Ability to Pay & to Continue in Business | 1 | \$ 27,900.00 | | |
| Step 7 | Other Factors as Justice May Require | 1 | \$ 27,900.00 | | |
| | Staff Costs | \$ 12,000 | \$ 39,900.00 | | |
| Step 8 | Economic Benefit | \$ 10,000 | \$ 39,900.00 | | |
| Step 9 | Minimum Liability Amount | 10000 | | | |
| | Maximum Liability Amount | \$ 760,000 | | | |
| Step 10 Final Liability Amount | | | \$ 39,900.00 | | |

Penalty Day Range Generator

Start Date of Violation=

End Date of Violation=

Maximum Days Fined (Steps 2 & 3) = Days

Minimum Days Fined (Steps 2 & 3) = Days

**ENCLOSURE 4
(PART 2)**

**California Regional Water Quality Control Board
Los Angeles Region**



320 West Fourth Street, Suite 200, Los Angeles, California 90013
(213) 576-6600 • Fax (213) 576-6640
<http://www.waterboards.ca.gov/losangeles>

Linda S. Adams
Acting Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

February 9, 2011

Mr. William M. Giamela, President
Coast United Property Management
8020 Deering Avenue
Canoga Park, CA 91304

Certified Mail
Return Receipt Requested
Claim No. 7006 3450 0002 4641 9616

**DIRECTIVE FOR ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R4-2010-0115
AGAINST COAST UNITED PROPERTY MANAGEMENT FOR THE PROPERTY
LOCATED AT 8714 AND 8716 DARBY AVENUE, NORTHRIDGE, CALIFORNIA**

Dear Mr. Giamela:

On July 29, 2010, the Interim Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) issued Administrative Civil Liability Complaint No. R4-2010-0115 (ACLC) against Coast United Property Management, in the amount of \$39,900 for failing to submit two technical reports under a 13267 Investigative Order issued February 20, 2008.

On October 27, 2010, a hearing on the ACLC was held by a Hearing Panel of the Regional Board pursuant to California Water Code (CWC) § 13228.14 and 13323. The Panel subsequently submitted to the Regional Board its report of the hearing consisting of the findings of fact, conclusions of law, and recommended an administrative liability of \$56,362.50. However, the Panel determined that if both reports were submitted and approved by the Executive Officer no later than December 31, 2010, the Panel recommended that the Regional Board impose a reduced liability on the Discharger in the amount by \$50,762.50.

On February 3, 2011, in a Regional Board meeting, the Executive Officer informed the Regional Board that both reports were submitted and approved. The Regional Board approved the Panel's recommendation and imposed administrative civil liability on Coast United Property Management and issued Order on Complaint No. R4-2010-0115 (ACLO), a copy of which is attached hereto and incorporated herein by reference, which directs payment of \$50,762.50.

As noted in the ACLO, the assessment is due and payable no later than thirty (30) days from the date on which this Order is issued. A check in the amount of \$50,762.50 (payable to the State Water Resources Control Board Cleanup and Abatement Account) must be received by the Regional Board on or before March 7, 2011.

Mr. William M. Giamela
Coast United Property Management

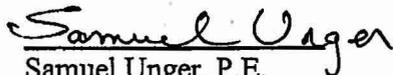
- 2 -

February 9, 2011

In the event that Coast United Property Management fails to comply with the requirements of this Directive, the Executive Officer or his delegee is authorized to refer this matter to the Office of Attorney General for enforcement.

If you have any questions please contact Staff Counsel Laura Drabandt at (916) 341-5180 or Dr. Angelica Castaneda at (213) 576 6737 regarding this matter.

Sincerely,


Samuel Unger, P.E.
Executive Officer

Enclosure: Order on Complaint No. R4-2010-0115

cc: Ms. Laura Drabandt, Office of Enforcement, State Water Resources Control Board
Ms. Jennifer Fordyce, Office of Chief Counsel, State Water Resources Control Board
Ms. Deborah Smith, Los Angeles Regional Water Quality Control Board

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:

Coast United Property Management

Also known as

Coast-United Advertising Co., Inc.

Order on Complaint No. R4-2010-0115

Administrative Civil Liability

Pursuant to California Water Code § 13268

For Violation of

California Water Code § 13267

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The Regional Water Quality Control Board, Los Angeles Region (Regional Board) has found and determined that Coast United Property Management (hereinafter Discharger) violated California Water Code (CWC) § 13267 by failing to submit two technical reports required by an investigative order issued to the Discharger on February 20, 2008.
2. The Discharger owns the property located at 8714 and 8716 Darby Avenue in Northridge, California (the Site). Both addresses are assigned Assessor Parcel Number 2769-024-030. The Discharger purchased the Site in 1997. The Site was historically used as a circuit board manufacturing facility prior to the Discharger purchasing the Site. Soil samples collected at the Site in 1986 detected high levels of chlorinated volatile organic compounds (VOCs), including tetrachloroethylene (PCE), trichloroethane (TCA), and trichloroethylene (TCE), as well as heavy metals, such as copper and chromium. A May 1989 report conducted by Tetra Tech confirmed that PCE, TCA, and TCE had migrated vertically through the soil and impacted the first groundwater below the Site.
3. On February 20, 2008, the Regional Board issued a CWC section 13267 investigative order (13267 Order) requiring the Discharger to submit two technical reports by March 24, 2008. The 13267 Order required submittal of the following reports: 1) a Phase 1 Environmental Site Assessment report containing a history of operations on the Site and the identification of all potential source areas and chemicals used/stored at the Site (Phase 1 Report), and 2) a technical work plan to completely delineate the soil, soil vapor, and groundwater contamination (Work Plan). Pursuant to a request by the Discharger, the due date to submit the reports was extended to June 30, 2008.
4. On March 17, 2009, the Regional Board Executive Officer issued a Notice of Violation (NOV) to the Discharger for failure to submit the reports required by the 13267 Order. Regional Board staff mailed the NOV by certified mail, and received a signed Certified Mail Receipt confirming delivery to the Discharger. Regional Board staff also made several attempts to contact the Discharger, but the various phone calls and emails were not returned.

Coast United Property Management
Order on Complaint No. R4-2010-0115

5. On July 29, 2010, the Interim Executive Officer issued Complaint No. R4-2010-0115 to the Discharger recommending that the Regional Board assess the Discharger administrative civil liability in the amount of \$39,900 pursuant to CWC section 13268 for failure to submit the two reports required by the 13267 Order.
6. On October 27, 2010, this matter was heard in Los Angeles, California before a Regional Board Hearing Panel (Panel) consisting of Regional Board Members Mary Ann Lutz (Chair), Madelyn Glickfeld (Vice-Chair), Francine Diamond, and Steve Blois. Deborah Smith and Jennifer Fordyce were Panel advisors. John Kalajian and William Giamela appeared on behalf of the Discharger. Samuel Unger, Laura Drabandt, and Dr. Angelica Castaneda appeared for the Prosecution Team. The Panel subsequently submitted to the Regional Board its report of the hearing consisting of the findings of fact, conclusions of law, and recommended administrative civil liability, a copy of which is attached hereto and incorporated herein by reference.
7. Based on the written record and evidence presented at the hearing, the Panel determined that the Discharger violated CWC section 13267 by failing to submit the two technical reports required by the 13267 Order. Pursuant to CWC section 13268, the Panel recommended that the Regional Board impose administrative civil liability in the amount of \$56,362.50 on the Discharger for these violations. As a result of the Discharger providing evidence that he had entered into a contract for the two reports the day before the hearing, the Panel further determined that it will reduce its recommended liability amount by the contract amount of \$5,600 if both the Phase 1 Report and the Work Plan are submitted to the Regional Board and approved by the Executive Officer no later than December 31, 2010. If that were to occur, then the Panel will recommend that the Regional Board impose a reduced administrative civil liability on the Discharger in the amount of \$50,762.50.
8. On December 31, 2010, the Discharger submitted to the Regional Board two technical reports entitled "Phase 1 Environmental Site Assessment" (Phase I Report) and "Preliminary Environmental Site Assessment Work Plan" (Work Plan), prepared by Ami Adini & Associates, Inc..
9. On January 20, 2011, the Executive Officer sent the Discharger a letter entitled "Conditional Approval of Technical Reports Submitted Pursuant to Water Code Section 13267 Order." The letter indicated that the Phase I Report was accepted and approved. The Work Plan, however, was conditionally approved. The letter states, "As submitted, the Work Plan does not fully satisfy the [13267] Order because it does not contain work plans for soil and groundwater sampling, and the proposed passive soil gas sampling method is used for screening purposes only. However, in practice, site assessment using a phased approach strategy has been commonly accepted by the Regional Board staff for several sites. Therefore, your initial Work Plan is approved, provided that active soil gas, soil, and groundwater assessment will be conducted in a later phase of assessment."
10. Upon considering the Panel's report and making an independent review of the record, as well as actions by the parties after the hearing, the Regional Board during its meeting on February 3, 2011 adopted the findings of the Panel's report as its own and upheld the imposition of the Panel's proposed administrative civil liability on the Discharger. After considering the Discharger's actions that occurred after the hearing, the Regional Board has determined that the recommended civil liability of \$56,362.50 should be reduced by the entire contract amount of \$5,600. The Regional Board believes that such a reduction is

Coast United Property Management
Order on Complaint No. R4-2010-0115

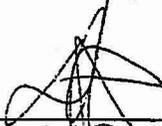
appropriate since the Phase I Report was submitted and approved soon after the hearing. Further, although the Work Plan was only conditionally approved, the Regional Board has determined that the Discharger has shown good faith by submitting a Work Plan as required, which will hopefully allow remediation of the Site to proceed. Therefore, the Regional Board has determined that civil liability should be imposed on the Discharger in the amount of \$50,762.50.

11. On February 3, 2011, despite an opportunity to provide financial information, the Discharger for the first time requested a payment plan. The Discharger did not provide any information concerning his financial status, either prior to the panel hearing or before the Regional Board's consideration of the Panel's recommendation. Therefore, the Regional Board did not have any financial information from the Discharger to consider in adopting this Order.
12. This Order on Complaint is effective and final upon issuance by the Regional Board. Payment must be received by the Regional Board no later than thirty days from the date on which this Order is issued.
13. In the event that the Discharger fails to comply with the requirements of this Order, the Executive Officer or his delegee is authorized to refer this matter to the Office of Attorney General for enforcement.
14. Any person aggrieved by this action of the Regional Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must *receive* the petition by 5:00 p.m., 30 days after the Regional Board action, except that if the thirtieth day following the action falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

IT IS HEREBY ORDERED that, pursuant to § 13323 of the CWC, the Discharger shall make a cash payment of \$50,762.50 (check payable to the State Water Pollution Cleanup and Abatement Account) no later than thirty days from the date of issuance of this Order.

In the event that the Discharger fails to comply with the requirements of this Order on Complaint No. R4-2010-0115, the Executive Officer or his delegee is authorized to refer this matter to the Office of Attorney General for enforcement.

I, Deborah J. Smith, Chief Deputy Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order issued by the California Regional Water Quality Control Board, Los Angeles Region, and that such action occurred on February 3, 2011.



Deborah J. Smith
Chief Deputy Executive Officer

HEARING PANEL REPORT AND PROPOSED ORDER

This matter was heard on October 27, 2010 in Los Angeles, California before a panel consisting of Regional Board Members Mary Ann Lutz (Chair), Madelyn Glickfeld (Vice-Chair), Francine Diamond, and Steve Blois. Deborah Smith and Jennifer Fordyce were Panel advisors. John Kalajian and William Giamela appeared on behalf of Coast United Property Management (Discharger). Samuel Unger, Laura Drabandt, and Dr. Angelica Castaneda appeared for the Prosecution Team.

The Panel makes the following:

FINDINGS OF FACT

1. The Discharger owns the property located at 8714 and 8716 Darby Avenue in Northridge, California (the Site). Both addresses are assigned Assessor Parcel Number 2769-024-030. The Site is 0.65 acres and consists of various structures, including a one-level multi-unit building. There is an asphalt-paved driveway and parking lot area, and a mainly asphalt-paved open yard area. There are residences to the north and east, and light industrial properties across Darby Avenue to the south and west.
2. The Site was historically used as a circuit board manufacturing facility prior to the Discharger purchasing the Site. The manufacturing operations at the former circuit board facility used a concrete clarifier and an adjacent pit to discharge various compounds and chemicals used or generated during the production processes.
3. In 1986, soil samples collected beneath the former clarifier to a depth of 40 feet below ground surface (bgs) detected high levels of chlorinated volatile organic compounds (VOCs), including tetrachloroethylene (PCE), trichloroethane (TCA), and trichloroethylene (TCE), as well as heavy metals, such as copper and chromium. The highest concentrations of the chemicals of concern were identified directly beneath and adjacent to the former copper sulfate pit and former clarifier.
4. A May 1989 report conducted by Tetra Tech confirmed that contaminants had migrated vertically through the soil and impacted the first groundwater below the Site. Groundwater analysis from a monitoring well adjacent to the clarifier verified that the groundwater beneath the site was contaminated with PCE, TCA, and TCE.
5. In 1991, the County of Los Angeles Department of Health Services closed the circuit board manufacturing facility on the Site, concluding that poor methods of disposal, housekeeping, and maintenance resulted in a threat to the quality of the groundwater.
6. After the Site was foreclosed upon, the Discharger purchased the Site from American International Bank in 1997. William Giamela is the President of Coast United Property Management. Mr. Giamela testified at the hearing on this matter that he had not conducted a site assessment prior to purchasing the Site.
7. On February 20, 2008, the Regional Board issued a California Water Code (CWC) section 13267 investigative order (13267 Order) requiring the Discharger to submit two technical reports by March 24, 2008. The 13267 Order required submittal of the following reports: 1) a Phase 1 Environmental Site Assessment report containing a history of

Coast United Property Management
ACL Complaint No. R4-2010-0115

operations on the Site and the identification of all potential source areas and chemicals used/stored at the Site (Phase 1 Report), and 2) a technical work plan to completely delineate the soil, soil vapor, and groundwater contamination (Work Plan).

8. After receiving the 13267 Order, Regional Board staffmembers Dr. Arthur Heath and Adnan Siddiqui met with Mr. Giamela on March 24, 2008 and explained the contents and requirements of the 13267 Order. During that meeting, Mr. Giamela consistently asserted that he did not cause the problems at the Site and should not be required to submit any reports. Dr. Heath testified that he and Mr. Siddiqui explained to Mr. Giamela that, as the owner of the Site, the Discharger was responsible for complying with the 13267 Order under the California Water Code.
9. On March 25, 2008, the Discharger requested an extension of time to comply with the 13267 Order. On May 12, 2008, the Discharger's request for an extension was granted and the due date for submittal of the reports was extended to June 30, 2008. The Discharger failed to submit either report by June 30, 2008.
10. On March 17, 2009, the Regional Board Executive Officer issued a Notice of Violation (NOV) to the Discharger for failure to submit the reports required by the 13267 Order. The NOV informed the Discharger that it could be subject to penalties for its noncompliance. Regional Board staff mailed the NOV by certified mail, and received a signed Certified Mail Receipt confirming delivery to the Discharger.
11. Dr. Castaneda testified that, after the NOV was issued, Regional Board staff made several attempts to contact Mr. Giamela via telephone calls and emails to find out the status of reports. However, these efforts were unsuccessful as Mr. Giamela did not return these phone calls or emails.
12. On July 29, 2010, the Interim Executive Officer issued Complaint No. R4-2010-0115 to the Discharger recommending that the Regional Board assess the Discharger administrative civil liability in the amount of \$39,900 pursuant to CWC section 13268 for failure to submit the two reports required by the 13267 Order. The Complaint alleged that the Discharger failed to submit the required reports for at least 760 days, from June 30, 2008 (the extended due date) to July 29, 2010 (the date of the Complaint). The Interim Executive Officer provided notice in the Complaint that he had reserved his right to amend the recommended liability amount to seek additional staff costs incurred after the date the Complaint was issued through completion of the hearing.
13. As of the date of the hearing before the Panel, the Discharger had still not submitted the required technical reports to the Regional Board.
14. Mr. Giamela testified at the hearing that he understood in 2008 that the Regional Board wanted him to do a Phase 1 Report. Upon questioning by Panel member Francine Diamond, Mr. Giamela admitted that, even after requesting an extension, he in-fact had no intention of submitting the required reports, for fear that he would be liable for what was found in those reports.
15. The Discharger violated CWC section 13267 on at least 760 days by failing to comply with the 13267 order issued on February 20, 2008 requiring submittal of two technical reports.

16. CWC section 13268(a)(1) states that "Any person failing or refusing to furnish technical or monitoring reports as required by subdivision (b) of Section 13267 . . . is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."
17. CWC section 13268(b)(1) states that "Civil Liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violations occurs."
18. The State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for assessing discretionary administrative civil liability. Use of the methodology addresses the factors in CWC section 13327. A spreadsheet demonstrating the penalty calculation is in Exhibit A, which is attached hereto and incorporated herein by reference. The recommended administrative civil liability derived from the use of the penalty methodology in the Enforcement Policy is as follows.

a. Initial Liability Determination:

- i. The Per Day Factor for Non-Discharge Violations is 0.55. This factor was determined by a matrix analysis using the Potential for Harm and the Deviation from Requirement. The Potential for Harm is determined to be Moderate because failure to submit the required reports, specifically the Work Plan to delineate contamination in the soil and groundwater, resulted in delayed assessment and cleanup, which presents a substantial threat to beneficial uses and a potential for harm. Chlorinated VOCs known to be carcinogens to humans from the soil and groundwater have been detected at the Site in the past and may have or threaten to detrimentally impact the quality of the waters of the state. The Deviation from Requirement was Major. The 13267 Order required submittal of technical reports and the Discharger failed to submit these reports, even as of the date of the hearing. The Panel determined that the mid-point of the range was reasonable based on the evidence.
- ii. There are 760 days of violation from June 30, 2008 (the extended due date) through July 29, 2010 (the date of the Complaint). The Panel determined that the Enforcement Policy's alternative approach to penalty calculation is appropriate. A multiple-day approach is appropriate since the violations result in no economic benefit from the illegal conduct that can be measured on a daily basis. The economic benefit is the cost of having the required reports prepared.
- iii. Following the Enforcement Policy, for violations that last more than 30 days, the liability shall not be less than an amount that is calculated based on an assessment of the initial liability amount for the first day of violation, plus an assessment for each five day period of violations until the 30th day, plus an assessment for each 30 days of violation thereafter. Since the Discharger failed to submit the reports for 760 days, only 31

days worth of violations are accrued based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, 90, etc.

- iv. Applying the Per Day Factor to the number of days of violation yields an initial liability of \$17,050. This is the number of days of violation (31) multiplied by the Per Day Factor (0.55), multiplied by the statutory maximum penalty per day (\$1,000).
- b. Adjustments to Initial Liability Determination: Based on the following adjustments, the Initial liability was revised to \$38,362.50.
- i. The Discharger's Culpability factor is 1.5 based on the Discharger's intentional failure to submit the technical reports required by the 13267 Order. The Discharger was given sufficient notice with the 13267 Order, an extension of the due date at the Discharger's request, the Notice of Violation, and multiple e-mail and phone reminders.
 - ii. The Discharger's Cleanup and Cooperation factor is 1.5. Cleanup is not a factor in this matter because the violation is failure to submit reports. However, the Discharger did not cooperate by complying with the 13267 Order. As of the date of the hearing on this matter, the Discharger has yet to submit either required report despite the ample notification.
 - iii. The Discharger's History of Violations factor is 1, which is a neutral multiplier. Neither enforcement staff nor the Panel is aware of any prior violations by this Discharger.
 - iv. Based on these adjustments, the Total Base Liability Amount is calculated as \$38,362.50. This is the initial liability (\$17,050) multiplied by the Culpability factor (1.5), multiplied by the Cleanup and Cooperation factor (1.5), multiplied by the History of Violations factor (1).
- c. Ability to Pay and to Continue In Business: The Discharger has the ability to pay the Total Base Liability Amount based on the following: 1) the Discharger owns the Site and thus has a significant asset, 2) the Discharger leases the Site and thus has an income, and 3) a records search conducted by the Prosecution Team indicates that the Discharger is operating at least one, if not multiple, businesses out of its offices located at 8116 and 8020 Deering Park Avenue in Canoga Park, California (Coast United Advertising Co., Inc.; Coast United Bench Advertising Company; and Coast United Property Management), which Mr. Glamela confirmed during the hearing. Based on this evidence, the Ability to Pay and to Continue in Business factor is 1, which is a neutral multiplier. Accordingly, the Total Base Liability Amount was not adjusted.
- d. Other Factors as Justice May Require: As of the date of the Complaint, the Prosecution Team incurred costs of investigation and enforcement in the amount of \$12,000. This represented approximately 80 hours of staff time devoted to investigating the violations and preparing the Complaint at \$150 per hour. At the hearing, the Prosecution Team sought an additional \$6,000 in staff costs, representing approximately 40 hours of time staff spent preparing for the hearing.

The Panel granted the Prosecution Team's request for additional staff costs in the amount of \$6,000. This amount was added to the \$12,000 staff costs in the Complaint, which totaled \$18,000. This amount is added to the Total Base Liability Amount, which calculates to \$56,362.50. There are no additional factors as justice may require.

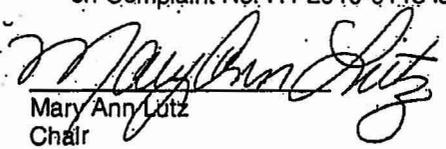
- e. Economic Benefit: The Prosecution Team estimated the economic benefit of the violations to be approximately \$10,000, based on current consulting costs of producing a Phase 1 Environmental Site Assessment (estimated at \$3,000) and a Work Plan for soil, soil vapor and groundwater assessment (estimated at \$7,000). At the hearing, the Discharger presented for the Panel's consideration an executed contract dated October 26, 2010 between Mr. Giamela and Ami Adini & Associates, Inc., an environmental consulting firm, for work to be performed. The contract indicated that the costs of the reports required by the 13267 Order would cost \$5,600 total (\$3,000 for the Phase 1 Report and \$2,600 for the Work Plan). Although this contract was submitted after the deadline to submit evidence, the Panel accepted this letter as evidence and did consider it. However, the Panel determined that the Prosecution Team's estimate of the economic benefit (\$10,000) was more compelling since the contract provided by the Discharger was created the day before the hearing. Given the current economic climate, it is reasonable to conclude that, had the Discharger paid for the reports in 2008 when it was first required to, the costs of the reports would have been more than \$5,600. The Adjusted Total Base Liability Amount of \$56,362.50 is more than at least 10% higher than the economic benefit amount as required in the Enforcement Policy. Therefore, the Adjusted Total Base Liability Amount was not adjusted for this factor.
 - f. Maximum and Minimum Liability Amount: The statutory minimum liability is zero dollars. The statutory maximum liability amount for 760 days of violation is \$760,000. The Enforcement Policy requires that the discretionary administrative civil liability must not exceed the maximum liability amount nor be less than the minimum liability amount. Accordingly, there is no need to adjust the proposed liability amount since it is less than the statutory maximum amount.
 - g. Final Liability Amount: Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed calculated administrative civil liability is \$56,362.50.
19. On considering the written record and evidence presented at the hearing, the Panel determined that \$56,362.50 should be imposed on the Discharger pursuant to CWC section 13268 for violating CWC section 13267. However, the Panel was encouraged by the above-referenced contract entered into between Mr. Giamela and Ami Adini & Associates, Inc., which indicated that the required reports would be submitted to the Discharger no later than four weeks after authorization to proceed, which occurred on October 26, 2010. Therefore, the Panel determined that it will reduce its recommended liability amount by the contract amount of \$5,600 if both the Phase 1 Report and the Work Plan are submitted to the Regional Board and approved by the Executive Officer no later than December 31, 2010. If both reports are submitted and approved by December 31, 2010, then the Panel recommends that the Regional Board impose a reduced administrative civil liability on the Discharger in the amount of \$50,762.50.

CONCLUSIONS OF LAW

1. The Discharger violated California Water Code section 13267 on at least 760 days by failing to comply with the Investigative order issued on February 20, 2008 requiring submittal of two technical reports.
2. Pursuant to CWC section 13268, the Regional Board may impose civil liability up to \$1,000 for each day of violation.
3. The total maximum amount of administrative civil liability assessable for the violations alleged in Complaint No. R4-2010-0115 pursuant to CWC section 13268 is \$760,000.

RECOMMENDED ADMINISTRATIVE CIVIL LIABILITY

The Panel recommends that the Regional Board impose administrative civil liability in the amount of \$56,362.50 on the Discharger for the violations found herein to have been committed by the Discharger. However, if both the Phase 1 Report and the Work Plan are submitted to the Regional Board and approved by the Executive Officer no later than December 31, 2010, the Panel recommends that the Regional Board impose a reduced administrative civil liability on the Discharger in the amount of \$50,762.50. A proposed Order on Complaint No. R4-2010-0115 is attached.


Mary Ann Lutz
Chair

1/19/2011
Date

Attachments:

Exhibit "A": Liability Methodology Spreadsheet
Proposed Order on Complaint No. R4-2010-0115

Instructions

1. Select Potential Harm for Discharge Violations
2. Select Characteristics of the Discharge
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Standard
5. Click "Determine Harm & per Gallon/Day..."
6. Enter Values into the Yellow highlighted fields

Select Item **Potential Harm for Discharge Violations**
 Select Item **Characteristics of the Discharge**
 Select Item **Susceptibility of Cleanup or Abatement**
 Select Item **Deviation from Requirement**

Select Item **Potential Harm for Discharge Violations**
 Select Item **Characteristics of the Discharge**
 Select Item **Susceptibility of Cleanup or Abatement**
 Select Item **Deviation from Requirement**

Discharger Name/ID:

| | | Violation 1 | | Violation 2 | |
|---|--|--|--------------|-------------|------|
| Discharge Violations | Step 1 | Potential Harm Factor <i>(Generated from Button)</i> | | | |
| | Step 2 | Per Gallon Factor <i>(Generated from Button)</i> | | | |
| | | Gallons | | | |
| | | Statutory / Adjusted Max per Gallon (\$) | | | |
| | Total | | | | |
| | | | \$ - | \$ - | \$ - |
| Non-Discharge Violations | Step 3 | Per Day Factor | | | |
| | | Days | 0.55 | | |
| | | Statutory Max per Day | 31 | | |
| | Total | | | | |
| | | \$ 1,000 | \$ 17,050.00 | \$ - | |
| Initial Amount of the ACL | | | \$ 17,050.00 | \$ - | |
| Add'l Factors | Step 4 | Culpability | 1.5 | | |
| | | Cleanup and Cooperation | 1.5 | | |
| | | History of Violations | 1 | | |
| | | | \$ 25,575.00 | \$ - | |
| | | | \$ 38,362.50 | \$ - | |
| | | | \$ 38,362.50 | \$ - | |
| Step 5 Total Base Liability Amount | | | \$ 38,362.50 | \$ - | |
| Step 6 | Ability to Pay & to Continue in Business | 1 | | | |
| | | | \$ 38,362.50 | \$ - | |
| Step 7 | Other Factors as Justice May Require | 1 | | | |
| | Staff Costs | \$ 18,000 | | | |
| | | | \$ 56,362.50 | \$ - | |
| Step 8 | Economic Benefit | \$ 10,000 | | | |
| | | | \$ 56,362.50 | \$ - | |
| Step 9 | Minimum Liability Amount | 0 | | | |
| | Maximum Liability Amount | \$ 760,000 | | | |
| Step 10 Final Liability Amount | | | \$ 56,362.50 | \$ - | |

Penalty Day Range Generator

Start Date of Violation= 6/30/08

End Date of Violation= 7/29/10

Maximum Days Fined (Steps 2 & 3) = 760 Days

Minimum Days Fined (Steps 2 & 3) = 31 Days