

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

In the Matter of)	
Green Valley Foods Products, Inc. and)	COMPLAINT NO. R6V-2011-0082
Hector Huerta,)	FOR
San Bernardino County,)	ADMINISTRATIVE CIVIL LIABILITY
WDID No. 6B360704003)	

**GREEN VALLEY FOODS PRODUCTS, INC. AND HECTOR HUERTA,
ARE HEREBY GIVEN NOTICE THAT:**

1. Green Valley Foods Products, Inc. and Hector Huerta (collectively Dischargers) operate a cheese production facility, which processes milk (both liquid and solid) into rounds of Mexican style hard cheese known as Cotija. The cheese production facility is located on two parcels, owned by Hector Huerta, located at 25684 and 36293 Community Boulevard, Barstow, San Bernardino County, California (Assessor's Parcel Numbers 0497-221-14-0000 and 0497-221-13-0000, respectively). A map showing both parcels is attached hereto as Attachment A, and incorporated herein by this reference.
2. An underground pipeline transports untreated wash water (waste) from the cheese production facility located at 25684 Community Boulevard to the unimproved parcel located at 36293 Community Boulevard. The waste consists of water and cleaning solution used for cleaning the cheese-making equipment and the rinsate from the milk delivery truck discharge spigots. The Dischargers discharge the waste directly to the land on the unimproved parcel where it is allowed to percolate. A site plan of the cheese production facility, underground pipeline, and waste disposal area (Facility) are attached hereto as Attachment B, and incorporated herein by this reference.
3. The Dischargers are alleged to have violated provisions of law and regulations for which the California Regional Water Quality Control Board, Lahontan Region (Water Board) may impose administrative civil liabilities pursuant to Water Code section 13268, subdivisions (a) and (b).

**STATEMENT OF PROHIBITIONS AND REQUIREMENTS APPLICABLE TO THE
DISCHARGERS**

4. On May 13, 2010, the Water Board adopted Board Order No. R6V-2010-0019 prescribing waste discharge requirements for the Facility's waste discharges. Board Order No. R6V-2010-0019 specifies prohibitions, specifications, and provisions

necessary to protect the beneficial uses of the surface and ground waters within the Middle Mojave River Valley Groundwater Basin.

- Board Order No. R6V-2010-0019 requires the Dischargers to submit a series of plans and reports intended to result in the construction of an operational Class II surface impoundment and associated monitoring facilities by March 30, 2011. Table No. 1, below, identifies the required plans and reports, the deadlines for submission of those plans and reports, and the citation to the section in Board Order No. R6V-2010-0019 that requires the submission of those plans and reports.

Table No. 1 – Board Order No. R6V-2010-0019 Plan/Report Requirements

Plan/Report	Due Date	Board Order Requirement No.
Design Plan for Surface Impoundment	December 30, 2010	V.B.1.
Work Plan for Surface Impoundment Construction	December 30, 2010	V.B.2.
Odor Control Plan	January 30, 2011	V.B.3.
Monitoring and Reporting Plan	January 30, 2011	V.B.4.
Sampling and Analysis Plan	January 30, 2011	V.B.4.
Detection Monitoring Plan	January 30, 2011	V.B.5.
Closure Plan and Cost Estimate	January 30, 2011	V.B.6.
Known or Reasonably Foreseeable Release Plan	January 30, 2011	V.C.
Monitoring System Installation Report	April 30, 2011	V.E.2.
Final Construction Quality Assurance Report	April 30, 2011	V.F.

ALLEGED VIOLATIONS OF PROHIBITIONS AND REQUIREMENTS APPLICABLE TO THE DISCHARGERS

- The Dischargers failed to submit plans and reports as required by Board Order No. R6V-2010-0019, Requirements V.B.1 through V.B.6, V.C, V.E.2, and V.F as identified in Table 2, below. The days of violation are calculated from the day after the due date of each respective plan and/or report through October 31, 2011, the issuance date of this Complaint.

Table No. 2 – Board Order Requirements and Days of Violation

Violation No.	Plan/Report	Board Order Requirement No.	Days of Violation
1	Design Plan for Surface Impoundment	V.B.1.	305

2	Work Plan for Surface Impoundment Construction	V.B.2.	305
3	Odor Control Plan	V.B.3.	273
4	Monitoring and Reporting Plan with a Sampling and Analysis Plan	V.B.4.	273
5	Detection Monitoring Plan	V.B.5.	273
6	Closure Plan and Cost Estimate	V.B.6.	273
7	Known or Reasonably Foreseeable Release Plan	V.C.	273
8	Monitoring System Installation Report	V.E.2.	182
9	Final Construction Quality Assurance Report	V.F.	182
Total			2,339

FACTUAL BASIS FOR THE ALLEGED VIOLATIONS

7. Board Order No. R6V-2010-0019, Requirement No. V.B.1 requires that the final design plans for the surface impoundment be submitted by December 30, 2010. The Dischargers submitted draft design plans for the surface impoundment in May 2009 and June 2010. Water Board staff responded to both submittals and identified deficiencies in the design plans that needed to be addressed prior to the Water Board staff's acceptance of the plans. Water Board staff has yet to receive any of the plans or reports required by Board Order No. R6V-2010-0019, and identified in Table Nos. 1 and 2, above.
8. On January 26, 2011, Water Board staff issued a Notice of Violation (NOV) to the Dischargers for the failure to submit the Design Plan for the Surface Impoundment and the Work Plan for Surface Impoundment Construction (Violation Nos. 1 and 2, respectively). Water Board staff received a letter dated February 15, 2011 from the Dischargers' project manager, John Stamford, stating that the Dischargers had submitted the design plans that month (February 2011) and that the Dischargers were "waiting for Design Plan approval." Water Board staff have not received any design plans from the Dischargers.
9. On May 31, 2011, Water Board staff issued a second NOV to the Dischargers for the failure to submit any of the plans or reports required by Board Order No. R6V-2010-0019, and identified in Table No. 2, above.

10. The Dischargers responded to the May 31, 2011 NOV via letter dated June 24, 2011. The Dischargers requested additional time (90 to 120 days) to study a possible alternative to the surface impoundment design for wastewater disposal.
11. On September 2, 2011, the Discharger submitted a new, but incomplete, Report of Waste Discharge that proposed an alternative to the surface impoundment design. By letter dated September 30, 2011, Water Board staff informed the Dischargers that its September 2, 2011 Report of Waste Discharge is incomplete and identified the information necessary to complete the Report of Waste Discharge.

**WATER CODE SECTIONS UPON WHICH ADMINISTRATIVE CIVIL LIABILITY IS
BEING ASSESSED FOR THE ALLEGED VIOLATIONS**

12. Pursuant to Water Code section 13268, subdivision(b), any person failing or refusing to furnish technical or monitoring program reports as required by an order issued by the Water Board pursuant to Water Code section 13267, subdivision (b), may be liable in an amount that shall not exceed \$1,000 for each day in which the violations occurs.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

13. Pursuant to Water Code section 13327, in determining the amount of any civil liability, the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.
14. On November 17, 2009, the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327. The entire Enforcement Policy can be found at:

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

15. The required factors have been considered for the violations alleged herein using the methodology in the Enforcement Policy, as explained in detail in Attachment C.

MAXIMUM ADMINISTRATIVE CIVIL LIABILITY THAT MAY BE IMPOSED

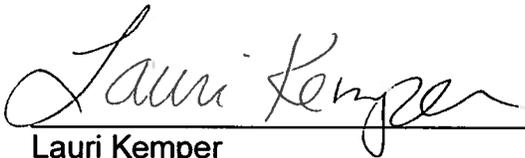
16. Pursuant to Water Code section 13268, subdivisions (a)(1) and (b)(1), the total maximum administrative civil liability that may be imposed for the violations alleged in this Complaint is **\$2,339,000**, as described in Attachment C.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY AMOUNT

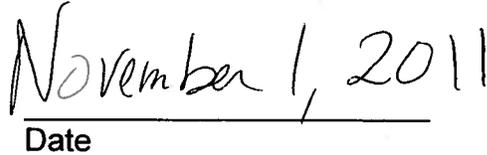
17. Based on consideration of the above facts, the applicable law, and after applying the administrative civil liability methodology, the Assistant Executive Officer of the Water Board proposes that civil liability be imposed administratively on the Dischargers in the amount of **\$235,674**.

California Environmental Quality Act

18. Issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.), pursuant to title 14, California Code of Regulations, section 15308 and section 15321, subsection (a)(2).



Lauri Kemper
Assistant Executive Officer



Date

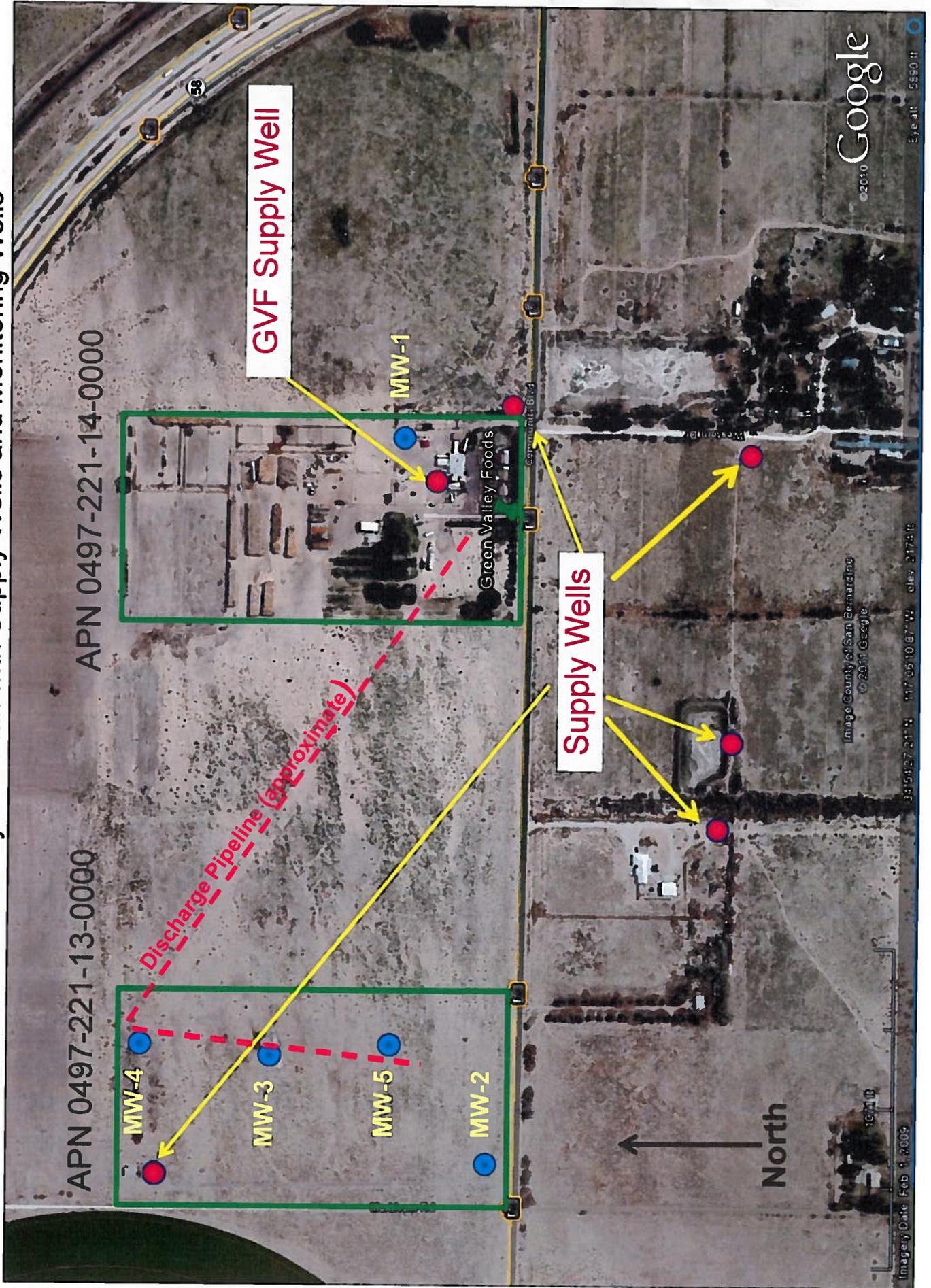
Attachments:

- A. Location Map
- B. Facility Site Plan
- C. Enforcement Policy Methodology
- D. Enforcement Policy Methodology Spreadsheet

Attachment A – Vicinity Map



Attachment B – Facility Site Plan with Supply Wells and Monitoring Wells



ATTACHMENT C

ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY

Administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. Water Code section 13327 identifies the factors the Water Board must consider in determining the amount of liability to be imposed.

The State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in Water Code section 13327. Attachment D and the following presents the administrative civil liability derived from the use of the administrative civil liability methodology in the Enforcement Policy. Attachment D is attached hereto and incorporated herein by this reference. Because Administrative Civil Liability Complaint No. R6V-2011-0082 only alleges non-discharge violations, Step Nos. 1 and 2 of the methodology are not addressed.

Step 3: Initial Liability Determination – Violation No. 1 and Violation No. 2

The per-day factor for Violation No. 1 and Violation No. 2 is **0.4**. This factor is determined by a matrix analysis based upon the Potential for Harm and the Deviation from Applicable Requirements.

- a. For Violation No. 1 and Violation No. 2, the Potential for Harm is determined to be **moderate**. The plans the Dischargers failed to submit are critical to the construction of the surface impoundment that will contain all of the Facility's waste discharge, which is currently discharged to land where it percolates. Given the Facility's waste characteristics and reported discharge volume, there is a significant potential for the ongoing discharge of waste from the Facility to degrade groundwater quality and adversely affect beneficial uses of the groundwater. The chances of groundwater quality degradation and adverse impacts to beneficial uses continue to increase each day the surface impoundment design plans and Work Plan for Surface Impoundment Construction are delayed.
- b. The Deviation from Applicable Requirements to submit the required plans is **major (lower level)**. The reason for the **major** designation is that the Water Board staff notified the Dischargers of their failure to submit the required plans associated with Violation No. 1 and Violation No. 2 in a January 26, 2011 Notice of Violation (NOV) and again in a May 31, 2011 NOV. The Dischargers gave no indication they were considering alternatives to the surface impoundment design until their Project Manager, John Driscoll, stated such in a June 24, 2011 letter. Additionally, it is not the Dischargers' prerogative to dictate the schedule under which they will comply with the waste discharge requirement specified by Board Order No. R6V-2010-0019, as Mr. Stamford did in his February 15, 2011 letter.

The Dischargers should have submitted the required Work Plan for Surface Impoundment Construction on time (December 30, 2010) and based it upon the final design plans that were also due December 30, 2010. The reason Water Board staff

is selecting the lower of the three values for the Deviation from Requirement is that staff did not immediately address the Dischargers' incorrect assertion that the final design plans had already been submitted, although late, and/or address the Dischargers' assertion that it was going to delay submitting the Work Plan for Surface Impoundment Construction until sometime following Water Board staff's acceptance of the updated design plans.

- c. There are 305 days of violations for Violation No. 1 and Violation No. 2, respectively for the period ending October 31, 2011, the issuance date of Administrative Civil Liability Complaint No. R6V-2011-0082. The statutory maximum amount per day per violation is \$1,000. Applying the per day factor for each violation, the number of days of violation for each violation, and the statutory maximum liability for each violation, yields an initial liability of **\$122,000** for Violation No. 1 and Violation No. 2, respectively.

Step 4: Adjustment Factors – Violation No. 1 and Violation No. 2

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

a. Multiple Day Violations

The Enforcement Policy provides for violations lasting more than 30 days, the 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 Dischargers have failed to submit the plans and work plan addressed by Violation No. 1 and Violation No. 2, respectively, for 305 days. The continuance of these violations does not result in an economic benefit that can be measured on a daily basis. The economic benefit is the one-time cost of having the design plans and Work Plan prepared. Therefore, an adjustment can be made.

The Water Board Prosecution Team recommends the alternate approach to civil liability calculation provided by the Enforcement Policy be applied. Using this approach, the calculation of days of violation will include the first day of violation, plus one additional day of violation for each five-day period up to the 30th day of violation, and thereafter, plus one additional day of violation for each 30-day period. Using this approach, the total days of violation for Violation No. 1 and Violation No. 2 is revised to 16 days for each violation.

This results in a Revised Initial Liability Amount as follows:

Revised Initial Liability = (0.4) X (16 days of violation) X (\$1,000) = \$6,400
Violation No. 1 = \$6,400 and Violation No. 2 = \$6,400

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 for both of Violation No. 1 and Violation No. 2, a Culpability multiplier of 1.2 has been selected for the reasons described below:

The Dischargers are ultimately responsible for ensuring compliance with the time schedule set forth in Board Order No. R6V-2010-0019. In a February 15, 2011 letter, Mr. Stamford incorrectly stated that the revised design plans for the surface impoundment had been submitted earlier that month (February 2011), which, if true, would have still been two-plus months late. Mr. Stamford informed Water Board staff in his February 15, 2011 letter, that the Dischargers' failure to submit the Work Plan for Surface Impoundment Construction was due to the Discharger's decision to delay developing and submitting the Work Plan until after they received Water Board approval of the revised design plans. However, as discussed above, it is not a discharger's prerogative to dictate the time schedule for complying with the Water Board's requirements. The Dischargers did not provide any other reason why they had failed to submit the revised design plans until Mr. Driscoll stated in a June 24, 2011 letter that the Dischargers were pursuing an alternative wastewater treatment and disposal plan. The reason the maximum multiplier has not been selected for these two violations is that Water Board staff did not immediately respond to Mr. Stamford's February 15, 2011 letter and the incorrect and inappropriate assertions it contained.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 and 1.5. A lower multiplier is for situations where there is a high degree of cleanup and/or cooperation and a higher multiplier is for situations where cleanup and/or cooperation is minimal or absent. In this case for Violation No. 1 and Violation No. 2, a Cleanup and Cooperation multiplier of 1.3 has been selected for the reasons described below:

The Dischargers' level of cooperation has been less than forthcoming with respect to submitting the design plans and Work Plan that are the subject of Violation No. 1 and Violation No. 2. It was only after Water Board staff issued a NOV on January 26, 2011 that staff received any updated, although incorrect, information regarding the status of the design plans, as discussed above. Additionally, and as discussed above, Mr. Stamford also informed Water Board staff that the Dischargers did not intend to comply with the due date for the Work Plan for Surface Impoundment Construction. Instead, the Dischargers were going to wait until their revised plans

were accepted by the Water Board. So while the Dischargers did respond to Water Board staff's NOV, the response was incorrect and inappropriate, and did not move the Dischargers any closer to returning to compliance with Board Order No. R6V-2010-0019. Additionally, the Dischargers did not inform Water Board staff that they were considering alternatives to the surface impoundment until Water Board staff received Mr. Driscoll's June 24, 2011 letter.

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 for this factor. In this case for Violation No. 1 and Violation No. 2, a multiplier of **1.0** has been selected based upon absence of prior violations of Board Order No. R6V-2010-0019.

A review of the California Integrated Water Quality System (CIWQS) and Water Board files shows that Violation No. 1 and Violation No. 2, above, represent the first violations of Board Order No. R6V-2010-0019. Water Board did identify during its evaluation of this factor, the Dischargers' two prior violations associated with a Water Code section 13267 Order in 2008. Those violations were for a late and subsequently deficient groundwater investigation work plan related to the Facility's discharge practices. Violation No. 1 and Violation No. 2 are for failure to submit required plans and reports, rather than a late and deficient report. Therefore, there is no history of repeated violations related to Violation No. 1 and Violation No. 2, above.

Determination of Total Base Liability – Violation No. 1 and Violation No. 2

The Total Base Liability for the two violations is **\$9,984**, for Violation No. 1 and Violation No.2, respectively. The Total Base Liability for each of the two violations is determined by multiplying the Initial Liability for each of the violations by the multipliers associated with each of the Adjustment Factors discussed above.

Total Base Liability = (Initial Liability) X (Culpability) X (Cleanup/Cooperation) X (History of Violations)

Total Base Liability Violation No. 1 = (\$6,400) X (1.2) X (1.3) X (1.0) = **\$9,984**

Total Base Liability Violation No. 2 = (\$6,400) X (1.2) X (1.3) X (1.0) = **\$9,984**

Step 3: Initial Liability Determination – Violation No. 3 through Violation No. 7

The per-day factor for Violation Nos. 3 through 7 is **0.4**. This factor is determined by a matrix analysis based upon the Potential for Harm and the Deviation from Applicable Requirements.

- a. For Violation Nos. 3 through 7, the Potential for Harm is determined to be **minor**. Failure to submit the plans, which are the subject of these five violations, do not have an immediate, if any, impact to beneficial uses.

- b. The Deviation from Applicable Requirements to submit the required plans is **major (high level)**. The reason for the **major** designation is that the plans addressed by Violation Nos. 3 through 7 are the second set of plans/reports required by Board Order No. R6V-2010-0019 that the Dischargers have failed to submit. These five violations occurred shortly after Water Board staff issued a NOV for Violation No. 1 and Violation No. 2, above.
- c. There are 273 days of violations for Violation No. 3, Violation No. 4, Violation No. 5, Violation No. 6 and Violation No. 7, respectively, for the period ending October 31, 2011, the issuance date for Administrative Civil Liability Complaint No. R6V-2011-0082. The statutory maximum amount per day per violation is \$1,000. Applying the per-day factor for each violation, the number of days of violation for each violation, and the statutory maximum liability for each violation, yields an initial liability of **\$109,200** for each of the five violations.

Step 4: Adjustment Factors for Violation No. 3 through Violation No. 7

a. Multiple Day Violations

The Enforcement Policy provides for violations lasting more than 30 days, the 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 Dischargers have failed to submit the multiple plans addressed by Violation Nos. 3 through 7, for 273 days for each violation. The continuance of these violations does not result in an economic benefit that can be measured on a daily basis. The economic benefit is the one-time cost of having the plans and reports prepared. Therefore, an adjustment can be made.

The Water Board Prosecution Team recommends that an alternate approach to civil liability calculation be used. However, the Prosecution Team believes that it is inappropriate to consolidate the number of days of violation to the maximum level allowed by the Enforcement Policy. Violation Nos. 3 through 7 represent the second set of plans and/or reports required by Board Order No. R6V-2010-0019 that the Dischargers failed to submit. Each plan and report required by Board Order No. R6V-2010-0019 is intended to move the Dischargers closer to completing an acceptable wastewater disposal system for their Facility. The calculation of the days of violation for these five violations includes the first day of violation, plus an additional day of violation for each 5-day period up to the 30th day of violation, and thereafter, plus one additional day of violation for each 15-day period. Using this approach, the total days of violation of for Violation Nos. 3 through 7, respectively, is revised 23 days for each violation.

This results in a Revised Initial Liability Amount as follows:

Revised Initial Liability = $(0.4) \times (23 \text{ days of violation}) \times (\$1,000) = 9,200$
\$9,200 per violation for Violation Nos. 3 through 7

b. Adjustment for Culpability

For Violation Nos. 3 through 7, a Culpability multiplier of 1.5 has been selected. The Dischargers are ultimately responsible for ensuring compliance with the time schedule specified by Board Order No. R6V-2010-0019. The Dischargers did not offer any updates or explanations of why they failed to submit the plans associated with Violation Nos. 3 through 7. The Dischargers' lack of activity regarding these plans resulted in Water Board staff issuing a second NOV, informing the Dischargers' of the steadily increasing potential liabilities. Mr. Driscoll's June 24, 2011 letter provided the first notification that the Dischargers were pursuing an alternative wastewater treatment and disposal system. In this case, unlike the situation with Violation No. 1 and Violation No. 2, there were no issues related to Water Board staff addressing incorrect and inappropriate assertions regarding the due dates for the plans associated with Violation Nos. 3 through 7.

c. Adjustment for Cleanup and Cooperation

For Violation Nos. 3 through 7, a Cleanup and Cooperation multiplier of 1.5 has been selected. The Dischargers have made no attempt to comply with the plan requirements associated with Violation Nos. 3 through 7, in spite of receiving a NOV for Violation No. 1 and Violation No. 2. The Dischargers provided no notice or other indication that they were contemplating an alternative wastewater treatment and disposal system until their June 24, 2011 letter, which was 144 days after the due dates associated with Violation Nos. 3 through 7.

d. Adjustment for History of Violations

For Violation Nos. 3 through 7, a History of Violation multiplier of 1.1 has been selected for each of the five violations. The five plans associated with these violations are the second set of deliverables the Dischargers have failed to submit in violation of Board Order No. R6V-2010-0019. The Dischargers are establishing a pattern of non-compliance with Board Order No. R6V-2010-0019. Through this set of violations, the Dischargers have now failed to submit seven different plans and/or reports required by the Board Order.

Determination of Total Base Liability – Violation Nos. 3 through 7

The Total Base Liability for Violation Nos. 3 through 7 is **\$22,770**, for each violation.

Total Base Liability = (Initial Liability) X (Culpability) X (Cleanup/Cooperation) X (History of Violations)

Total Base Liability (for each violation) = (\$9,200) X (1.5) X (1.5) X (1.1) = **\$22,770**

Step 3: Initial Liability Determination – Violation No. 8 and Violation No. 9

The per-day factor for Violation No. 8 and Violation No. 9 is **0.7**. This factor is determined by a matrix analysis based upon the Potential for Harm and the Deviation from Applicable Requirements.

- a. For Violation No. 8 and Violation No. 9, the Potential for Harm is determined to be **moderate**. The reports the Dischargers failed to submit are to document the completion of the surface impoundment monitoring system and to verify the surface impoundment was constructed in accordance with the Water Board-accepted design plans and specifications. The Dischargers have not submitted these two reports because the surface impoundment and its monitoring system have not been installed as of the date of this Complaint. The Dischargers continue to discharge waste from the Facility to land where the waste can infiltrate to the groundwater. This unauthorized waste discharge to land presents a significant risk of adverse impacts to groundwater quality and to the beneficial uses of groundwater. The longer the unauthorized wastewater discharge continues, the greater the risk of adverse impacts to groundwater quality and beneficial uses.
- b. The Deviation from Applicable Requirements to submit the required reports is **major (high level)**. The reason for the **major** designation is that the reports addressed by Violation No. 8 and Violation No. 9 are the third set of plans and/or reports required by Board Order No. R6V-2010-0019 that the Dischargers failed to submit. Additionally, and as discussed above, the reason the Dischargers failed to submit the reports addressed by Violation No. 8 and Violation No. 9, is that the Dischargers failed to complete the surface impoundment and its monitoring system as of the date of this Complaint. The surface impoundment and its monitoring system were to be completed no later than March 30, 2011 and in use by March 31, 2011, pursuant to Board Order No. R6V-2010-0019. Violation No. 8 and Violation No. 9 are the most recent examples of the Dischargers' continued lack of response to the Water Board's waste discharge requirements for the Facility.
- c. There are 182 days of violations for each of Violation No. 8 and Violation No. 9 for the period ending October 31, 2011, the issuance date of Administrative Civil Liability Complaint No. R6V-2011-0082. The statutory maximum amount per day per violation is \$1,000. Applying the per day factor for each violation, the number of days of violation for each violation, and the statutory maximum liability for each violation, yields an initial liability of **\$127,400** for each of the violations.

Step 4: Adjustment Factors for Violation No. 8 and Violation No. 9

a. Multiple Day Violations

The Enforcement Policy provides for violations lasting more than 30 days, the 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 violations.

The Dischargers failed to submit the reports addressed by Violation No. 8 and Violation No. 9 for 182 days per violation. The continuance of these violations does not result in an economic benefit that can be measured on a daily basis. The economic benefit is the one-time cost of having the reports prepared. Therefore, an adjustment can be made. .

The Water Board Prosecution Team recommends that an alternate approach to civil liability calculation be used. However, the Prosecution Team believes that it is inappropriate to consolidate the number of days of violation to the maximum level allowed by the Enforcement Policy. Violation No. 8 and Violation No. 9 represent the third set of plans and/or reports required by Board Order No. R6V-2010-0019 that the Dischargers failed to submit. Additionally, the Dischargers' failure to submit the reports is a direct result of the Dischargers' failure to complete the required surface impoundment and monitoring system as required by Board Order No. R6V-2010-0019. The failure to complete the project and submit the required reports is continually increasing the risk of the waste discharge adversely affecting groundwater quality and beneficial uses. The calculation of days of violation for these two violations includes the first day of violation, plus an additional day of violation for each 5-day period up to the 30th day of violation, and thereafter, plus one additional day of violation for each 10-day period. Using this approach, the revised total days of violation for Violation No. 8 and Violation No. 9 is 22 days each.

This results in a Revised Initial Liability Amount as follows:

Revised Initial Liability = $(0.7) \times (22 \text{ days of violation}) \times (\$1,000) = \$15,400$
Violation No. 8 = \$15,400 and Violation No. 9 = \$15,400

b. Adjustment for Culpability

For Violation No. 8 and Violation No. 9, a Culpability multiplier of **1.5** has been selected. The Dischargers are ultimately responsible for ensuring compliance with the time schedule specified by Board Order No. R6V-2010-0019. The Dischargers did not offer any updates or explanations of why they failed to comply with the schedule to complete the surface impoundment and monitoring system. There was no communication from the Dischargers between Mr. Stamford's February 15, 2011 letter and Mr. Driscoll's June 24, 2011 letter. It is the Dischargers' responsibility to keep the Water Board updated on its progress, or lack thereof, towards complying with the Water Board's waste discharge requirements. No such communication occurred until Mr. Driscoll's June 24, 2011 letter, which informed Water Board staff that the Dischargers were pursuing an alternative wastewater treatment and disposal system and requested additional time to develop and evaluate an alternative wastewater treatment and disposal system.

c. Adjustment for Cleanup and Cooperation

For Violation No. 8 and Violation No. 9, a Cleanup and Cooperation multiplier of **1.5** has been selected. Water Board staff have seen no attempt on the Dischargers' part to comply with the reporting requirements associated with Violation No. 8 and Violation No. 9, or the related project completion requirements specified by Board Order No. R6V-2010-0019, in spite of being issued a NOV for Violation No. 1 and Violation No. 2, and a subsequent NOV for Violation Nos. 3 through 9. The Dischargers provided no notice or other indication that they were contemplating an alternative wastewater treatment and disposal system until Mr. Driscoll's June 24, 2011 letter, which was 53 days past the due dates associated with Violation No. 8 and Violation No. 9.

d. Adjustment for History of Violations

For Violation No. 8 and Violation No. 9, a History of Violation multiplier of 1.1 has been selected for each of the violations. The two reports associated with these violations are the third set of deliverables the Dischargers have failed to submit in violation of Board Order No. R6V-2010-0019. The Dischargers have established a pattern of non-compliance with Board Order No. R6V-2010-0019. The Dischargers have now failed to submit nine different deliverables required by the Board Order.

Determination of Total Base Liability – Violation No. 8 and Violation No. 9

The Total Base Liability for the two violations is **\$38,115**, for Violation No. 8 and Violation No. 9, respectively.

Total Base Liability = (Initial Liability) X (Culpability) X (Cleanup/Cooperation) X (History of Violations)

Total Base Liability Violation No. 8 = (\$15,400) X (1.5) X (1.5) X (1.1) = **\$38,115**

Total Base Liability Violation No. 9 = (\$15,400) X (1.5) X (1.5) X (1.1) = **\$38,115**

Step 5: Determination of Total Base Liability Amount – Violation No. 1 through Violation No. 9

The Total Base Liability Amount of **\$ 209,424** is determined by adding together the Total Base Liabilities for each of the nine violations identified, above.

Step 6: Ability to Pay and Ability to Continue Business

The Enforcement Policy provides that if the Water Board has sufficient financial information 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.

The Water Board Prosecution Team has enough information to suggest that the Dischargers have the ability to pay the proposed liability, so that the burden of rebutting this presumption shifts to the Dischargers. The Dischargers own the properties listed in Table No. 1, below, which includes the two parcels where the Facility is located. Green Valley Foods Products, Inc. is a business that has the ability to generate revenue for the Dischargers.

Table No. 1 – Dischargers Property Holdings

Owner	Assessor Parcel Number	Total Value	Land Type/Zoning
Hector Huerta	0488121030000	\$36,271	Single Family Residence
Hector Huerta	0488121040000	\$14,609	Vacant/Single Family Residence
Hector Huerta	0494031610000	\$25,424	Vacant/Single Family Residence
Hector Huerta	0497031080000	\$74,778	Single Family Residence
Hector Huerta	0497031250000	\$97,399	Single Family Residence

Hector Huerta	049708109Z002	\$23,523	Building on Leased Land/Single Family Residence
Hector Huerta	0497081090000	\$313,309	Livestock/Single Family Residence
Hector Huerta	0497081270000	\$27,744	Single Family Residence
Hector Huerta	0497091280000	\$29,405	Vacant/Single Family Residence
Hector Huerta D.B.A Green Valley Foods	049722114P000	\$529,673	Manufacturing and Processing - Dairy
Hector S. Huerta	0449013210000	\$82,474	Vacant/Single Family Residence
Hector S. Huerta	0497221100000	\$192,674	Vacant/Single Family Residence
Hector S. Huerta	0497221130000	\$49,850	Single Family Residence
Hector S. Huerta	0497221140000	\$396,133	Food Processing
Green Valley Foods Products, Inc	0497221010000	\$116,798	Field Crops
Green Valley Foods Products, Inc	0497221020000	\$2,012,295	Field Crops
Total		\$4,022,359	

Given the assets and sources of income described above, and without further information regarding the Dischargers' ability to pay, there is no basis for adjusting the proposed liability.

Step 7: Other Factors as Justice May Require

The Enforcement Policy provides that if the 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, evidence-supported findings are made. Additionally, the staff costs for investigating the violation should be added to the liability amount.

a. **Adjustments for Other Factors as Justice May Require**

The Water Board Prosecution Team has determined that the proposed liability amount is appropriate. Therefore, no adjustment is being made for other factors as justice may require.

b. **Adjustment for Staff Costs**

The Water Board Prosecution Team staff time incurred to prepare this Complaint and supporting information is estimated to be 175 hours. Based on an average cost to the State of \$150 per hour, the total staff cost is estimated to be \$26,250. As a

result, the Adjusted Total Base Liability is recommended to be adjusted upward by **\$26,250**, bringing the total proposed liability to **\$235,674**.

Step 8: Economic Benefit

The Enforcement Policy directs the Water Board to determine any Economic Benefit Amount of the violations based upon the best available information. The Enforcement Policy suggests that the Water Board compare the Economic Benefit Amount to the Adjusted Total Base Liability and ensure that the Adjusted Total Base Liability is at a minimum, 10 percent greater than the Economic Benefit Amount. Doing so should create a deterrent effect and will prevent administrative civil liabilities from simply becoming the cost of doing business.

The Dischargers have realized an economic benefit from failing to prepare and submit the plans and/or reports required by Board Order No. R6V-2010-0019. The economic benefit amount realized by the Dischargers is estimated to be **\$72,500**, based upon the estimated costs associated with each report as shown in Table No. 2, below. The Adjusted Total Base Liability Amount is greater than 110 percent of the economic benefit amount.

Table No. 2 – Plan/Report Estimated Costs

Plan/Report Name	Estimated Cost
Design Plan for Surface Impoundment	\$0
Work Plan for Surface Impoundment Construction	\$15,000
Odor Control Plan	\$5,000
Monitoring and Reporting Plan with a Sampling and Analysis Plan	\$5,000
Detection Monitoring Plan	\$5,000
Closure Plan and Cost Estimate	\$10,000
Known or Reasonably Foreseeable Release Plan and Financial Assurance Instrument	\$10,000
Monitoring System Installation Report	\$7,500
Final Construction Quality Assurance Report	\$15,000
Total	\$72,500

Step 9: Maximum and Minimum Liability Amounts

The maximum liability amount the Water Board may assess for the above-referenced violations pursuant to Water Code section 13268, subdivision (b), is \$1,000 per day of violation for each violation. Therefore, the maximum liability the Water Board may assess is **\$2,339,000**.

Water Code section 13268, subdivision (b) does not establish a minimum liability. However, the 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 Water Board must assess is **\$79,750**.

Step 10: Final Liability Amount

The Total Proposed Liability Amount is **\$235,674** based upon the considerations discussed in detail, above.

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent Hector Huerta and Green Valley Foods Products, Inc. (hereinafter "Dischargers") in connection with Administrative Civil Liability Complaint No. R6V-2011-0082 (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 Dischargers waive the hearing requirement and will pay the liability.)

- a. I hereby waive any right the Dischargers may have to a hearing before the Regional Water Board.
- b. I certify that the Dischargers will remit payment for the civil liability imposed in the total amount of **two hundred thirty-five thousand six hundred seventy-four dollars (\$235,674)** by check that references "ACL Complaint No. R6V-2011-0082" made payable in the amount of **\$235,674** to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Regional Water Board by **5:00 p.m. on November 28, 2011** or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
- 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 mandated by the State Water Resources Control Board's Water Quality Enforcement Policy 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 Assistant 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 Dischargers 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 Dischargers to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Dischargers waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)

I hereby waive any right the Dischargers may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I intend to request a hearing in the future. By checking this box, the Dischargers request that the Regional Water Board delay the hearing and/or hearing deadlines so that the Dischargers may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board to agree to delay the hearing.

(Print Name and Title)

(Signature)

(Date)