

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2012-0561

IN THE MATTER OF

HENRY J. TOSTA (DBA HENRY TOSTA DAIRY), HENRY J. TOSTA JR. FAMILY LIMITED
PARTNERSHIP, AND HENRY J. TOSTA TRUST
SAN JOAQUIN COUNTY

This Complaint is issued to Henry J. Tosta (dba Henry Tosta Dairy), Henry J. Tosta Jr. Family Limited Partnership, and Henry J. Tosta Trust (hereafter collectively referred to as Discharger) pursuant to California Water Code (Water Code) section 13323. This Complaint is based on allegations that the Discharger violated provisions of the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (Dairy General Order) for discharging waste resulting in degradation and pollution to groundwater, Water Code section 13267 for failing to furnish a technical or monitoring program report, and Water Code sections 13267 and 13350 for failing to comply with Cleanup and Abatement Order No. R5-2012-0708.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (hereinafter Central Valley Water Board) alleges, with respect to the Discharger's acts, or failure to act, the following:

Background

1. Henry J. Tosta operates Henry Tosta Dairy (Tosta Dairy) located at 20662 San Jose Road, Tracy, San Joaquin County. The Henry J. Tosta Jr. Family Limited Partnership owns the real property located at 20662 San Jose Road, Tracy, San Joaquin County.
2. On 3 May 2007, the Central Valley Water Board adopted the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order No. R5-2007-0035 (hereinafter Dairy General Order) (Exhibit 1) and a Monitoring and Reporting Program (hereinafter MRP) that accompanies the Dairy General Order (Exhibit 2). The Dairy General Order and the MRP contain reporting requirements for dairies regulated by the General Order. The General Order became effective on 9 May 2007. The Dairy General Order is a set of general waste discharge requirements that apply to owners and operators of existing milk cow dairies that (1) submitted a Report of Waste Discharge in response to the Central Valley Water Board's 5 August 8, 2005 request and (2) have not expanded operations since 17 October 2005.
3. The Tosta Dairy is enrolled under the Dairy General Order. The Discharger submitted a Report of Waste Discharge on 18 October 2005 (Exhibit 3) and has not expanded operations since 17 October 2005. The facility is currently an operating dairy and, as of 31 December 2011, houses 1,196 mature cows. As an enrolled facility, the Tosta Dairy is subject to the requirements of the Dairy General Order for regulatory purposes.
4. The Tosta Dairy was purchased by the Discharger in 1994, and a dairy facility has been in operation on the property since 1962. The Tosta Dairy is located to the west of the city of

Tracy, within the legal boundaries of the Sacramento-San-Joaquin Delta (Exhibits 4 and 5). The Tosta Dairy production area occupies approximately 20 acres, and includes one freestall barn with scraped lanes and adjacent corrals, and corrals to house support stock. The scraped lanes were originally designed to discharge to a pond (Settling Basin #1). There is one additional settling basin (Settling Basin #2) and five wastewater lagoons. There are 687 acres of cropland associated with the Tosta Dairy, which occasionally receive manure and dairy wastewater.

5. The Tosta Dairy production area is surrounded on the southeast by another dairy farm (Ornellas Dairy #1); by Discharger-owned cropland to the northeast, north, and south; and by cropland farmed by the Discharger and owned by the Echeverria Brothers Dairy General Partnership on the west. The south perimeter of the Tosta Dairy production area is bordered by the Main Drain canal of the Naglee-Burk Irrigation District, which flows northwest through cropland owned by Echeverria Brothers Dairy General Partnership and farmed by Henry Tosta. At Bethany Road, the Main Drain canal enters an underground pipe which trends due north and discharges into the Old River.

Alleged Violations

On 1 May 2012 the Central Valley Water Board performed a routine compliance inspection of the Tosta Dairy. During the 1 May 2012 inspection (hereinafter the May Inspection), Board staff identified the following violations of the Dairy General Order and inadequacies and deficiencies in the Waste Management Plan.

Violation #1: Manure Discharge to Ground Water

6. Dairy General Order Prohibition A.4 states:

The collection, treatment, storage, discharge or disposal of wastes at an existing milk cow dairy that results in (1) discharge of waste constituents in a manner which could cause degradation of surface water or groundwater except as allowed by this Order, (2) contamination or pollution of surface water or groundwater, or (3) a condition of nuisance (as defined by the California Water Code Section 13050) is prohibited.

7. On 1 May 2012 the Central Valley Water Board performed a routine compliance inspection of Tosta Dairy. (Exhibit 6) Staff identified onsite violations included deposition of slurry manure from the freestall barn into a 3 to 4 acre area not designed to store waste, and which is not contained or graded to prevent ponding. This area contains manure to a depth of one to three feet.
8. On 12 July 2012 Board staff inspected the Tosta Dairy and sampled the three monitoring wells (Exhibit 7). Monitoring well MW-2 (MW-2) is located in the central part of the production facility immediately adjacent to Settling Basin #1. At the time MW-2 was sampled, the area in and around the wellhead was covered with manure solids and slurry such that shoveling of manure was required to access the wellhead. Nitrate as nitrogen was detected at 13.5 mg/L. Total Dissolved Solids (TDS) was detected at 14,700 mg/L.

9. The Discharger's consultant, Western Dairy Design Associates, submitted sampling results in response to Directive 4 of the CAO which required locating and sampling of existing monitoring wells and submission of the sampling results by 23 July 2012. (Exhibit 8) The results of the sampling indicate a very high concentration of nitrate-nitrogen together with a low concentration of ammonia-nitrogen in the well nearest to the 3 to 4 acre manure disposal area.
10. On 10 October 2012 the Discharger sampled MW-2. Nitrate as nitrogen was detected at 26 mg/L and TDS was detected at 15,302 mg/L (Exhibit 9).
11. Groundwater samples from MW-2 were obtained at a level approximately less than seven feet below ground surface. The monitoring wells located in the production area indicate an alteration in the quality of waters of the groundwater by waste to a degree which unreasonably affects the waters for beneficial uses. For both samples collected by Board staff and the Discharger, concentrations of nitrate as nitrogen, 13.5 mg/L and 26 mg/L, respectively, exceed the primary Maximum Contaminant Level (MCL) of 10 mg/L. Additionally, the samples collected by Board staff and the Discharger indicate concentrations of TDS, 14,700 and 15,302, respectively, exceeding the secondary MCL, which ranges from 500 mg/L to 1,500 mg/L. Given the close proximity of manure solids and slurry to MW-2 and the shallow depth to groundwater (less than seven feet), the exceedances of primary and secondary MCLs indicates the waste has unreasonably affected groundwater quality resulting in exceedances of water quality objectives and, therefore, causing degradation and pollution of groundwater in violation of Prohibition A.4.
12. The Discharger submitted Annual Reports for calendar years 2007, 2008, 2009, 2010, and 2011. During this five year period, the Tosta Dairy reported an average of 1,124 mature cows and generated a total of 142,660 tons of manure. Board staff summarized the Annual Report results from 2007 through 2011 for manure management in Exhibit 10. Based on a review of the submitted data in these five Annual Reports, a total of 3,332 tons of manure was reportedly applied to the Tosta Dairy cropland and a total of 10,445 tons of manure was exported offsite. This results in 131,052 tons of manure remaining in the Tosta Dairy production area. Board staff estimate this amount of manure accounts for the excessive manure conditions seen at the Tosta Dairy, starting with Board staff's 1 May 2012 Inspection. According to the WMP for the Tosta Dairy, received 21 September 2010 (Exhibit 11), the lagoon system has a storage capacity of 10,397,000 gallons or 41,699 tons of waste per storage period of 120 days. Given that the waste remained onsite, the amount of waste to be managed, 131,052 tons, far exceeds the storage capacity of 41,699 tons.
13. The Prosecution Team alleges the Discharger violated Prohibition A.4 of the Dairy General Order from at least 1 May 2012, the date of the initial inspection until 16 November 2012, for a total of 200 days. The Prosecution Team selected 1 May 2012 as the start date of this violation given that the manure waste at the Tosta Dairy remained unchanged from the 1 May 2012 Inspection until the time when Board staff sampled groundwater on 12 July 2012.
14. Liability for this violation may be imposed pursuant to Water Code Section 13350. Water Code section 13350 states, in part:

(a) Any person who . . . (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state . . . shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

Subdivision (e) provides, in part:

The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

Violation #2: Failure to Submit Adequate Waste Management Plan

15. The Dairy General Order requires the submission of reports, including a Waste Management Plan (WMP) for the production area of the dairy facility, as detailed in Section H of the Dairy General Order. The purpose of the WMP is to ensure that the production area of the dairy facility is designed, constructed, operated and maintained so that dairy wastes generated at a dairy are managed in compliance with the Dairy General Order in order to prevent adverse impacts to groundwater and surface water quality. Attachment B of the Dairy General Order further describes the requirements of a WMP. Submission of the WMP was due in phases pursuant to the schedule in Table 1 of the Dairy General Order, with submission of the final portions of the WMP due no later than 1 July 2009. Board Order R5-2009-0029, dated 23 April 2009, extended the submission of final portions of the WMP to 1 July 2010.
16. The Discharger submitted the final portions of its WMP on 20 September 2010.
17. During the May Inspection, Board staff identified inadequacies and inaccuracies in the Waste Management Plan. Deficiencies in the WMP related to silage leachate storage and liquid manure management. A channel designed to convey silage leachate into the lagoon system contained excessive manure and old feed which prevented leachate from reaching the lagoon system. Leachate instead flowed through a canal into a 3 to 4 acre manured area. The WMP did not reflect actual on-site conditions and management practices.
18. A more extensive evaluation of the WMP submitted to Board staff on 21 September 2010 reveals that the WMP: 1) does not accurately describe the dimensions of the lagoons and settling basins, thus leading to an incorrect conclusion that the storage capacity is more than adequate; 2) lists a critical storage period that is much less than the actual amount of time that waste is stored in the production area, thus leading to an incorrect evaluation of the storage capacity as more than adequate; and 3) includes a Production Area Design & Construction Report and a Waste Management Plan Modification Progress Status Report, both signed by the Discharger, stating that the entire production area drains into ponds and that no modifications of the production area are needed to comply with the General Order.

19. The Prosecution Team alleges the Discharger violated Prohibition A.4 of the Dairy General Order from at least 20 September 2010, until 16 November 2012, for a total of 789 days.
20. The Dairy General Order is issued in part under the authority of Water Code section 13267. Liability for this violation may be imposed pursuant to Water Code Section 13268 which states, in part:

(a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) Civil liability may be administratively imposed by a regional board . . . in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

Violation #3: Failure to Comply With Cleanup Directives

21. On 11 June 2012 the Executive Officer for the Central Valley Water Board issued Cleanup and Abatement Order (CAO) R5-2012-0708 (Exhibit 12) to the Discharger to address the immediate water quality threats from Tosta Dairy identified during the 1 May 2012 Inspection.
22. The following directives of the CAO have not been complied with:
- A) Directive 1: Develop a plan for the Cleanup of the Production Area (Production Area Cleanup Plan) of the Dairy by 25 June 2012;
 - i. On 5 July 2012, the Discharger's consultant, Western Dairy Design Associates, electronically submitted a Production Area Cleanup Plan in response to Directive 1. (Exhibit 13)
 - ii. The plan that was submitted on 5 July 2012 was deemed incomplete by Board staff (Exhibit 14) on 10 August 2012.
 - iii. On 26 July 2012, Board staff performed a follow-up inspection (26 July Inspection) and noted none of the manure appeared to have been removed from the production area, but instead appeared to be relocated to other areas within the production area (Exhibit 15).
 - iv. On 10 August 2012, the Assistant Executive Officer for the Central Valley Water Board issued a letter to the Discharger discussing the status of the Discharger's compliance with the CAO. The 5 July 2012 submitted Production Area Cleanup Plan was deemed unrealistic because it did not include a specific schedule for the cleanup of the manure, and did not include an estimate of the total volume of manure and wastewater to be removed. The plan for the use of the removed manure was deemed unrealistic as the land identified for manure application in the submitted plan is insufficient to use all of the manure to be removed if agronomic application rates are to be maintained.
 - v. The plan is 145 days late as 16 November 2012.

B) Directive 1A: Removal of slurry manure in the 3 to 4 acre central portion of the production area by 27 August 2012

- i. During the May Inspection, Board staff observed an area of native soil that the Discharger uses to store liquid wastewater, solid manure, and slurry manure. The mismanagement and excessive manure of the 3 to 4 acre area resulted in the backup of manure into the corral in the northeast corner of the production area. This area has not been prepared or designed to store waste, and is not contained or graded to prevent ponding of wastewater. Staff estimates this area to be approximately 3-4 acres with manure one to three feet deep in places (the 3-4 acre area).
- ii. On 3 July 2012 Central Valley Water Board staff performed a follow-up inspection (3 July Inspection) (Exhibit 16) on Tosta Dairy to assess compliance with the directives of the CAO. Removal of manure from the production area had not started as of the date of the inspection. The CAO required removal of manure to begin by 2 July 2012.
- iii. Board staff conducted inspections on 12 July 2012 (Exhibit 17) (12 July Inspection), 17 July 2012 (Exhibit 18) (17 July Inspection), and 26 July 2012 (26 July Inspection) and did not observe commencement of manure removal activities.
- iv. During an inspection on 5 September 2012 (Exhibit 19) (5 September Inspection) Board staff noted that a medium-sized loader was removing manure from the 3-4 acre manure disposal area and stacking it immediately west of the lagoon complex. It appeared that manure generated by the current herd was being pushed into Settling Basin #1, rather than into the 3-4 acre area. A large amount of solid manure, slurry manure, and liquid wastewater still remained in the 3-4 acre area.
- v. On 11 October 2012 Board staff observed during an inspection (11 October Inspection) minimal removal activity (Exhibit 20).
- vi. During an inspection on 30 October 2012 (Exhibit 21) (30 October Inspection), Board staff observed that manure generated by the current herd was once again being placed in the 3-4 acre area, rather than in the settling basins.
- vii. The manure has not been removed from the 3-4 acre area. Compliance with this Directive is 82 days late as of 16 November 2012.

C) Directive 1B: Removal of manure from the two settling basins

- i. On the 1 May 2012 Inspection, Board staff identified violations including the lack of management of existing settling basins, including excessive vegetation, manure on and adjacent to the embankments, solid manure being used to reinforce embankments, lack of staff gages, and an inability to move water between most of the settling basins and lagoons. Both of the settling basins lacked any freeboard.
- ii. On the 12 July Inspection, Staff noted that manure relocation had commenced at Settling Basin #1. On the 17 July Inspection, Staff noted that manure solids had been removed and stacked on the embankments of Settling Basins #1 and #2, but that significant amounts of wastewater were still present in the basin.

- iii. During the 5 September Inspection, Board staff noted Settling Basin #1, which had two to three feet of freeboard at the time of the last inspection on 26 July 2012, had no freeboard. Also, manure generated by the current herd was being pushed into Settling Basin #1 instead of being placed in the 3 to 4 acre manure disposal area. Settling Basin #2 still contained significant amounts of manure.
- iv. During the 11 October Inspection, Board staff observed Settling Basin #1 overtopping the southern and northern embankments and adjacent dirt access roads.
- v. During an inspection on 22 October 2012 (Exhibit 22) (22 October Inspection), a small manure berm had been constructed along the south side of Settling Basin #1 to prevent the discharge of wastewater from that basin into the Naglee Burk canal.
- vi. During the 30 October Inspection, Board staff observed Settling Basin #1 was lowered in the level of liquids but Settling Basin #2 was now overtopping.
- vii. The manure has not been removed from the settling basins. Compliance with this Directive is 51 days late as of 16 November 2012.

D) Directive 6: Submit a revised waste management plan that describes how the settling basins and lagoons will operate in conformance with the Dairy General Order, including a description of modifications needed to manage slurry manure within the existing constructed settling basin/lagoon system.

- i. Dairy General Order Section H.1.b provides that if the design, construction, operation, and/or maintenance of the dairy facility does not comply with the specifications and prohibitions in the Dairy General Order, the WMP must propose modifications and a schedule for modifications that will bring the dairy facility into compliance.
- ii. The lack of maintenance of the conveyances between the lagoons resulted in an inability to operate the lagoons and settling basins in conformance with the Dairy General Order.
- iii. Staff has not received a revised WMP which is 82 days late as of 16 November 2012.

E) Directive 7: Submit a Groundwater Remediation Plan if groundwater samples indicate the waste disposal caused pollution to groundwater.

- i. Staff determined groundwater monitoring samples exceeded water quality objectives, as described in Finding 11 of this Complaint, causing pollution of groundwater. Staff has not received a Groundwater Remediation Plan, which is 51 days late as of 16 November 2012.

23. Liability for violations of the CAO may be imposed pursuant to Water Code Section 13268 or 13350 in an amount not to exceed one thousand dollars (\$1,000) or five thousand dollars (\$5,000), respectively, for each day the violation occurs.

Proposed Administrative Civil Liability

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

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final_111709.pdf.
26. The administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
27. Based on consideration of the above facts, and after applying the penalty methodology and allowing for staff costs pursuant to the Enforcement Policy, the Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$1,140,713**. The specific factors considered in this penalty are detailed in Attachment A.
28. Payment of the assessed liability amount does not absolve the Discharger from complying with the General Order or the MRP, the terms of which remain in effect. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of waste discharge requirements and/or applicable orders for which civil liability have not yet been assessed, or for violations that may subsequently occur.
29. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) in accordance with title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **\$1,140,713**.

2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **31 January/1 February 2013**, unless one of the following occurs by **14 December 2012**:
 - a) The Discharger waives the hearing by completing the attached form (checking the box next to Option #3) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **one million one hundred and forty thousand seven hundred and thirteen dollars (\$1,140,713)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking the box next to Option #4 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking the box next to Option #5 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If the Regional Water Board holds a hearing, it may choose to impose an administrative civil liability in the amount proposed or for a different amount, decline to seek civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing.
4. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

ORIGINAL SIGNED BY ROBERT D. BUSBY

For PAMELA C. CREEDON, Executive Officer

19 November 2012

Date

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent Henry J. Tosta (Owner and Operator) dba Henry Tosta Dairy, Henry J. Tosta Jr. Family, Limited Partnership and Henry J. Tosta Trust (Owner), (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2012-0561 (hereinafter the "Complaint");
2. 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;
3. (***Check here if the Discharger will waive its right to a hearing and accept the proposed liability amount of one million, one hundred forty thousand seven hundred and thirteen dollars (\$1,140,713).***) I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and

I certify that the Discharger will be liable for **\$1,140,713, in full.**

The Discharger shall remit payment, by check, which will contain a reference to "ACL Complaint R5-2012-0561" and will be made payable to the "State Water Resources Control Board Cleanup and Abatement Account". Payment must be received by the Central Valley Water Board by **14 December 2012** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **31 January 2013/1 February 2013** Central Valley Water Board meeting.

I understand that payment of the **\$1,140,713** in full 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.

-or-

4. (***Check here if the Discharger will waive the 90-day hearing requirement, but wishes to engage in settlement negotiations. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.***) 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 reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.

-or-

5. (***Check here if the Discharger will waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted. Attach a separate sheet with the amount of additional time requested and the rationale.***) I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint but reserve the ability to request a hearing in the future. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A

Penalty Methodology: Specific Factors Considered

ATTACHMENT B
Penalty Calculation for Civil Liability