

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

In the matter of:

Jaswinder Shergill and Hardip Singh
Sandhu

Payless Food & Gas Mart
3440 South Market Street, Redding,
California

Complaint No. R5-2014-0523

For

Administrative Civil Liability

**Violations of California Water Code
Section 13267**

12 May 2014

**JASWINDER SHERGILL AND HARDIP SINGH SANDHU ARE HEREBY
GIVEN NOTICE THAT:**

1. Jaswinder Shergill and Hardip Singh Sandhu (Discharger) owned and operated Payless Food & Gas Mart at 3440 South Market Street, Redding, Shasta County until 12 June 2013. The Dischargers still operate the facility, however it is currently owned by Good Luck Me, a California Limited Liability Corporation.
2. The Dischargers are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) may impose civil liability pursuant to California Water Code (Water Code) section 13268. Water Code section 13323 authorizes the Executive Officer to issue this Complaint; that authority has been delegated to the Assistant Executive Officer.
3. This Complaint is based on findings that the Dischargers failed to comply/submit with a Water Code section 13267 (13267 Order) dated 21 December 2012.
4. The Central Valley Water Board will hold a public hearing on this matter on **7/8 August 2014**, in Rancho Cordova, California, unless the Dischargers agree to waive the right to a public hearing by filling out, signing, and submitting the enclosed "Waiver of Hearing." The meeting is scheduled to begin at 8:30 am; however, no specific time has been set for consideration of this item.
5. If, Dischargers, or their representative choose not to waive the right to a public hearing, they will have an opportunity to address and contest the allegations in this Complaint and the proposed imposition of administrative civil liability. An agenda will be mailed to the Dischargers separately, not less than ten days before the public hearing date. At the hearing, the Central Valley Water Board will receive evidence and hear arguments and consider whether to affirm, reject, or modify the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.

BACKGROUND

1. Shasta County records indicate that Good Luck Me, a California Limited Liability Corporation, incorporated on 12 June 2013, currently owns 3440 South Market Street in Redding, California (Shasta County APN 108-030-009-000) (the Site). However, the Site was previously owned by several entities that included S & V Payless Gas & Mart, LLC, Kamaljeet K. Shergill, Hardev S. Shergill, Jaswinder R. Shergill, and Hardip Singh Sandhu. Payless Gas & Food Mart is currently operated by Jaswinder Shergill and Hardip Singh Sandhu.
2. In October 1989, one 500-gallon underground storage tank (UST) containing waste oil was removed from the Site. According to Shasta County Environmental Health Division (SCEHD) staff, soil and groundwater contamination was evident in the excavation during the removal of the waste oil UST.
3. On 7 July 1990, approximately 25 cubic yards of contaminated soil was excavated from the former waste oil tanks location and deposited offsite.
4. In March 1998, SCEHD filed an Unauthorized Release Report and referred the case to the Central Valley Water Board. In October 1998, relining of two 10,000-gallon USTs occurred and a third UST was found to be a single walled fiberglass tank.
5. To delineate the soil and groundwater impacts at the Site, a number of subsurface investigations were conducted from March 1997 until October 2003. Furthermore, a total of 11 monitoring wells have been installed at the Site, and routine groundwater monitoring has been conducted since 2000.
6. In September 2004, a *Corrective Action Plan (CAP)* was submitted to the Central Valley Water Board. The CAP recommended an ozone sparging system for insitu treatment of the contaminants. After Central Valley Water Board staff approved the CAP, an air sparge pilot test was conducted in March 2005. The *Pilot Study Report of Findings and Remedial Action Work Plan (RAP)* presents results from the completed air sparge pilot test and a work plan for a full-scale pilot study with an ozone remediation system.
7. On 29 July 2005, Central Valley Water Board staff approved the RAP for the installation of an ozone sparge treatment system. Subsequently, groundwater remediation began at the Site in November 2006; however, due to budgetary constraints, the ozone treatment system has not operated since March 2009.
8. Although a substantial amount of data has been gathered from the Site, a review of the most recent groundwater data from March 2011 indicates that residual contaminant mass is still present in the source area. Current maximum concentrations of total petroleum hydrocarbons as gasoline and methyl tertiary-butyl ether of 63,000 and 1,000 micrograms per liter, respectively, were detected.

9. On 15 July 2011, Central Valley Water Board received a site status update that indicated the Discharger received notification from the Underground Storage Tank Cleanup Fund that site remediation activities were approved for the maximum reimbursement of \$50,000 for Fiscal Year 2011-2012. In accordance with the approved CAP and RAP, the following tasks were to be implemented:
- Re-initiation of the ozone treatment system at the Site with associated operation and maintenance activities.
 - Continue groundwater monitoring at the Site on a semi-annual basis.
10. None of the tasks mentioned in paragraph #9 were completed. On 21 December 2012 the Central Valley Water Board sent an order to Jaswinder Shergill and Hardip Singh Sandhu in accordance with Water Code section 13267. The 13267 Order required the Discharger to submit:
- a. By **18 January 2013**, a technical memorandum to Central Valley Water Board staff that provides reasons why the remediation system was not operating and why groundwater monitoring and reporting has not been conducted since first quarter 2011.
 - b. By **30 April 2013**, groundwater monitoring data for the first quarter 2013.
11. By failing to submit the requested technical memorandum by 18 January 2013, and by not submitting the groundwater monitoring report by 30 April 2013, the Discharger violated Water Code section 13267. On 18 June 2013 the Central Valley Water Board sent the Discharger a *Forthcoming Assessment of Civil Liability for Failure to Comply with California Water Code Section 13267* and notified the Discharger of the violations, potential penalties, and instructed the Discharger to submit the required technical memorandum and report. The requested material has not been received to date.

ALLEGATIONS

Part 1: Failure to submit a technical memorandum to Central Valley Water Board staff providing reasons why the remediation system is not currently operating and why groundwater monitoring and reporting has not been conducted since first quarter 2011.

Paragraph 1 of Page 2 of the 13267 Order, dated 21 December 2012, required the Discharger to:

“Therefore, pursuant to Water Code section 13267, you are hereby required to provide a technical memorandum providing reasons why the remediation system is not currently operating and why there has been no activity at the site since the letter dated 15 July 2011. This technical memorandum shall be submitted to this office **by 18 January 2013.**”

Paragraph 4 of Page 2 of the 13267 Order instructed the Discharger that:

“[f]ailure to submit the technical memorandum... by the due dates indicated above may result in additional enforcement action(s) being taken against you.”

1. The required technical memorandum has not been received by the Central Valley Water Board.
2. On 18 June 2013 the Central Valley Water Board sent a *Forthcoming Assessment of Civil Liability for Failure to Comply with California Water Code Section 13267*, in which the Discharger was notified of the violation, potential penalty, and instructed the Discharger to submit the required technical memorandum.
3. Discharger failed to provide the required report and therefore has violated the 13267 Order for 567 days.
4. The report was required pursuant to Water Code section 13267. In accordance with Water Code section 13268, the Central Valley Water Board may impose \$1,000 in liability for each day of violation.
5. Water Code section 13327 specifies factors that the Central Valley Water Board shall consider in establishing the amount of civil liability.
6. **Attachment A** indicates the proposed administrative civil liability for the violations described in Part 1 above, in consideration of the factors in Water Code section 13327, derived from the use of the penalty methodology in the *Enforcement Policy*.

Part 2: Failure to submit a groundwater monitoring report for the first quarter of 2013.

Paragraph 1 of Page 2 of 13267 Order, dated 21 December 2012, required:

"[G]roundwater monitoring shall be conducted during the first quarter 2013 **by 31 March 2013** with the associated groundwater monitoring report due to this office **by 30 April 2013**."

Paragraph 4 of Page 2 of the 13267 Order instructed the Discharger that:

"[f]ailure to submit the...the groundwater monitoring report by the due dates indicated above may result in additional enforcement action(s) being taken against you."

7. On 18 June 2013 the Central Valley Water Board sent a *Forthcoming Assessment of Civil Liability for Failure to Comply with California Water Code Section 13267*, which notified the Discharger of the violation, potential penalty, and instructed to submit the required report.
8. To date, the required groundwater monitoring report has not been received by the Central Valley Water Board.
9. The Discharger failed to provide the required report and therefore has violated the 13267 Order for 465 days.
10. The report was required pursuant to Water Code section 13267. In accordance with Water Code section 13268, the Central Valley Water Board may impose \$1,000 in liability for each day of violation.

11. Water Code section 13327 specifies factors that the Central Valley Water Board shall consider in establishing the amount of civil liability.
12. **Attachment A** indicates the proposed administrative civil liability for the violations described in Part 1 above, in consideration of the factors in Water Code section 13327, derived from the use of the penalty methodology in the *Enforcement Policy*.
13. As described in Attachment A, the proposed administrative civil liability for both violations 1 and 2 described above, is \$43,600.

MAXIMUM LIABILITY

14. The maximum liability for the violations described above is \$1,032,000.

Part	Requirement	Days of Violation	Maximum Potential Liability
Part 1	Submit a technical memorandum to Central Valley Water Board staff providing reasons why the remediation system is not currently operating and why groundwater monitoring and reporting has not been conducted since first quarter 2011	567	\$567,000
Part 2	Submit a groundwater monitoring report for the first quarter of 2013	465	\$465,000

MINIMUM LIABILITY

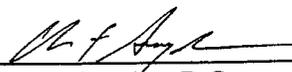
15. The *Enforcement Policy* directs the Central Valley Water Board to recover, at a minimum, ten percent more than the economic benefit. In this case, that would be \$3,300.

PROPOSED LIABILITY

16. As described in Attachment A, it is recommended that the Central Valley Water Board impose civil liability against Discharger in the amount of \$43,600 for the violations described in this Complaint. If the Discharger elects to contest this matter, the recommended liability may increase to recover additional necessary staff costs.

**JASWINDER SHERGILL AND HARDIP SINGH SANDHU ARE 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 **forty three thousand six hundred dollars (\$43,600)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled **on 7/8 August 2014**, unless either of the following occurs **by 11 June 2014**:
 - a) The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **forty three thousand and six hundred dollars (\$43,600)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 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 off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is conducted, the Central Valley 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 recovery of judicial civil liability.
4. If this matter proceeds to hearing, the 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.



Clint E. Snyder, P.G.
Assistant Executive Officer

5/12/14

Date

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the Jaswinder Shergill (Discharger) in connection with Administrative Civil Liability Complaint **R5-2014-0523** (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. 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 in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of forty **three thousand six hundred dollars (\$43,600)** by check that references "ACL Complaint **R5-2014-0523**" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **11 June 2014**.
- 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 a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. 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 Central Valley 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 Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives 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 Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. 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.

(Print Name and Title)

(Signature)

(Date)

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent Hardip Singh Sandhu (Discharger) in connection with Administrative Civil Liability Complaint **R5-2014-0523** (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. 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 in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of forty **three thousand six hundred dollars (\$43,600)** by check that references "ACL Complaint **R5-2014-0523**" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **11 June 2014**.
- 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 a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. 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 Central Valley 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 Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives 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 Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. 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.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A

Calculation of Liability for Violations Described in Part 1:

Failure to submit a technical memorandum to Central Valley Water Board staff providing reasons why the remediation system is not currently operating and why groundwater monitoring and reporting has not been conducted since first quarter 2011

Step 1 - Potential for Harm for Discharge Violations

Failure to submit a technical memorandum to Central Valley Water Board staff is a non-discharge violation. Therefore, this step does not apply.

Step 2 – Assessments for Discharge Violations

Failure to submit a technical memorandum to Central Valley Water Board staff is a non-discharge violation. Therefore, this step does not apply.

Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the *Enforcement Policy's* penalty calculation methodology directs the Central Valley 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 for failure to submit a technical memorandum is moderate because the circumstances of the violation indicate a substantial potential for harm. Remediation was performed from November 2006 to March 2009. At the time that remediation was prematurely ceased, contaminant concentrations were decreasing in all wells; however, there is a moderate potential for rebound due to the long lapse of active remediation, and thus a moderate potential for harm to beneficial uses.

The Extent of Deviation from applicable requirements is major because the intended effectiveness of the requirement has been compromised. Specifically, the intent of the requirement was that a technical memorandum be submitted and it was not. Thus, the requirement has been rendered ineffective.

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:

$$\text{Initial Base Liability} = (0.55) \times (567 \text{ days of violation}) \times (\$1,000) = \$311,850$$

Step 4 – Adjustment Factors

Multiple Day Violations

The *Enforcement Policy* provides that for violations lasting more than 30 days, the Central Valley 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 a complete technical memorandum as required by Order Requirement #1 lasted 567 days.

The Prosecution Team recommends that 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, 60, and every 30 days thereafter. This results in 24 days of violation.

This results in a Revised Initial Base Liability as follows:

Revised Initial Base Liability = $(0.55) \times (24 \text{ days of violation}) \times (\$1,000) = \$13,200$

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.

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 1.3 has been selected because according to Central Valley Water Board records, the Discharger met with Central Valley Water Board at least three times, discussed the violations, and repeatedly claimed that the required information would be submitted. To date, the required information has not been submitted despite the Discharger's assurances that it would be. Such behavior is unreasonable if the Discharger was making a good faith attempt to come into compliance.

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 multiplier of 1.3 has been selected because the Discharger met with the Central Valley Water Board staff a number of times, and disregarded requests for this information. The Discharger was uncooperative and did not submit the required information. Such behavior is unreasonable if the Discharger was making a good faith attempt to come into compliance. Therefore, a multiplier of 1.3 is appropriate.

Adjustment for History of Violations

The *Enforcement Policy* suggests that where there is a history of repeat violations, a minimum multiplier of 1 should be used to reflect this. In this case, a multiplier of 1 is proposed because the Discharger does not have a history of violations.

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:

(Revised Initial Liability) x (Culpability Multiplier) x (Cleanup and Cooperation Multiplier)
x (History of Violations) = (Total Base Liability Amount)

$$(\$13,200) \times (1.3) = \$17,160 \times (1.3) = \$22,308 \times (1) = \$22,308$$

**Calculation of Liability for Violations Described in Part 2:
Failure to a submit groundwater monitoring report for the first quarter of 2013.**

Step 1 - Potential for Harm for Discharge Violations

Failure to submit a groundwater monitoring report is a "non-discharge violation." Therefore, this step does not apply.

Step 2 – Assessments for Discharge Violations

Failure to submit a groundwater monitoring report is a "non-discharge violation." Therefore, this step does not apply.

Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the *Enforcement Policy's* penalty calculation methodology directs the Central Valley 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 a groundwater monitoring report creates a substantial potential for harm. As noted above, remediation was performed from November 2006 to March 2009. At the time that remediation prematurely ceased, contaminant concentrations were decreasing in all wells; however there is a moderate potential for rebound due to the long lapse of active remediation. Thus, there is a moderate potential for harm.

The Extent of Deviation from applicable requirements is major because the intended effectiveness of the requirement has been compromised. Specifically, the intent of the requirement was that a groundwater monitoring report be submitted and it was not. Thus, the requirement has been rendered ineffective

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:

$$\text{Initial Base Liability} = (0.55) \times (465 \text{ days of violation}) \times (\$1,000) = \$255,750$$

Step 4 – Adjustment Factors

Multiple Day Violations

The *Enforcement Policy* provides that for violations lasting more than 30 days, the Central Valley 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 a groundwater monitoring report as required by Order Requirement #2 lasted 465 days.

The Prosecution Team recommends that 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, 60, and every 30 days thereafter. This results in 21 days of violation.

This results in a Revised Initial Base Liability as follows:

Revised Initial Base Liability = $(0.55) \times (21 \text{ days of violation}) \times (\$1,000) = \$11,550$

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.

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 1.3 has been selected because according to Central Valley Water Board records, the Discharger met with Central Valley Water Board at least three times, discussed the violations, and repeatedly claimed that the required information would be submitted. To date, the required information has not been submitted despite the Discharger's assurances that it would be. Such behavior is unreasonable if the Discharger was making a good faith attempt to come into compliance.

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 multiplier of 1.3 has been selected because the Discharger met with the Central Valley Water Board staff several times, and disregarded requests for this information. The Discharger was uncooperative and did not submit the required information. Such behavior is unreasonable if the Discharger was making a good faith attempt to come into compliance. Therefore, a multiplier of 1.3 is appropriate.

Adjustment for History of Violations

The *Enforcement Policy* suggests that where there is a history of repeat violations, a minimum multiplier of 1 should be used to reflect this. In this case, a multiplier of 1 is proposed because the Discharger does not have a history of violations.

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:

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

$$(\$11,550) \times (1.3) = \$15,015 \times (1.3) = \$19,519.50 \times (1) = \$19,519.50$$

COMBINED TOTAL BASE LIABILITY AND FACTORS APPLIED TO ALL VIOLATIONS

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

The *Enforcement Policy* provides that if the Central Valley 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.

The Central Valley Water Board Prosecution Team does not have sufficient information to determine whether the Discharger has the ability to pay the proposed liability.

Step 7 – Other Factors As Justice May Require

The *Enforcement Policy* provides that if the Central Valley 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 findings are made. In addition, the costs of investigation should be added to the liability amount according to the *Enforcement Policy*.

The Central Valley Water Board has incurred approximately \$1,800 (12 hours at \$150 per hour) in investigative costs to date associated with the violations described in the Complaint. These staff costs include several meetings and associated follow-up correspondence that occurred from July 2013 until May 2014.

Step 8 – Economic Benefit

The *Enforcement Policy* directs the Central Valley 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, by a minimum of ten per cent. In this matter, the Discharger did not submit the required technical memorandum by the due date of 18 January 2013. The technical

memorandum would cost approximately \$600 to prepare, which is an avoided cost because it was never submitted. The economic benefit of not preparing this report by the due date is \$621 when the value of the interest of the avoided cost is added. The discharger also failed to submit the groundwater monitoring data for the first quarter by the due date of 30 April 2013. The preparation of the groundwater monitoring report would have cost approximately \$2,400, which is an avoided cost since it was not submitted. The economic benefit of not preparing this data by the due date is \$2,460 when the value of the interest of the avoided cost is added. The sum total economic benefit of the Discharger's non-compliance for both violations is \$3,081.

Step 9 – Maximum and Minimum Liability Amounts

The Enforcement Policy directs the Central Valley Water Board to consider the maximum or minimum liability amounts set forth in the applicable statutes.

As described in Paragraphs 25 and 26 of the Complaint, the maximum potential liability for the alleged violations is \$1,032,000.

There is no statutory minimum liability for a violation of Water Code section 13267. However, the enforcement policy directs the Central Valley Water Board to recover, at a minimum, ten percent more than the economic benefit. In this case that would be \$3,389.10.

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 various violations was performed as follows.

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

$$\$41,827.50 + [\$1,800.00] + 0 =$$

Final Liability Amount = \$43,627.50