CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2012-0516

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

CITY OF SACRAMENTO AND SYLVIA DELLAR SURVIVOR'S TRUST
DELLAR LANDFILL

This administrative civil liability complaint (Complaint) is issued under the authority of Water Code section 13323 to the City of Sacramento and the Sylvia Dellar Survivor's Trust (hereafter jointly referred to as Dischargers, or referred to individually as City or Trust) to assess administrative civil liability pursuant to Water Code sections 13268 and 13350. This Complaint is based on allegations that the Dischargers violated the provisions of Cleanup and Abatement Order R5-2008-0705. The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) hereby alleges:

1. Unless waived, a hearing on this matter will be held before the Central Valley Water Board within 90 days following issuance of this Complaint. The Dischargers, or their representative(s), will have an opportunity to be heard and to contest the allegations in this Complaint and the proposed imposition of administrative civil liability. Not less than ten days before the hearing date, an agenda for the meeting of the Central Valley Water Board at which this matter will be heard will be available on the Board's website: http://www.waterboards.ca.gov/centralvalley/.

2. At the hearing, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability (including an increase in the amount of the liability up to the statutory maximum) or whether to refer the matter to the Attorney General for assessment of judicial civil liability. The Dischargers can waive their right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form.

3. 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 Complaint through the close of the hearing. The enforcement costs can be considered as an additional factor as justice may require.

BACKGROUND

4. The Sylvia Dellar Survivor's Trust owns property referred to hereafter as the Dellar Property, and upon which the City of Sacramento formerly operated an unlined landfill. The landfill covers 29 acres along "A" Street immediately north of the north end of 24th

and 25th Streets in the City of Sacramento. The Dellar Property includes 6 parcels: APNs 001-0160-008, 001-0160-009, 001-0160-013, 001-0160-038, 001-0160-039, and 003-0032-013. The property is in Section 32, T9N, R5E, MDB&M.

5. The City operated the Dellar Property as a landfill under operating agreements with the former owners (R. Cannon and A. Lucas) from 1959 to 1963. The agreements with the former owners authorized the discharge of "garbage, garden refuse, and other waste material". These wastes included household and commercial garbage, rubbish, and street cleaning wastes (e.g., yard trimming and maintenance wastes) from the City of Sacramento area.

6. The City ceased landfill operations on the Dellar Property in 1963. Reports on file indicate that the landfill was left with uncompacted soil cover of varying thickness, and that it did not receive an engineered cover (i.e., it was not capped and graded for drainage). A conceptual closure plan for the landfill on the Dellar Property was included in an amendment to the Final Closure Plan for the 28th Street Landfill, but was never finalized or implemented.

7. The land surface is vacant except for a 75-foot steel truss radio tower and associated equipment storage shed, both located within a small fenced area on the site and owned by Immaculate Heart Radio. The land surface has been characterized through site inspections as hummocky, uncompacted fill with no proper drainage controls.

8. On 29 January 2007, the City submitted (on behalf of both the City and the Trust), a conceptual plan for closure of the Dellar Property landfill (*Proposed Plan for Resolution of Dellar Property Issues*). The plan proposed construction of a three to four foot thick, non-prescriptive soil cover over the landfill. Both the existing interim cover soil and imported fill (approximately 90,000 cubic yards) would be used for the final cover. The cover would be graded to drain both to the east and west from a north-south central crown.

9. On 4 June 2008, the Executive Officer issued Cleanup and Abatement Order (CAO) R5-2008-0705 to the Dischargers. This Order included a list of tasks and a time schedule that would culminate in the construction of a closure cover of the Dellar Property by 30 October 2010 and submittal of a final Closure Certification Report by 15 December 2010. The CAO provided the Dischargers with three construction seasons (2008, 2009, and 2010) to complete the closure.

10. During the 2008 construction season, the Dischargers imported and stockpiled approximately 60,000 yards of soil for future use, installed storm water controls, and submitted quarterly status reports. As required by the CAO, the Dischargers obtained a construction storm water permit, submitted a storm water pollution prevention plan and submitted a 2008 erosion control plan.

11. The Dischargers submitted the *Final Closure Design*, which was approved by Board staff in an email dated 9 December 2009.

12. To date, the Dischargers have failed to comply with the following requirements of CAO R5-2008-0705:

    a. Submittal of the 2009 erosion control plan by 15 September 2009.
    b. Initiation of closure construction by 1 June 2010.
    c. Submittal of the 2010 erosion control plan by 15 September 2009.
    d. Completion of closure construction by 30 October 2010.
    e. Submittal of the Closure Certification Report by 15 December 2010.

REGULATORY CONSIDERATIONS

13. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board.

14. Surface water drainage from the Dellar Property is to the American River. The beneficial uses of the American River stated in the Basin Plan are municipal and domestic supply; agricultural supply; industrial service supply; hydropower generation; water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; migration of aquatic organisms; spawning, reproduction and/or early development; and wildlife habitat.

15. The beneficial uses of underlying groundwater stated in the Basin Plan are municipal and domestic supply, agricultural supply, industrial service supply, and industrial process supply.

16. Administrative civil liabilities may be sought and imposed for violations of an order of the Board pursuant to the procedure described in Water Code section 13323. This Administrative Civil Liability Complaint alleges the Discharger's acts and/or failure to act constitute violations of CAO R5-2008-0705, and seeks administrative civil liabilities under Water Code sections 13268 and 13350.

17. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2) and all applicable law.

ALLEGATIONS

A. Violation #1- Failure to submit technical reports

18. CAO R5-2008-0705, Task 2.d requires the Dischargers to submit a 2009 Erosion Control Plan for Phase I construction work by 15 September 2009. As of 9 March 2012, the Discharger has violated the requirement to submit this report for **906** days.

19. CAO R5-2008-0705, Task 2.f requires the Dischargers to submit a 2010 Erosion Control Plans for Phase II construction work by 15 September 2010. As of 9 March 2012, the Discharger has violated the requirement to submit this report for **541** days.

20. CAO R5-2008-0705, Task 2.h requires the Dischargers to submit a Closure Certification Report by 15 December 2010. As of 9 March 2012, the Discharger has violated the requirement to submit this report for **450** days.

21. CAO R5-2008-0705 requires that technical reports be submitted pursuant to Water Code section 13267.

22. Water Code section 13268(a) states, in part: *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).*

23. Water Code section 13268(b)(1) states, in part: *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.*

24. The failure to submit the required three reports required by the CAO constitute violations for which liability may be imposed under Water Code section 13268. Pursuant to this section, penalties may be assessed in the amount of $1,000 per day of violation. The two reports are a total of 1,897 days late; therefore **the maximum civil liability under Water Code section 13268 is $1,897,000**. There is no minimum penalty under Water Code section 13268.

B. Violation #2 - Failure to Begin and Complete Closure Construction

25. CAO R5-2008-0705, Task 2.e. requires the Dischargers to begin closure construction activities by 1 June 2010. As of 9 March 2012, the Dischargers have violated this requirement for **786** days.

26. CAO R5-2008-0705, Task 2.f. requires the Dischargers to complete construction activities by 30 October 2010. As of 9 March 2012, the Dischargers have violated this requirement for **509** days.

27. Water Code section 13350(a) states, in part: *A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional*

board…shall be liable civilly, and remedies may be proposed, in accordance with subdivisions (d) or (e).

28. Water Code section 13350(e) states, in part: *The state board or a regional board may impose civil liability administratively…either on a daily basis or on a per gallon basis, but not on both.*

29. Water Code section 13350(e)(1) states: *The civil liability on a daily basis shall not exceed five thousand dollars ($5,000) for each day the violation occurs.*

30. Water Code section 13350(e)(1)(B) states, in part: *When there is no discharge, but an order issued by the regional board is violated…the civil liability shall not be less than one hundred dollars ($100) for each day in which the violation occurs.*

31. The failure to initiate and complete closure construction as required by the CAO constitute violations for which liability may be imposed pursuant to Water Code section 13350. According to Water Code section 13350(e), civil liability may be imposed in an amount not to exceed $5,000 per day of violation and not to be less than $100 per day of violation. The violations have taken place for a cumulative 1,295 days; therefore **the maximum civil liability under Water Code section 13350 is $6,475,000 and the minimum penalty is $129,500.**

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

32. Pursuant to Water Code section 13327, in determining the amount of any civil liability imposed under Water Code section 13350, the 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.

33. 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 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_final11179.pdf

34. This 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.

35. As described above, the maximum penalty for the violations is $6,475,000 and the minimum penalty is $129,500. Based on consideration of the above facts, after applying the penalty methodology, and considering the Discharger's ability to pay, the Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of $164,796. The specific factors considered in this penalty are detailed in Attachment A.

36. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's Cleanup and Abatement Order for which penalties have not yet been assessed or for violations that may subsequently occur.

THE CITY OF SACRAMENTO AND THE SYLVIA DELLAR SURVIVORS TRUST 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 **one hundred sixty four thousand seven hundred ninety six dollars ($164,796)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code section 13327, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.

2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **7/8 June 2012**, unless one of the following occurs by **9 April 2012:**

   a) The Discharger waives the hearing by completing the attached form (checking the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **one hundred sixty four thousand seven hundred ninety six dollars ($164,796)**; 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 #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 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 is held, 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.

PAMELA C. CREEDON, Executive Officer

9 March 2012

Date

Attachment A: Calculation of Liability

TDF/WSW:9Mar12

Attachment A: Calculation of Liability

Factual Background[1]

On 4 June 2008, the Executive Officer issued Cleanup and Abatement Order (CAO) R5-2008-0705. The Dischargers began requesting extensions to the CAO almost as soon as it was issued, as described in the paragraphs below.

A status report dated 1 August 2008 was submitted by the City of Sacramento requesting a two-week extension to submit the 30% engineering drawings for the closure cover. The 30% cover design was an element of the Final Closure Plan (FCP) due 15 August 2008. In an email dated 12 September 2008, the Dischargers had not gained access to the Dellar Property to conduct preliminary survey work and thus, the 30% percent design or the FCP had not been submitted by the 15 August 2008 deadline.

In a status report dated 30 January 2009 the City of Sacramento indicated the Dischargers were working to complete the engineered drawings describing the closure plan and would submit the drawings with the next quarterly status report. In a letter dated 23 January 2009, Board staff requested that the Dischargers submit the overdue FCP by 1 April 2009.

In a letter dated 19 March 2009, Board staff stated that it understood that funding to complete the FCP was not available and that the City of Sacramento was requesting additional funding from the City Council. Based on the availability of funding, staff agreed that it would not recommend enforcement if the FCP was submitted by 12 May 2009.

The Dischargers submitted the FCP on 13 May 2009. In a letter dated 19 August 2009, staff asked for additional information about the FCP by 15 October 2009. The City of Sacramento responded and submitted the required information in a letter dated 1 November 2009. The FCP and subsequent information requested were approved in an email dated 9 December 2009.

The CAO required the Discharger to begin closure construction by 1 June 2010. In an email dated 8 June 2010, the City notified Board staff that elderberry bushes had been identified on-site during a biological survey conducted during February and March 2010, and would require mitigation before construction work was performed. City staff verbally requested an extension to the final closure date in the CAO; Board staff did not agree that an extension was appropriate. No work was conducted in 2010 with the exception of the Dischargers preparing a habitat conservation plan to address the mitigation of the elderberry bushes.

In a letter dated 16 June 2010 the City of Sacramento requested a four year extension to the final closure of the Dellar Property. They based this request on having to prepare a habitat conservation plan, which the Dischargers did not know how long the preparation and review process of the plan would take. Board staff did not agree to extend the due dates of the

[1] The factual background is intended to provide context to the consideration of the factors in the Enforcement Policy used to determine the appropriate liability.

CAO.

On 6 January 2011, Board staff met with the Dischargers to discuss an alternative closure plan that would work around the elderberry bushes, which is habitat for the Valley Elderberry Longhorn Beetle, a threatened species. As discussed in the meeting, the Dischargers were to provide an updated schedule and tasks required to complete the final closure of the landfill by end of construction season 2011.

On 13 January 2011, the Dellar Trust submitted a letter containing the following list of tasks and schedule. Board staff approved the document, but reserved the right to initiate enforcement based on the initial compliance dates in the Cleanup and Abatement Order.

- Submit Field Activities Report by 9 March 2011
- Submit a revised Final Closure Plan by 25 April 2011
- Begin closure construction by 18 August 2011
- Complete closure construction by 5 October 2011
- Submit Construction Quality Assurance Report by 10 November 2011

In a 13 May 2011 letter submitted to Board staff, the Dischargers requested a one year extension to the CAO deadlines. The extension request was based upon the City's intention to submit a request to CalRecycle for a grant to cover a portion of the closure cost.

In a response letter dated 25 May 2011, Board staff stated that it could not recommend another extension to the CAO unless and until "the Dischargers show that they will make every effort to proceed with as much of the construction as possible this year...the tasks performed must include submitting the [revised] Final Closure Plan and must show that the Dischargers are spending approximately $500,000 to $750,000." Board staff requested the Dischargers submit, by 31 May 2011, a list of closure tasks and proposed schedule of work to be performed during the 2011 construction season.

On 22 July 2011, the Dischargers submitted a Closure and Post Closure Maintenance Plan. This plan proposed a grade-to-drain cover that would avoid the incidental take of the Valley Elderberry Longhorn Beatle. The Dischargers provided a schedule of tasks to be completed during construction season 2011, as shown below.

- Abandon well by 16 September 2011
- Construct detention basin by 23 September 2011
- Reset power poles at new grade by 23 September 2011
- Conduct work around radio tower by 30 September 2011
- Submit interim CQA report by 21 October 2011

In a letter dated 7 September 2011, Board staff approved the Closure and Post Closure Maintenance Plan and the schedules for the 2011 work and final closure work, and again verbally informed the Dischargers that any enforcement actions would be based on the initial compliance dates in the Cleanup and Abatement Order. The letter states that the final CQA Report shall be submitted by 26 October 2012.

However, the only task completed was the submission of a document titled "CQA Interim Report" dated 21 October 2011. This report does not contain CQA data generated from construction work, and instead only discussed contract complexities and the intent of the Dellar Trust to complete some elements of the closure construction during fall 2011. As such, the report does not meet the intent of the approved Plan, and therefore the Dischargers did not submit an Interim CQA Plan.

In a letter dated 1 November 2011, the City provided a status report as required by the CAO stating the City received verbal confirmation that CalRecycle will recommend awarding the $720,000 grant to the City. However, a contract for construction services had not been finalized, and none of the work which the Dischargers had committed to complete in the fall 2011 had been performed.

In a 13 January 2012 letter, Board staff expressed strong concern that the Dischargers had not completed any work in the 2011. The Dischargers responded separately, with multiple excuses as to why either party was unable to complete any work during the fall of 2011.

Calculation of Penalty

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under Water Code section 13327. Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

Step 1 – Potential for Harm for Discharge Violations
The alleged violations are non-discharge violations, and therefore this first step is not used in the calculation.

Step 2 – Assessment for Discharge Violations
The alleged violations are non-discharge violations, and therefore this second step is not used in the calculation.

Step 3 – Per Day Assessment for Non-Discharge Violation
The Board shall calculate an initial liability for each non-discharge violation.

Violation #1: The Discharger failed to submit (a) the two erosion control reports needed to evaluate the potential for run-on/run-off of storm water and the threat to surface water, and (b) the Closure Certification Report. The erosion control reports are critical to show that the landfill area will be prepared for the wet season as required by Title 27 and the CAO. The landfill does not have a certified closure cover that is graded to drain storm water. Run-off of storm water in contact with the landfill can cause erosion of the existing soil cover, expose

waste to the environment, and release sediment and pollutants into surface waters. Failure to properly install erosion and sedimentation controls will only exacerbate water quality impacts. The Closure Certification Report is critical to show that the landfill was closed in compliance with the CAO and with the approved closure plans.

Violation #2: The Dischargers have failed to begin closure construction and have failed to complete closure construction by the required deadlines in the CAO. Closure of the Dellar Property is an essential element of ensuring that the waste on site is contained in a manner protective of the environment.

Given the above, the Potential for Harm for is determined to be "moderate" and the Deviation from Requirement is considered to be "moderate". Using Table 3, the Per Day Factor 0.35. This value is to be multiplied by the days of violation and the maximum per day penalty.

The three reports are a total of 1,897 days late (as of 9 March 2012). The Enforcement Policy allows a reduction in penalty for violations that last more than 30 days (p. 18), if certain findings can be made and if the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violations. Because the continuance of the violations is not causing daily detrimental impacts to the environment and because the adjusted per day liability is less than the per day economic benefit, an adjustment can be made.

The number of days of violation can be reduced in the penalty calculation, as follows: count the first day of violation, every fifth day up to 30 days, and then every 30 days. In this case, violations are counted as: day 1, 5, 10, 15, 20, 25, 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, 390, 420, 450, 480, 510, 540, 570, 600, 630, 670, 700, 730, 760, 790, 820, 850, 880, 910, 940, 970, 1000, 1030, 1060, 1090, 1120, 1150, 1180, 1210, 1240, 1270, 1300, 1330, 1360, 1390, 1420, 1450, 1480, 1510, 1540, 1570, 1600, 1630, 1660, 1690, 1720, 1750, 1780, 1810, 1840, and 1870 days late for a total of 68 days of violation.

The Dischargers have failed to initiate closure construction as required, and have been in violation for 786 days. The Dischargers have also failed to complete construction as required, and have been in violation for 509 days. The total days of violation are 1,295. As stated above, the Enforcement Policy allows a reduction in penalty for violations that last more than 30 days if certain findings can be made. The findings described above concerning Violation #1 also apply to Violation #2 and therefore, the number of days of violation can be reduced as follows: day 1, 5, 10, 15, 20, 25, 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, 390, 420, 450, 480, 510, 540, 570, 600, 630, 670, 700, 730, 760, 790, 820, 850, 880, 910, 940, 970, 1000, 1030, 1060, 1090, 1120, 1150, 1180, 1210, 1240, and 1270 for a total of 48 days of violation.

Initial Liability Amount

The initial liability amount for the non-discharge violations is calculated as follows:

Violation #1 (reporting violations): 68 days x $1,000/day x 0.35 = $23,800
Violation #2 (failure to begin construction): 48 days x $5,000/day x 0.35 = $84,000

Total Initial Liability = **$107,800**

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to cleanup or cooperate with regulatory authority, 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.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of 1.2, because the required reports are described in the CAO, and because the Discharger was provided with three years to complete the closure construction. The dates in the CAO were based on the Dischargers' proposals, yet since issuance of the CAO, the Dischargers have continually requested more time to close the landfill.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger was given a multiplier value of 1.1 based on the fact that there has been less cooperation and movement to correct the violations than would otherwise be expected.

History of Violation

This factor is to be used when there is a history of repeat violations. Other than failure to comply with the CAO, these two dischargers do not jointly, have a history of violations. A neutral multiplier of 1.0 was used.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

Violations #1 and #2 - Total Base Liability Amount

Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$107,800 x 1.2 x 1.1 x 1.0 = $142,296

Total Base Liability = **$142,296**

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

The Dischargers are the City of Sacramento and the Sylvia Dellar Survivors Trust. The two responsible parties have been litigating over this property and its value for years. The City of Sacramento is running a deficit for the last four or five years according to the City Attorney. However, the City and its solid waste program is supported by tax revenue. The City has the ability to raise taxes. The Dellar Trust is capable of hiring Professional Engineers to provide plans needed for closure. The Dellar Trust may have cash assets or real estate holdings that staff is unaware of. The two entities are jointly responsible for complying with the CAO and with paying this civil liability. The Board does not determine the percentage that each party must pay. Based on this information, it appears that the City of Sacramento and the Sylvia Dellar Survivors Trust have the ability to pay the civil liability and remain in business.

Step 7 – Other Factors as Justice May Require

Costs of Investigation and Enforcement Adjustment

The costs of investigation and enforcement are "other factors as justice may require", and should be added to the liability amount. Over the last four years, staff of the Central Valley Water Board has spent over 150 hours associated with preparing the CAO, reviewing closure plans, status reports, email correspondence, preparing for and meeting with the Discharger, writing response letters, conducting site inspections, phone calls, and preparing this enforcement action. The State Water Board Office of Enforcement has directed that all regions are to use a value of $150 per hour for staff costs. For this case, staff time through preparation of the Complaint is $22,500.

The Enforcement Policy states that staff costs are to be added to the liability amount. The adjusted liability is $142,296 + $22,500 = $164,796.

Step 8 – Economic Benefit

The Enforcement Policy provides that civil liability, at a minimum, should be assessed at a level that recovers the economic benefit, plus ten percent, derived from the acts that constitute the violation so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrence to future violations.

As of May 2011, Board staff understood that the cost to close the landfill is approximately $2 million, of which approximately $720,000 would be a grant. The economic benefit in this case

is the savings in not completing the 2009 or 2010 erosion control plans and the closure certification report, as well as the delay in expending the funds to complete the closure. Using the U.S. EPA's BEN model, th economic benefit has been calculated at approximately $130,390. The proposed penalty exceeds the economic benefit, plus ten percent.

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being proposed. The maximum statutory value is found in the ACL Complaint, and the minimum value is the economic benefit.

Maximum Liability Amount: $6,475,000

Minimum Liability Amount: $130,390

Penalty Calculation Amount: $164,796

Step 10 – Final liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. Without further investigation of the discharge, calculation of economic benefits, and additional staff time, the proposed Administrative Civil Liability is **$164,796.**

WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

I am duly authorized to represent the City of Sacramento and the Sylvia Dellar Survivors Trust (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2012-0516 (hereafter 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 **one hundred sixty four thousand seven hundred ninety six dollars ($164,796)** by check that references "ACL Complaint R5-2012-0516" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **9 April 2012.**

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)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2013-0154

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

CITY OF SACRAMENTO AND SYLVIA DELLAR SURVIVOR'S TRUST
DELLAR LANDFILL
SACRAMENTO COUNTY

This Order is issued to the City of Sacramento and the Sylvia Dellar Survivor's Trust (hereafter jointly referred to as Dischargers, or referred to individually as City or Trust) pursuant to Water Code sections 13268 and 13350, which authorize the imposition of an Administrative Civil Liability (ACL). This Order is based on findings that the Dischargers violated the provisions of Cleanup and Abatement Order R5-2008-0705.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds:

1. The Sylvia Dellar Survivor's Trust owns property referred to hereafter as the Dellar Property, and upon which the City of Sacramento formerly operated an unlined landfill. The landfill covers 29 acres along "A" Street immediately north of the north end of 24th and 25th Streets in the City of Sacramento. The Dellar Property includes 6 parcels: APNs 001-0160-008, 001-0160-009, 001-0160-013, 001-0160-038, 001-0160-039, and 003-0032-013. The property is in Section 32, T9N, R5E, MDB&M.

2. The City operated the Dellar Property as a landfill under operating agreements with the former owners (R. Cannon and A. Lucas) from 1959 to 1963. The agreements with the former owners authorized the discharge of "garbage, garden refuse, and other waste material". These wastes included household and commercial garbage, rubbish, and street cleaning wastes (e.g., yard trimming and maintenance wastes) from the City of Sacramento area.

3. The City ceased landfill operations on the Dellar Property in 1963. Reports on file indicate that the landfill was left with uncompacted soil cover of varying thickness, and that it did not receive an engineered cover (i.e., it was not capped and graded for drainage). A conceptual closure plan for the landfill on the Dellar Property was included in an amendment to the Final Closure Plan for the 28th Street Landfill, but was never finalized or implemented.

4. The land surface is vacant except for a 75-foot steel truss radio tower and associated equipment storage shed, both located within a small fenced area on the site and owned by Immaculate Heart Radio. The land surface has been characterized through site inspections as hummocky, uncompacted fill with no proper drainage controls.

5. On 29 January 2007, the City submitted (on behalf of both the City and the Trust), a conceptual plan for closure of the Dellar Property landfill (*Proposed Plan for Resolution of Dellar Property Issues*). The plan proposed construction of a three to four foot thick, non-prescriptive soil cover over the landfill. Both the existing interim cover soil and imported fill (approximately 90,000 cubic yards) would be used for the final cover. The cover would be graded to drain both to the east and west from a north-south central crown.

6. On 4 June 2008, the Executive Officer issued Cleanup and Abatement Order (CAO) R5-2008-0705 to the Dischargers. This Order included a list of tasks and a time schedule that would culminate in the construction of a closure cover of the Dellar Property by 30 October 2010 and submittal of a final Closure Certification Report by 15 December 2010. The CAO provided the Dischargers with three construction seasons (2008, 2009, and 2010) to complete the closure.

7. During the 2008 construction season, the Dischargers imported and stockpiled approximately 60,000 yards of soil for future use, installed storm water controls, and submitted quarterly status reports. As required by the CAO, the Dischargers obtained a construction storm water permit, submitted a storm water pollution prevention plan and submitted a 2008 erosion control plan.

8. The Dischargers submitted the *Final Closure Design*, which was approved by Board staff in an email dated 9 December 2009.

9. To date, the Dischargers have failed to comply with the following requirements of CAO R5-2008-0705:

    a. Submittal of the 2009 erosion control plan by 15 September 2009.
    b. Initiation of closure construction by 1 June 2010.
    c. Submittal of the 2010 erosion control plan by 15 September 2009.
    d. Completion of closure construction by 30 October 2010.
    e. Submittal of the Closure Certification Report by 15 December 2010.

VIOLATIONS OF THE CLEANUP AND ABATEMENT ORDER

10. Violation #1- Failure to submit technical reports

    a. CAO R5-2008-0705, Task 2.d requires the Dischargers to submit a 2009 Erosion Control Plan for Phase I construction work by 15 September 2009. As of 9 March 2012, the Discharger has violated the requirement to submit this report for **906** days.

    b. CAO R5-2008-0705, Task 2.f requires the Dischargers to submit a 2010 Erosion Control Plans for Phase II construction work by 15 September 2010. As of 9 March 2012, the Discharger has violated the requirement to submit this report for **541** days.

    c. CAO R5-2008-0705, Task 2.h requires the Dischargers to submit a Closure Certification Report by 15 December 2010. As of 9 March 2012, the Discharger has violated the requirement to submit this report for **450** days.

    d. CAO R5-2008-0705 requires that technical reports be submitted pursuant to Water Code section 13267.

    e. Water Code section 13268(a) states, in part: *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).*

    f. Water Code section 13268(b)(1) states, in part: *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.*

    g. The failure to submit the required three reports required by the CAO constitute violations for which liability may be imposed under Water Code section 13268. Pursuant to this section, penalties may be assessed in the amount of $1,000 per day of violation. The two reports are a total of 1,897 days late; therefore **the maximum civil liability under Water Code section 13268 is $1,897,000**. There is no minimum penalty under Water Code section 13268.

11. Violation #2 - Failure to Begin and Complete Closure Construction

    a. CAO R5-2008-0705, Task 2.e. requires the Dischargers to begin closure construction activities by 1 June 2010. As of 9 March 2012, the Dischargers have violated this requirement for **786** days.

b. CAO R5-2008-0705, Task 2.f. requires the Dischargers to complete construction activities by 30 October 2010. As of 9 March 2012, the Dischargers have violated this requirement for **509** days.

c. Water Code section 13350(a) states, in part: *A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board…shall be liable civilly, and remedies may be proposed, in accordance with subdivisions (d) or (e).*

d. Water Code section 13350(e) states, in part: *The state board or a regional board may impose civil liability administratively…either on a daily basis or on a per gallon basis, but not on both.*

e. Water Code section 13350(e)(1) states: *The civil liability on a daily basis shall not exceed five thousand dollars ($5,000) for each day the violation occurs.*

f. Water Code section 13350(e)(1)(B) states, in part: *When there is no discharge, but an order issued by the regional board is violated…the civil liability shall not be less than one hundred dollars ($100) for each day in which the violation occurs.*

g. The failure to initiate and complete closure construction as required by the CAO constitute violations for which liability may be imposed pursuant to Water Code section 13350. According to Water Code section 13350(e), civil liability may be imposed in an amount not to exceed $5,000 per day of violation and not to be less than $100 per day of violation. The violations have taken place for a cumulative 1,295 days; therefore **the maximum civil liability under Water Code section 13350 is $6,475,000 and the minimum penalty is $129,500.**

REGULATORY CONSIDERATIONS

12. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board.

13. Surface water drainage from the Dellar Property is to the American River. The beneficial uses of the American River stated in the Basin Plan are municipal and domestic supply; agricultural supply; industrial service supply; hydropower generation; water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; migration of aquatic organisms; spawning, reproduction and/or early development; and wildlife habitat.

14. The beneficial uses of underlying groundwater stated in the Basin Plan are municipal and domestic supply, agricultural supply, industrial service supply, and industrial process supply.

15. Administrative civil liabilities may be sought and imposed for violations of an order of the Board pursuant to the procedure described in Water Code section 13323. This Administrative Civil Liability Order finds that the Discharger's acts and/or failure to act constitute violations of CAO R5-2008-0705, and seeks administrative civil liabilities under Water Code sections 13268 and 13350.

16. Issuance of this Administrative Civil Liability Order to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2) and all applicable law.

ADMINISTRATIVE CIVIL LIABILITY

17. Pursuant to Water Code section 13327, in determining the amount of any civil liability imposed under Water Code section 13350, the 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.

18. 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 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_final11179.pdf

19. This 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.

20. As described above, the California Water Code's maximum penalty for the violations is $6,475,000 and the minimum penalty is $129,500. The Enforcement Policy's minimum penalty is the economic benefit plus 10%, or $148,904. Based on consideration of the above facts, after applying the penalty methodology, and considering the Discharger's

ability to pay, the Central Valley Water Board has determined that civil liability be imposed administratively on the Discharger in the amount of $148,904.

21. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's Cleanup and Abatement Order for which penalties have not yet been assessed or for violations that may subsequently occur.

IT IS HEREBY ORDERED that the City of Sacramento and the Sylvia Dellar Survivor's Trust shall pay a civil liability of **$148,904** as follows:

Within 30 days of adoption of this Order, the Discharger shall pay one hundred and forty eight thousand, nine hundred and four dollars ($148,904) by check made payable to the *State Water Pollution Cleanup and Abatement Account*. The check shall have written upon it the number of this ACL Order.

I, Kenneth D. Landau, Assistant Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 6 December 2013.

KENNETH D. LANDAU, Assistant Executive Officer

Attachment A: Calculation of Liability
TAD/WSW

Attachment A: Calculation of Liability

Factual Background[1]

On 4 June 2008, the Executive Officer issued Cleanup and Abatement Order (CAO) R5-2008-0705. The Dischargers began requesting extensions to the CAO almost as soon as it was issued, as described in the paragraphs below.

A status report dated 1 August 2008 was submitted by the City of Sacramento requesting a two-week extension to submit the 30% engineering drawings for the closure cover. The 30% cover design was an element of the Final Closure Plan (FCP) due 15 August 2008. In an email dated 12 September 2008, the Dischargers had not gained access to the Dellar Property to conduct preliminary survey work and thus, the 30% percent design or the FCP had not been submitted by the 15 August 2008 deadline.

In a status report dated 30 January 2009 the City of Sacramento indicated the Dischargers were working to complete the engineered drawings describing the closure plan and would submit the drawings with the next quarterly status report. In a letter dated 23 January 2009, Board staff requested that the Dischargers submit the overdue FCP by 1 April 2009.

In a letter dated 19 March 2009, Board staff stated that it understood that funding to complete the FCP was not available and that the City of Sacramento was requesting additional funding from the City Council. Based on the availability of funding, staff agreed that it would not recommend enforcement if the FCP was submitted by 12 May 2009.

The Dischargers submitted the FCP on 13 May 2009. In a letter dated 19 August 2009, staff asked for additional information about the FCP by 15 October 2009. The City of Sacramento responded and submitted the required information in a letter dated 1 November 2009. The FCP and subsequent information requested were approved in an email dated 9 December 2009.

The CAO required the Discharger to begin closure construction by 1 June 2010. In an email dated 8 June 2010, the City notified Board staff that elderberry bushes had been identified on-site during a biological survey conducted during February and March 2010, and would require mitigation before construction work was performed. City staff verbally requested an extension to the final closure date in the CAO; Board staff did not agree that an extension was appropriate. No work was conducted in 2010 with the exception of the Dischargers preparing a habitat conservation plan to address the mitigation of the elderberry bushes.

In a letter dated 16 June 2010 the City of Sacramento requested a four year extension to the final closure of the Dellar Property. They based this request on having to prepare a habitat conservation plan, which the Dischargers did not know how long the preparation and review

[1] The factual background is intended to provide context to the consideration of the factors in the Enforcement Policy used to determine the appropriate liability.

process of the plan would take. Board staff did not agree to extend the due dates of the CAO.

On 6 January 2011, Board staff met with the Dischargers to discuss an alternative closure plan that would work around the elderberry bushes, which is habitat for the Valley Elderberry Longhorn Beetle, a threatened species. As discussed in the meeting, the Dischargers were to provide an updated schedule and tasks required to complete the final closure of the landfill by end of construction season 2011.

On 13 January 2011, the Dellar Trust submitted a letter containing the following list of tasks and schedule. Board staff approved the document, but reserved the right to initiate enforcement based on the initial compliance dates in the Cleanup and Abatement Order.

- Submit Field Activities Report by 9 March 2011
- Submit a revised Final Closure Plan by 25 April 2011
- Begin closure construction by 18 August 2011
- Complete closure construction by 5 October 2011
- Submit Construction Quality Assurance Report by 10 November 2011

In a 13 May 2011 letter submitted to Board staff, the Dischargers requested a one year extension to the CAO deadlines. The extension request was based upon the City's intention to submit a request to CalRecycle for a grant to cover a portion of the closure cost.

In a response letter dated 25 May 2011, Board staff stated that it could not recommend another extension to the CAO unless and until "the Dischargers show that they will make every effort to proceed with as much of the construction as possible this year...the tasks performed must include submitting the [revised] Final Closure Plan and must show that the Dischargers are spending approximately $500,000 to $750,000." Board staff requested the Dischargers submit, by 31 May 2011, a list of closure tasks and proposed schedule of work to be performed during the 2011 construction season.

On 22 July 2011, the Dischargers submitted a Closure and Post Closure Maintenance Plan. This plan proposed a grade-to-drain cover that would avoid the incidental take of the Valley Elderberry Longhorn Beatle. The Dischargers provided a schedule of tasks to be completed during construction season 2011, as shown below.

- Abandon well by 16 September 2011
- Construct detention basin by 23 September 2011
- Reset power poles at new grade by 23 September 2011
- Conduct work around radio tower by 30 September 2011
- Submit interim CQA report by 21 October 2011

In a letter dated 7 September 2011, Board staff approved the Closure and Post Closure Maintenance Plan and the schedules for the 2011 work and final closure work, and again verbally informed the Dischargers that any enforcement actions would be based on the initial

compliance dates in the Cleanup and Abatement Order. The letter states that the final CQA Report shall be submitted by 26 October 2012.

However, the only task completed was the submission of a document titled "CQA Interim Report" dated 21 October 2011. This report does not contain CQA data generated from construction work, and instead only discussed contract complexities and the intent of the Dellar Trust to complete some elements of the closure construction during fall 2011. As such, the report does not meet the intent of the approved Plan, and therefore the Dischargers did not submit an Interim CQA Plan.

In a letter dated 1 November 2011, the City provided a status report as required by the CAO stating the City received verbal confirmation that CalRecycle will recommend awarding the $720,000 grant to the City. However, a contract for construction services had not been finalized, and none of the work which the Dischargers had committed to complete in the fall 2011 had been performed.

In a 13 January 2012 letter, Board staff expressed strong concern that the Dischargers had not completed any work in the 2011. The Dischargers responded separately, with multiple excuses as to why either party was unable to complete any work during the fall of 2011.

Calculation of Penalty

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under Water Code section 13327. Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

Step 1 – Potential for Harm for Discharge Violations
The alleged violations are non-discharge violations, and therefore this first step is not used in the calculation.

Step 2 – Assessment for Discharge Violations
The alleged violations are non-discharge violations, and therefore this second step is not used in the calculation.

Step 3 – Per Day Assessment for Non-Discharge Violation
The Board shall calculate an initial liability for each non-discharge violation.

Violation #1: The Discharger failed to submit (a) the two erosion control reports needed to evaluate the potential for run-on/run-off of storm water and the threat to surface water, and (b) the Closure Certification Report. The erosion control reports are critical to show that the landfill area will be prepared for the wet season as required by Title 27 and the CAO. The landfill does

not have a certified closure cover that is graded to drain storm water. Run-off of storm water in contact with the landfill can cause erosion of the existing soil cover, expose waste to the environment, and release sediment and pollutants into surface waters. Failure to properly install erosion and sedimentation controls will only exacerbate water quality impacts. The Closure Certification Report is critical to show that the landfill was closed in compliance with the CAO and with the approved closure plans.

Violation #2: The Dischargers have failed to begin closure construction and have failed to complete closure construction by the required deadlines in the CAO. Closure of the Dellar Property is an essential element of ensuring that the waste on site is contained in a manner protective of the environment.

Given the above, the Potential for Harm for is determined to be "moderate" and the Deviation from Requirement is considered to be "moderate". Using Table 3, the Per Day Factor 0.35. This value is to be multiplied by the days of violation and the maximum per day penalty.

The three reports are a total of 1,897 days late (as of 9 March 2012). The Enforcement Policy allows a reduction in penalty for violations that last more than 30 days (p. 18), if certain findings can be made and if the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violations. Because the continuance of the violations is not causing daily detrimental impacts to the environment and because the adjusted per day liability is less than the per day economic benefit, an adjustment can be made.

The number of days of violation can be reduced in the penalty calculation, as follows: count the first day of violation, every fifth day up to 30 days, and then every 30 days. In this case, violations are counted as: day 1, 5, 10, 15, 20, 25, 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, 390, 420, 450, 480, 510, 540, 570, 600, 630, 670, 700, 730, 760, 790, 820, 850, 880, 910, 940, 970, 1000, 1030, 1060, 1090, 1120, 1150, 1180, 1210, 1240, 1270, 1300, 1330, 1360, 1390, 1420, 1450, 1480, 1510, 1540, 1570, 1600, 1630, 1660, 1690, 1720, 1750, 1780, 1810, 1840, and 1870 days late for a total of 68 days of violation.

The Dischargers have failed to initiate closure construction as required, and have been in violation for 786 days. The Dischargers have also failed to complete construction as required, and have been in violation for 509 days. The total days of violation are 1,295. As stated above, the Enforcement Policy allows a reduction in penalty for violations that last more than 30 days if certain findings can be made. The findings described above concerning Violation #1 also apply to Violation #2 and therefore, the number of days of violation can be reduced as follows: day 1, 5, 10, 15, 20, 25, 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, 390, 420, 450, 480, 510, 540, 570, 600, 630, 670, 700, 730, 760, 790, 820, 850, 880, 910, 940, 970, 1000, 1030, 1060, 1090, 1120, 1150, 1180, 1210, 1240, and 1270 for a total of 48 days of violation.

Initial Liability Amount

The initial liability amount for the non-discharge violations is calculated as follows:

Violation #1 (reporting violations): 68 days x $1,000/day x 0.35 = $23,800
Violation #2 (failure to begin construction): 48 days x $5,000/day x 0.35 = $84,000

Total Initial Liability = **$107,800**

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to cleanup or cooperate with regulatory authority, 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.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of 1.2, because the required reports are described in the CAO, and because the Discharger was provided with three years to complete the closure construction. The dates in the CAO were based on the Dischargers' proposals, yet since issuance of the CAO, the Dischargers have continually requested more time to close the landfill.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger was given a multiplier value of 1.1 based on the fact that there has been less cooperation and movement to correct the violations than would otherwise be expected.

History of Violation

This factor is to be used when there is a history of repeat violations. Other than failure to comply with the CAO, these two dischargers do not jointly, have a history of violations. A neutral multiplier of 1.0 was used.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

Violations #1 and #2 - Total Base Liability Amount

Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$107,800 x 1.2 x 1.1 x 1.0 = $142,296

Total Base Liability = **$142,296**

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

The Dischargers are the City of Sacramento and the Sylvia Dellar Survivors Trust. The two responsible parties have been litigating over this property and its value for years. The City of Sacramento is running a deficit for the last four or five years according to the City Attorney. However, the City and its solid waste program is supported by tax revenue. The City has the ability to raise taxes. The Dellar Trust is capable of hiring Professional Engineers to provide plans needed for closure. The Dellar Trust may have cash assets or real estate holdings that staff is unaware of. The two entities are jointly responsible for complying with the CAO and with paying this civil liability. The Board does not determine the percentage that each party must pay. Based on this information, it appears that the City of Sacramento and the Sylvia Dellar Survivors Trust have the ability to pay the civil liability and remain in business.

Step 7 – Other Factors as Justice May Require

Costs of Investigation and Enforcement Adjustment: Per recent guidance from the State Water Board, staff costs are no longer recovered in administrative civil liabilities.

Step 8 – Economic Benefit

The Enforcement Policy provides that civil liability, at a minimum, should be assessed at a level that recovers the economic benefit, plus ten percent, derived from the acts that constitute the violation so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrence to future violations.

As of May 2011, Board staff understood that the cost to close the landfill is approximately $2 million, of which approximately $720,000 would be a grant. The economic benefit in this case is the savings in not completing the 2009 or 2010 erosion control plans and the closure certification report, as well as the delay in expending the funds to complete the closure. Using the U.S. EPA's BEN model, the economic benefit has been calculated at approximately $135,367. The proposed penalty exceeds the economic benefit, plus ten percent.

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being proposed. The maximum statutory value is found in the ACL Complaint, and the minimum value is the economic benefit.

Maximum Liability Amount: $6,475,000

Economic Benefit: $135,367

Economic Benefit plus 10%: 148,904

Penalty Calculation Amount: $142,296

Step 10 – Final liability Amount

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

The State Water Board's Enforcement Policy provides that civil liability, at a minimum, should be assessed at a level that recovers the economic benefit, plus ten percent, derived from the acts that constitute the violation so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrence to future violations. The liability that was calculated following the Penalty Calculation Methodology is less than the economic benefit plus 10%. Without further investigation of the discharge, calculation of economic benefits, and additional staff time, the proposed Administrative Civil Liability is set at the economic benefit plus 10%, or **$148,904.**