

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2015-0506

IN THE MATTER OF

JAMES G. AND AMELIA M. SWEENEY
SWEENEY DAIRY
TULARE COUNTY

This Complaint is issued under the authority of California Water Code (Water Code) section 13323 to James G. and Amelia M. Sweeney (Discharger) to assess civil administrative civil liability pursuant to Water Code section 13268 for failure to submit a 2013 Annual Report.

The Assistant Executive Officer of the Central Valley Water Board finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns and operates the Sweeney Dairy (Dairy), located at 30712 Road 170, Visalia, California, County of Tulare.
2. The Dairy is regulated by the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order), which was adopted by the Central Valley Water Board on 3 October 2013. (Exhibit A.) The Reissued General Order replaces the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (2007 General Order) and accompanying Monitoring and Reporting Program (MRP). The Reissued General Order and accompanying MRP contain reporting requirements for dairies regulated by the Reissued General Order.
3. The Reissued General Order and accompanying MRP require the submission of an Annual Report for the 2013 calendar year for regulated facilities by 1 July 2014 (2013 Annual Report), including an Annual Dairy Facility Assessment with facility modifications implemented to date.
4. The Discharger has consistently failed to meet the Annual Report requirement under the 2007 General Order and Reissued General Order. The Central Valley Water Board has adopted Administrative Civil Liability Orders for the Discharger's failure to submit the 2009 Annual Report and Waste Management Plan, the 2010 Annual Report, the 2011 Annual Report, and the 2012 Annual Report.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

5. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or

failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.

6. Pursuant to Water Code section 13267, subdivision (b), a regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
7. Pursuant to Water Code section 13268, subdivision (a), any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
8. Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

ALLEGED VIOLATION

9. On 29 August 2014, the Central Valley Water Board staff issued a Notice of Violation, notifying the Discharger that the 2013 Annual Report with appurtenant components had not been received. (Exhibit B.) The Notice of Violation also requested that the delinquent report be submitted as soon as possible to minimize potential liability.
10. On 5 December 2014, the Central Valley Water Board staff issued a courtesy pre-filing settlement letter notifying the Discharger that staff was in the process of assessing civil liability for failure to submit the 2013 Annual Report. (Exhibit C.) The letter included a calculation of the maximum penalty (\$157,000) and a recommended penalty amount (\$12,012) and provided the Discharger with an opportunity to meet with the Central Valley Water Board staff to discuss the alleged violation. On 26 February 2015, the Prosecution Team retracted the 5 December 2014 letter by issuing a letter to counsel for the Discharger. The retraction was based on the Prosecution Team's mistake of fact regarding the application of the Enforcement Policy factors.
11. Central Valley Water Board's compliance tracking system and case files indicate that to date the Board has not received the 2013 Annual Report or any of the appurtenant components thereof.

12. The Discharger is alleged to have violated the following sections of the Reissued General Order and of the MRP:

A) Provision G.3 of the Reissued General Order, which states:

“The Discharger shall comply with the attached Monitoring and Reporting Program R5-2013-0122 which is part of this Order, and future revisions thereto or with an individual monitoring and reporting program, as specified by the Central Valley Water Board or the Executive Officer.”

B) Provision G.13 of the Reissued General Order, which states in part:

“The Discharger must comply with all conditions of this Order, including timely submittal of technical and monitoring reports as directed by the Executive Officer.”

C) The MRP, which states in part:

“An annual monitoring report is due by 1 July of each year [T]he annual report shall cover information on crops harvested during the previous calendar year”

13. The Discharger violated both the Reissued General Order and the MRP by failing to submit the 2013 Annual Report with appurtenant components as directed by the MRP that accompanies the Reissued General Order, which contain reporting requirements for dairies regulated by the Reissued General Order.

SUMMARY OF ALLEGED VIOLATIONS

1. **Violation No. 1:** The Discharger failed to submit an annual report for 2013 with appurtenant components by 1 July 2014 as required by the Reissued General Order and the MRP. As of the date of this Complaint this report is now 253 days late. The pre-filing settlement letter issued to the Discharger on 5 December 2014 establishes a total of 157 days in which the Discharger has been out of compliance for failure to submit the 2013 Annual Report, and is the basis for determining the recommended civil liability amount.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

14. On 17 November 2009, the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability. This policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final_111709.pdf.

15. The administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy. The required factors have been considered using the 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.
16. The maximum penalty for the violation described above is \$157,000 based on a calculation of the total number of per-day violations times the statutory maximum penalty (157 total days of violation X \$1,000). However, based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **thirty-four thousand six hundred and fifty dollars (\$34,650)** for the violation cited above.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

17. The Assistant Executive Officer proposes that the Discharger be assessed an administrative civil liability pursuant to Water Code section 13268 in the amount of **thirty-four thousand six hundred and fifty dollars (\$34,650)** for failure to submit the 2013 Annual Report with appurtenant components by the 1 July 2014 deadline as required by the Reissued General Order and the MRP.
18. A hearing for this matter is scheduled for the Central Valley Water Board meeting on 4/5 June 2015.
19. If the Central Valley Water Board holds a hearing, it may choose to impose an administrative civil liability in the amount proposed or for a different amount, decline to seek civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing.
20. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.
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 waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
22. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.)

pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

23. Payment of the assessed liability amount does not absolve the Discharger from complying with the Reissued General Order or the MRP, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the Reissued General Order, the MRP, and/or future orders issued by the Central Valley Water Board.

3/11/2015

Date

Clay L. Rodgers

Clay L. Rodgers
Assistant Executive Officer
Central Valley Water Board Prosecution Team

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

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

1. I am duly authorized to represent James G. and Amelia M. Sweeney (Discharger) in connection with Administrative Civil Liability Complaint R5-2015-0506 (Complaint);
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. (***Check here if the Discharger will waive its right to a hearing and accept the proposed liability amount of thirty-four thousand six hundred and fifty dollars (\$34,650) subject to adjustment for timely submission of the required reports***) I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and

I certify that the Discharger will be liable for **thirty-four thousand six hundred and fifty dollars (\$34,650) in full.**

In addition to the reports, the Discharger shall also remit payment of the adjusted liability amount, by check, which will contain a reference to "ACL Complaint R5-2015-0506" and will be made payable to the "State Water Resources Control Board Cleanup and Abatement Account". Payment must be received by the Central Valley Water Board by **1 April 2015** or this matter will be placed on the Central Valley Water Board's agenda for consideration of adoption at the **4/5 June 2015** Central Valley Water Board meeting. Payment must be received at the following address: State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. A copy of the check must also be received by the Central Valley Water Board.

I understand that payment of the **\$34,650** in full is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

4. (***Check here if the Discharger will waive the 90-day hearing requirement, but wishes to engage in settlement negotiations. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.***) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
5. (***Check here if the Discharger will waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted. Attach a separate sheet with the amount of additional time requested and the rationale.***) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

EXHIBIT A

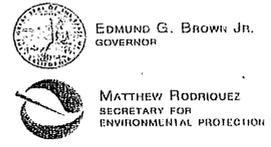
Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies
Order R5-2013-0122

can be viewed at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0122.pdf

EXHIBIT B

Notice of Violation Issued 29 August 2014
For Failure to Submit 2013 Annual Report



Central Valley Regional Water Quality Control Board

29 August 2014

NOTICE OF VIOLATION

CERTIFIED MAIL
7013 2250 0002 0661 8597

James G. & Amelia M. Sweeney
(owner/operator)
Sweeney Dairy
30712 Road 170
Visalia, CA 93292

**POTENTIAL ADMINISTRATIVE CIVIL LIABILITY FOR FAILURE TO SUBMIT THE
2013 ANNUAL REPORT, SWEENEY DAIRY, WDID 5D545155N01,
30712 ROAD 170, VISALIA, TULARE COUNTY**

The dairy facility identified above is regulated by the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order), which was issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) on 3 October 2013. The Reissued General Order required that a 2013 Annual Report (Annual Report) be submitted for regulated facilities by 1 July 2014. To date, the required Annual Report has not been received.

The required report is requested pursuant to California Water Code (CWC) section 13267. CWC section 13268 provides that failure to submit the required report can subject you to administrative civil liability (monetary penalties) at a rate of up to \$1,000 for each day the report is late or substantially incomplete if imposed by the Central Valley Water Board, or at a rate up to \$5,000 for each day a report is late or substantially incomplete if imposed by the superior court. It is important that you promptly provide the Central Valley Water Board with the Annual Report required by the Reissued General Order that was due by 1 July 2014, to minimize your potential liability.

Please note that an annual report is required for the subject facility as long as it is regulated under the Reissued General Order, even if the facility was vacant during the 2013 calendar year. If the facility was vacant during 2013, no manure or wastewater was exported during 2013, and no manure or wastewater was land applied during 2013, you must submit a report that contains this information and that provides groundwater monitoring data for any domestic or agricultural wells on site.

KARL E. LONGLEY SCD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCEE, EXECUTIVE OFFICER

1685 E Street, Fresno, CA 93706 | www.waterboards.ca.gov/centralvalley

If the dairy is currently in the closure process, but it operated as a dairy during part of the 2013 calendar year, you must submit a report which provides data on manure and crop production and land application or export of manure or wastewater, as well as groundwater data for any domestic or agricultural wells on site.

Please contact Lorin Sutton at (559) 445-6086 if you have any questions regarding this matter.

A handwritten signature in cursive script that reads "Dale E. Essary".

DALE E. ESSARY, PE
Senior Engineer
Confined Animals Unit

EXHIBIT C

Letter Issued 5 December 2014

Forthcoming Assessment of Civil Liability for Failure to Submit 2013 Annual Report



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

5 December 2014

CERTIFIED MAIL
7013 2250 0002 0661 9433

James G. and Amelia M. Sweeney (owner/operator)
Sweeney Dairy
30712 Road 170
Visalia, CA 93292

FORTHCOMING ASSESSMENT OF CIVIL LIABILITY FOR FAILURE TO SUBMIT THE ANNUAL REPORT FOR 2013, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) has requested the State Water Resources Control Board, Office of Enforcement to assist it in bringing formal enforcement in administrative civil liability for failing to comply with the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order). The Central Valley Water Board Prosecution Team intends to proceed with formal enforcement by issuing an Administrative Civil Liability Complaint (Complaint) against you. Prior to prosecuting this case, however, we are offering you the opportunity to discuss the alleged violation, including the option of settlement.

The Reissued General Order and the accompanying Monitoring and Reporting Program (MRP) required, pursuant to California Water section 13267, regulated facilities to submit an annual monitoring report for the calendar year 2013 (2013 Annual Report) by 1 July 2014. On 29 August 2014, Central Valley Water Board staff issued a Notice of Violation notifying you that the 2013 Annual Report had not been received for your dairy facility. The Notice of Violation also requested that the delinquent report be submitted as soon as possible to avoid incurring any additional liability. To date, the Central Valley Water Board has not received the 2013 Annual Report.

Failing to submit the 2013 Annual Report subjects you to civil penalties pursuant to California Water Code section 13268 of up to one thousand dollars (\$1,000) for each day in which the violation occurs. Further delay in submitting the 2013 Annual Report subjects you to ongoing penalties. The maximum penalty as of 5 December 2014 for this violation is one hundred fifty-seven thousand dollars (\$157,000), based on a calculation of the cumulative total number of per-day violations times the statutory maximum penalty (157 total days of violation X \$1,000).

KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCEE, EXECUTIVE OFFICER

1685 E Street, Fresno, CA 93706 | www.waterboards.ca.gov/centralvalley

Consistent with the State Water Resources Control Board's Water Quality Enforcement Policy, the Prosecution Team for the Central Valley Water Board intends to issue you a Complaint for at least 157 days of violation, or twelve thousand and twelve dollars (\$12,012). This recommended penalty amount is further explained in Attachment A. Please note, as long as you remain out of compliance, the Assistant Executive Officer, lead for the Prosecution Team, reserves his authority to issue a complaint in an amount that exceeds the penalty calculated in Attachment A.

By way of this letter, you are being notified of the opportunity to meet with the Prosecution Team prior to the issuance of a complaint to discuss the alleged violation and proposed penalty amount. If the Prosecution Team does not receive a response by **2 January 2015**, the Assistant Executive Officer will issue a complaint and this matter will proceed to a formal enforcement hearing before the Central Valley Water Board.

If you have any questions regarding this notice, please contact Lorin Sutton by phone at (559) 445-6086 or by email at Lorin.Sutton@waterboards.ca.gov.



DALE E. ESSARY
Senior WRC Engineer
Member of Enforcement Team

Enclosure: Attachment A

cc: Mr. Andrew Altevogt, Central Valley Water Board Prosecution Team, Rancho Cordova
Mr. Clay Rodgers, Central Valley Water Board Prosecution Team, Fresno
Ms. Naomi Kaplowitz, Office of Enforcement, SWRCB, Sacramento
Ms. Vanessa Young, Office of Enforcement, SWRCB, Sacramento
Mr. Paul Ciccarelli, Office of Enforcement, SWRCB, Sacramento
Tulare County Health & Human Services Agency, Environmental Health, Visalia
Tulare County Resource Management Agency, Code Compliance, Visalia

Attachment A – Pre-Complaint Letter
Specific Factors Considered – Civil Liability
James G. & Amelia M. Sweeney
Sweeney Dairy

The Central Valley Water Board alleges that the Discharger failed to submit the 2013 Annual Report required to be submitted by 1 July 2014. For the purpose of applying the Enforcement Policy's administrative civil liability methodology, the alleged violation is a non-discharge violation. Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

- 1. Violation No. 1 (Failure to submit 2013 Annual Report):** In accordance with the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order) and the accompanying Monitoring and Reporting Program (MRP), a 2013 Annual Report must be submitted for regulated facilities by 1 July 2014. To date, the Owner and/or Operator (hereinafter the Discharger) has not submitted this report for the Sweeney Dairy.

Calculation of Penalty for Failure to Submit 2013 Annual Report

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is 0.35.

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements. The potential for harm was determined to be minor due to the following: The failure to submit the 2013 Annual Report did not increase the amount of pollution discharged or threatened to discharge into waters of the State. The submission of an Annual Report is a means through which the Central Valley Water Board can evaluate a Discharger's compliance with the Reissued General Order. Failing to timely submit the Annual Report to the Central Valley Water Board hinders the Board's ability to follow-up with noncompliance and such circumstances present at least a minor potential for harm. The deviation from requirements was determined to be major, as the requirement to submit the Annual Report has been rendered ineffective. The failure to submit the required technical report undermines the Central Valley Water Board's efforts to prevent water quality degradation and implement the regulatory protection measures detailed in the Reissued General Order.

**Attachment A – Pre-Complaint Letter
Sweeney Dairy**

Initial Liability

The failure to submit annual reports is an enforceable violation under Water Code section 13268(b)(1) by civil liability in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Discharger failed to submit a 2013 Annual Report by 1 July 2014 as required by the Reissued General Order and the MRP, which is now 157 days late.

However, the alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable. The failure to submit required technical reports does not result in an economic benefit that can be measured on a daily basis. The Discharger only receives an economic benefit by not submitting the required technical report, and not a per-day benefit during the entire period of violation.

Applying the per-day factor to the adjusted number of days of violation rounded to the nearest full day equals 11 days of violation. A calculation of initial liability totals \$3,850 (0.35 per day factor X 11 adjusted days of violation X \$1,000 per day penalty).

Step 4. Adjustment Factors

a) *Culpability: 1.2*

Discussion: The Discharger was assessed a score of 1.2, which increases the liability amount. The Discharger is responsible for failing to submit the annual report alleged herein. The requirement to submit a 2013 Annual Report was detailed in the Reissued General Order. Despite the fact that the Discharger received multiple notices regarding the requirements set forth in the Reissued General Order, the Discharger continues to fail to comply. Thus, the Discharger had knowledge of the requirement to submit the Annual Report and failed to meet the reasonable standard of care in that regard.

b) *Cleanup and Cooperation: 1.3*

Discussion: The Discharger was assessed a score of 1.3, which increases the liability amount. The Discharger was issued a Notice of Violation (NOV) on 29 August 2014, which requested that the report be submitted as soon as possible to minimize liability. The Discharger was unresponsive to the NOV, and did not cooperate with the Water Board to come back into compliance. The violation of Water Code section 13268(a), alleged herein, is a non-discharge violation, and thus cleanup is not applicable.

**Attachment A – Pre-Complaint Letter
Sweeney Dairy**

c) *History of Violations: 2*

Discussion: The Discharger was assessed the score of 2, which increases the fine. The Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2011-0068 on 13 October 2011 for the Discharger's failure to submit the 2009 Annual Report and the Waste Management Plan by the required deadlines, as required by the Reissued General Order and the MRP. In addition, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2012-0070 on 2 August 2012 for the Discharger's failure to submit the 2010 Annual Report by the required deadline, as required by the Reissued General Order and the MRP. In addition, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2013-0091 on 25 July 2013 for the Discharger's failure to submit the 2011 Annual Report by the required deadline, as required by the Reissued General Order and the MRP. In addition, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2014-0119 on 9 October 2014 for the Discharger's failure to submit the 2012 Annual Report by the required deadline, as required by the Reissued General Order and the MRP. The Enforcement Policy requires that a minimum multiplier of 1.1 be used when there is a history of repeat violations.

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.

- a) *Total Base Liability Amount: \$12,012* [Initial Liability (\$3,850) x Adjustments (1.2)(1.3)(2)].

Step 6. Ability to Pay and Continue in Business

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

- a) *Adjusted Total Base Liability Amount: \$12,012*

Discussion: The Discharger has the ability to pay the total base liability amount based on 1) the Discharger owns the Dairy, a significant asset, and 2) the Discharger operates a dairy, an ongoing business that generates profits.

Without additional information provided by the Discharger, based on this initial assessment of information available in the public record, it appears the

**Attachment A – Pre-Complaint Letter
Sweeney Dairy**

Discharger has the assets to pay the Total Base Liability. Based on the reasons discussed above, no reduction in liability is warranted.

Step 7. Other Factors as Justice May Require

- a) *Adjusted Combined Total Base Liability Amount:* \$12,012 + \$0 (Staff Costs) = **\$12,012.**
- b) *Discussion:* No staff costs have been assessed as part of this enforcement action.

Step 8. Economic Benefit

- a) *Estimated Economic Benefit:* **\$1,500**

Discussion: The Discharger has received an economic benefit from the costs saved in not drafting and preparing the 2013 Annual Report. This is based on the current consulting costs of producing an Annual Report (\$1,500). The adjusted combined total base liability amount of \$12,012 is more than at least 10% higher than the economic benefit amount (\$1,500) as required by the Enforcement Policy.

Step 9. Maximum and Minimum Liability Amounts

- a) *Minimum Liability Amount:* **\$1,650**

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not fall below the economic benefit plus ten percent. As discussed above, the Central Valley Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the alleged violation is \$1,500.

- b) *Maximum Liability Amount:* **\$157,000**

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code section 13367(b)(1): one thousand dollars (\$1,000) for each day in which the violation occurs. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Discharger could face penalties for the total number of days in violation (157 total days X \$1,000 per day).

The proposed liability falls within these maximum and minimum liability amounts.

Attachment A – Pre-Complaint Letter
Sweeney Dairy

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit the 2013 Annual Report is **\$12,012.**

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

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

1. I am duly authorized to represent James G. and Amelia M. Sweeney (Discharger) in connection with Administrative Civil Liability Complaint R5-2015-0506 (Complaint);
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. **(Check here if the Discharger will waive its right to a hearing and accept the proposed liability amount of thirty-four thousand six hundred and fifty dollars (\$34,650) subject to adjustment for timely submission of the required reports)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and

I certify that the Discharger will be liable for **thirty-four thousand six hundred and fifty dollars (\$34,650) in full.**

In addition to the reports, the Discharger shall also remit payment of the adjusted liability amount, by check, which will contain a reference to "ACL Complaint R5-2015-0506" and will be made payable to the "State Water Resources Control Board Cleanup and Abatement Account". Payment must be received by the Central Valley Water Board by **1 April 2015** or this matter will be placed on the Central Valley Water Board's agenda for consideration of adoption at the **4/5 June 2015** Central Valley Water Board meeting. Payment must be received at the following address: State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. A copy of the check must also be received by the Central Valley Water Board.

I understand that payment of the **\$34,650** in full is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

4. **(Check here if the Discharger will waive the 90-day hearing requirement, but wishes to engage in settlement negotiations. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
5. **(Check here if the Discharger will waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2015-0506

ISSUED TO
JAMES G. AND AMELIA M. SWEENEY
SWEENEY DAIRY
TULARE COUNTY

SCHEDULED FOR JUNE 4/5, 2015

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Overview

Pursuant to Water Code section 13323, the Assistant Executive Officer has issued an Administrative Civil Liability (ACL) Complaint to James G. and Amelia M. Sweeney, owner/operator of Sweeney Dairy, alleging violations of Water Code section 13267 for failing to submit a 2013 Annual Report with appurtenant components as required by the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122. The ACL Complaint proposes that the Central Valley Water Board impose administrative civil liability in the amount of \$34,650. A hearing is currently scheduled to be conducted before the Board during its June 4/5 meeting.

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount. The Board may also decline to assess any liability, or may continue the hearing to a later date. If less than a quorum of the Board is available, this matter may be conducted before a hearing panel. The public hearing will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Board's meeting agenda. The meeting will be held at:

11020 Sun Center Drive, Suite 200, Rancho Cordova.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure, which has been approved by the Board Chair for the adjudication of such matters. The procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at

<http://www.waterboards.ca.gov>

Copies will be provided upon request. In accordance with Section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648(b) and herein, Chapter 5 of the Administrative Procedures Act (Gov't Code, § 11500 et seq.) does not apply to this hearing.

The Discharger shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

Hearing Participants

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons." Designated Parties may present evidence and cross-examine witnesses and are subject to cross-examination. Interested Persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff, or others, at the discretion of the Board Chair.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. James G. and Amelia M. Sweeney

Requesting Designated Party Status

Persons who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses), along with a statement explaining why the parties listed above do not adequately represent the person's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

Primary Contacts

Advisory Team:

Pamela Creedon, Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-3291

Patrick Pulupa, Senior Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5189; fax (916) 341-5199
patrick.pulupa@waterboards.ca.gov

Prosecution Team:

Andrew Altevogt, Assistant Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-3291

Clay Rodgers, Assistant Executive Officer
Doug Patteson, Supervising WRC Engineer
Dale Essary, Senior WRC Engineer
1685 E Street, Fresno, California 93706
Phone: (559) 445-5093; fax: (559) 445-5910
dale.essary@waterboards.ca.gov

Naomi Kaplowitz, Staff Counsel
State Water Resources Control Board, Office of Enforcement
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 322-3227; fax: (916) 341-5896
naomi.kaplowitz@waterboards.ca.gov

Discharger:

James G. and Amelia M. Sweeney
30712 Road 170
Visalia, CA 93292

Separation of Prosecutorial and Advisory Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Board (the "Prosecution Team") have been separated from those who will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Advisory Team are: Pamela Creedon, Executive Officer and Patrick Pulupa, Senior Staff Counsel. Members of the Prosecution Team are: Andrew Altevogt, Assistant Executive Officer, Clay Rodgers, Assistant Executive Officer, Doug Patteson, Supervising Water Resources Control Engineer, Dale Essary, Senior Water Resources Control Engineer, and Naomi Kaplowitz, Staff Counsel.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

Designated Parties and Interested Persons are forbidden from engaging in ex parte communications regarding this matter. An ex parte communication is a written or verbal communication related to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and a Board Member or a member of the Board's Advisory Team. However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Communications regarding non-controversial procedural matters are also not considered ex parte communications and are not restricted.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each Designated Party shall have a combined 30 minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide a closing statement. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference, as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will not generally receive copies of materials incorporated by reference unless copies are provided, and the referenced materials are generally not posted on the Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the Designated Party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

Prosecution Team: The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the ACL Complaint, Staff Report, or other material submitted by the Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Board staff.

Designated Parties (including the Discharger): All Designated Parties shall submit comments regarding the ACL Complaint along with any additional supporting evidence not cited by the Central Valley Water Board's Prosecution Team no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party that would like to submit evidence, legal analysis, or policy statements to rebut information previously submitted by other Designated Parties shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

Copies: Board members will receive copies of all submitted materials. The Board Members' hard copies will be printed in black and white on 8.5"x11" paper from the Designated Parties' electronic copies. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra nine paper copies for the Board Members. For voluminous submissions, Board Members may receive copies in electronic format only. Electronic copies will also be posted on the Board's website. Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Board will not reject materials solely for failure to provide electronic copies.

Other Matters: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) and will respond to all significant comments. The Summary Sheet and the responses shall clearly state that they were prepared by the Prosecution Team. The Summary Sheet and the responses will be posted online, as will revisions to the proposed Order.

Interested Persons: Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under "Important Deadlines" to be included in the Board's agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair will likely exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will *not* be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The ACL Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 1685 E Street, Fresno, CA 93726. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml

Although the web page is updated regularly, to assure access to the latest information, you may contact Clay Rodgers (contact information above) for assistance to obtain copies.

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

IMPORTANT DEADLINES

All required submissions must be received by 5:00 p.m. on the respective due date.

March 11, 2015	<ul style="list-style-type: none"> ▪ Prosecution Team issues ACL Complaint, Hearing Procedure, and other related materials.
March 19, 2015	<ul style="list-style-type: none"> ▪ Objections due on Hearing Procedure. ▪ Deadline to request "Designated Party" status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
March 24, 2015	<ul style="list-style-type: none"> ▪ Deadline to submit opposition to requests for Designated Party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
April 1, 2015	<ul style="list-style-type: none"> ▪ Discharger's deadline to submit <i>90-Day Hearing Waiver Form</i>. <p><u>Electronic or Hard Copy to:</u> Prosecution Team Primary Contact</p>
April 3, 2015*	<ul style="list-style-type: none"> ▪ Advisory Team issues decision on requests for designated party status. ▪ Advisory Team issues decision on Hearing Procedure objections.
April 10, 2015*	<ul style="list-style-type: none"> ▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements," above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
April 30, 2015*	<ul style="list-style-type: none"> ▪ Remaining Designated Parties' (including the Discharger's) deadline to submit all information required under "Submission of Evidence and Policy Statements" above. This includes all written comments regarding the ACL Complaint. ▪ Interested Persons' comments are due. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
May 7, 2015*	<ul style="list-style-type: none"> ▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. ▪ Deadline to submit requests for additional time. ▪ If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of <i>this</i> deadline. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
May 14, 2015* [†]	<ul style="list-style-type: none"> ▪ Prosecution Team submits Summary Sheet and responses to comments. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
June 4/5, 2015*	<ul style="list-style-type: none"> ▪ Hearing

* Dischargers have the right to a hearing before the Board within 90 days of receiving the Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, the Discharger is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing civil liability. However, if the Board accepts the waiver, all deadlines marked with an "*" will be revised if a settlement cannot be reached.

[†] This deadline is set based on the date that the Board compiles the Board Members' agenda packages. Any material received after this deadline will not be included in the Board Members' agenda packages.

Attachment A – ACL Complaint No. R5-2015-0506
Specific Factors Considered – Civil Liability
James G. & Amelia M. Sweeney
Sweeney Dairy

The Central Valley Water Board alleges that the Discharger failed to submit the 2013 Annual Report required to be submitted by 1 July 2014. For the purpose of applying the Enforcement Policy's administrative civil liability methodology, the alleged violation is a non-discharge violation. Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

Failure to submit 2013 Annual Report: In accordance with the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order) and the accompanying Monitoring and Reporting Program (MRP), a 2013 Annual Report must be submitted for regulated facilities by 1 July 2014. To date, the Owner/Operator (hereinafter the Discharger) has not submitted this report for the Sweeney Dairy.

Calculation of Penalty for Failure to Submit 2013 Annual Report

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is 0.35.

This factor is determined by using the potential for harm of the violation and the extent of the Discharger's deviation from requirements. The potential for harm was determined to be minor due to the following: The failure to submit the 2013 Annual Report did not increase the amount of pollution discharged or threatened to discharge into waters of the State. However, failing to submit the Annual Report to the Central Valley Water Board hinders the Board's ability to detect and address noncompliance. The Annual Report is a key means through which the Central Valley Water Board evaluates a Discharger's compliance with the Reissued General Order, including the assessment of proper manure application to fields and waste management in a dairy's production area. By failing to provide the information in the Annual Report, the Discharger frustrates the Board's efforts to assess the potential impacts and risks to water quality and circumvents the Board's ability to take necessary enforcement action to correct problems. The regulatory program is compromised when staff resources are directed toward bringing the Discharger into compliance and those resources are

Attachment A – ACL Complaint No. R5-2015-0506

not available for other program activities. Since the violation thwarts the Board's ability to identify water quality risks, the violation has the potential to exacerbate the presence and accumulation of, and the related risks associated with, pollutants of concern. Failing to timely submit the Annual Report to the Central Valley Water Board hinders the Board's ability to address noncompliance. Those circumstances present at least a minor potential for harm.

The deviation from requirements was determined to be major, as the requirement to submit the Annual Report has been rendered ineffective. The failure to submit the required technical report undermines the Central Valley Water Board's efforts to prevent water quality degradation and implement the regulatory protection measures detailed in the Reissued General Order.

Initial Liability

The failure to submit an annual report is an enforceable violation under Water Code section 13268(b)(1) by civil liability in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Discharger failed to submit a 2013 Annual Report by 1 July 2014 as required by the Reissued General Order and the MRP, and is 253 days late as of the issuance date of this Complaint. A pre-filing settlement letter issued to the Discharger on 5 December 2014 establishes a total of 157 days in which the Discharger has been out of compliance for failure to submit the 2013 Annual Report, and is the basis for determining the recommended civil liability amount.

Step 4. Adjustment Factors

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

a) 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.

For these cases, the Central Valley Water Board must make express findings that the violation: (1) is not causing daily detrimental impacts to the environment or the regulatory program; or (2) results in no economic benefit from the illegal

Attachment A – ACL Complaint No. R5-2015-0506

conduct that can be measured on a daily basis; or (3) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. If one of these findings is made, an alternate approach to penalty calculation for multiple day violations may be used.

Here, the Central Valley Water Board finds that the Discharger's failure to submit a 2013 Annual Report is not causing daily detrimental impacts to the environment or the regulatory program. There is no evidence that the Discharger's failure to submit a 2013 Annual Report has detrimentally impacted the environment on a daily basis, since obtaining regulatory coverage does not result in an immediate evaluation of, or changes in, practices that could be impacting water quality. There is no daily detrimental impact to the regulatory program because information that would have been provided by the Discharger pursuant to the regulatory requirements would have been provided on an intermittent, rather than daily basis.

Moreover, the Discharger's failure to submit a 2013 Annual Report results in no economic benefit that can be measured on a daily basis. Rather, the economic benefit here is associated with avoided costs of preparing and submitting a 2013 Annual Report.

Either of the above findings justifies use of the alternate approach to penalty calculation for multiple day violations. The alternate approach assesses daily penalties for the first day of violation, plus an assessment for each five-day period of violation until the 30th day, plus an assessment of one day for each thirty days of violation thereafter. Applying this assessment method on the total 157 violation days gives the Board the discretion to reduce the assessed penalty days to a minimum number of 11 days. However, because this approach generates a Total Base Liability Amount that is not a sufficient deterrent, and because the Discharger's unwillingness to comply with the Revised General Order undermines the Central Valley Water Board's ability to protect water quality through its regulatory program, the Prosecution Team has increased the number of days of violation above the Minimum Approach to a total number of 22 days of violation.

A calculation of initial liability totals \$7,700 (0.35 per day factor X 22 adjusted days of violation X \$1,000 per day penalty).

b) *Culpability*: 1.5

Discussion: The Discharger was assessed a score of 1.5, which increases the liability amount. The Discharger is responsible for failing to submit the annual report alleged herein. The requirement to submit a 2013 Annual Report was detailed in the Reissued General Order. Despite the fact that the Discharger received multiple notices regarding the requirements set forth in the Reissued General Order, the Discharger continues to fail to comply. Thus, the

Attachment A – ACL Complaint No. R5-2015-0506

Discharger had knowledge of the requirement to submit the Annual Report and failed to meet the reasonable standard of care in that regard. Given the fact that the Discharger has chosen to willfully violate the legal requirement, the maximum culpability score of 1.5 has been applied.

c) *Cleanup and Cooperation: 1.5*

Discussion: The Discharger was assessed a score of 1.5, which increases the liability amount. The Discharger was issued a Notice of Violation on 29 August 2014, which requested that the report be submitted as soon as possible to minimize liability. The Discharger was unresponsive to the NOV, and did not cooperate with the Water Board to come back into compliance. The violation of Water Code section 13268(a), alleged herein, is a non-discharge violation, and thus cleanup is not applicable.

d) *History of Violations: 2*

Discussion: The Discharger was assessed the score of 2, which increases the fine. The Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2011-0068 on 13 October 2011 for the Discharger's failure to submit the 2009 Annual Report and the Waste Management Plan by the required deadlines, as required by the Reissued General Order and the MRP. In addition, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2012-0070 on 2 August 2012 for the Discharger's failure to submit the 2010 Annual Report by the required deadline, as required by the Reissued General Order and the MRP. In addition, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2013-0091 on 25 July 2013 for the Discharger's failure to submit the 2011 Annual Report by the required deadline and for failure to comply with a Water Code 13267 Order issued to the Discharger on 4 May 2012, as required by the Reissued General Order and the MRP. In addition, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2014-0119 on 9 October 2014 for the Discharger's failure to submit the 2012 Annual Report by the required deadline, as required by the Reissued General Order and the MRP. The Enforcement Policy requires that a minimum multiplier of 1.1 be used when there is a history of repeat violations.

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.

- a) *Total Base Liability Amount: \$34,650* [Initial Liability (\$7,700) x Adjustments (1.5)(1.5)(2)].

Step 6. Ability to Pay and Continue in Business

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

- a) *Adjusted Total Base Liability Amount: \$34,650*

Discussion: The Discharger has the ability to pay the total base liability amount based on 1) the Discharger owns the Dairy, a significant asset, and 2) the Discharger operates a dairy, an ongoing business that generates profits.

Without additional information provided by the Discharger, based on this initial assessment of information available in the public record, it appears the Discharger has the assets to pay the Total Base Liability. Based on the reasons discussed above, no reduction in liability is warranted.

Step 7. Other Factors as Justice May Require

- a) *Adjusted Combined Total Base Liability Amount: \$34,650 + \$0 (Staff Costs) = \$34,650.*

- b) *Discussion:* No staff costs have been assessed as part of this enforcement action.

Step 8. Economic Benefit

- a) *Estimated Economic Benefit: \$964*

Discussion: The Discharger has received an economic benefit from the costs saved in not drafting and preparing the 2013 Annual Report. This is based on the current consulting costs of producing an Annual Report, including the cost of any and all samples required under the Reissued Dairy General Order (\$964). The adjusted combined total base liability amount of \$34,650 is more than the economic benefit amount (\$964) plus ten percent as required by the Enforcement Policy.

Step 9. Maximum and Minimum Liability Amounts

- a) *Minimum Liability Amount: \$1,060.40*

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not fall below the economic benefit plus ten percent. As discussed above, the Central Valley Water Board Prosecution Team's

Attachment A – ACL Complaint No. R5-2015-0506

estimate of the Discharger's economic benefit obtained from the alleged violation is \$964. Therefore, the minimum liability amount is \$1,060.40 [Economic Benefit (\$964) x Adjustment (1.1)].

b) *Maximum Liability Amount: \$157,000*

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code section 13367(b)(1): one thousand dollars (\$1,000) for each day in which the violation occurs. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Discharger could face penalties for the total number of days in violation (157 total days X \$1,000 per day).

The proposed liability falls within these maximum and minimum liability amounts.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit the 2013 Annual Report is **\$34,650**.

Attachment B

Administrative Civil Liability

Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint (complaint) by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer. The complaint describes the violations that alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person/s named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to seven board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

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Complaint Resolution options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; (5) hearing. Each of these options is described below.

Withdrawal: may result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and reissuance: may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver: may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement: results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at: http://www.waterboards.ca.gov/plans_policies/. Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Regional Water Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Regional Water Board may issue an order

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requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors that must be considered by the Regional Water Board

Except for Mandatory Minimum Penalties under Water Code section 13385 (h) and (i), the Regional Water Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Cal. Water Code §§ 13327, 13385(e) & 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,

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2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - IRS Form 1120 for C Corporations
 - IRS Form 1120 S for S Corporations
 - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:
 - Audited Financial Statements for last three years;
 - A list of major accounts receivable with names and amounts;
 - A list of major accounts payable with names and amounts;
 - A list of equipment acquisition cost and year purchased;
 - Ownership in other companies and percent of ownership for the last three years;
 - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
 - City/Town/Village;
 - County;
 - Municipality with enterprise fund;
 - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - Population;
 - Number of persons age 18 and above;
 - Number of persons age 65 and above;
 - Number of Individual below 125% of poverty level;
 - Median home value;
 - Median household income.
3. Current or most recent estimates of:
 - Population;
 - Median home value;
 - Median household income;

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- Market value of taxable property;
 - Property tax collection rate.
4. Unreserved general fund ending balance;
 5. Total principal and interest payments for all governmental funds;
 6. Total revenues for all governmental funds;
 7. Direct net debt;
 8. Overall net debt;
 9. General obligation debt rating;
 10. General obligation debt level.
 11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code section 13328, if necessary, in order to collect payment of the administrative civil liability amount.