



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

December 22, 2014

Edward Allred
Owner, President and CEO
Los Alamitos Race Course
4961 Katella Avenue
Los Alamitos, CA 90720
(by Certified First-Class Mail)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Frank Sherren
Facility Operator
fsherren@losalamitos.com
(By Email Only)

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2014-0080, LOS ALAMITOS RACE COURSE

Dear Mr. Allred:

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (Water Code) section 13323. The Complaint proposes that civil liability in the amount of **nine thousand eight hundred ninety dollars (\$9,890)** be imposed pursuant to Water Code section 13385 on Los Alamitos Race Course (hereinafter Discharger) for violations of Regional Board Order No. R8-2009-017, NPDES No. CA0106348 (Permit).

In response to the Complaint, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Santa Ana Water Board by signing the enclosed waiver (checking off the box next to Option #1) and submitting it to this office by January 22, 2015, along with payment for the full amount;
- Waive its right to a 90-day hearing and agree to enter into settlement discussions with the Santa Ana Water Board by signing the enclosed waiver (checking off the box next to Option #2) and submitting it to this office by January 22, 2015;

- Waive its right to a 90-day hearing in order to extend the hearing deadlines by signing the enclosed waiver (checking off box next to Option #3) and submitting it to this office by January 22, 2015; or
- Contest the Complaint and/or enter into settlement discussions with the Santa Ana Water Board without signing the enclosed waiver.

If the Discharger would like to rebut the presumption in the Complaint regarding **an ability to pay the proposed liability**, it must submit detailed financial information to the Santa Ana Water Board by January 13, 2015. Information must include a balance sheet of outstanding debts and liabilities (attached), as well as the information detailed on the attached Administrative Civil Liability Fact Sheet.

If the Santa Ana Water Board does not receive a signed waiver by January 22, 2015, then a hearing on this matter will be scheduled for the **March 20, 2015** regular meeting of the Santa Ana Water Board to be held at a to be determined location. If a hearing on this matter is held, the Santa Ana Water Board will consider whether to issue, reject, or modify an Administrative Civil Liability Order based on the enclosed Complaint, 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. Specific notice about this hearing and its procedures will be provided under separate cover.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, attention Michael Perez, **no later than 5 p.m. on the dates indicated in the attached Hearing Procedure**. This includes material submitted by the Discharger to be considered at a hearing and material submitted by interested parties, including members of the public, who wish to comment on the Complaint. Written materials received after **5 p.m. on the dates indicated in the attached Hearing Procedure** will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.

Payment of this assessed civil liability amount) does not absolve the Discharger from complying with the Permit, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the Permit in a timely manner.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Michael Perez by phone at (951) 782-4306 or by email at Michael.Perez@waterboards.ca.gov or Michelle Beckwith by phone at (951) 782-4433 or by email at Michelle.Beckwith@waterboards.ca.gov.

All legal questions should be directed to Naomi Kaplowitz, Office of Enforcement, by phone at (916) 341-5677 or by email at Naomi.Kaplowitz@waterboards.ca.gov.

Sincerely,



Hope A. Smythe
Division Chief

enclosures: Administrative Civil Liability Complaint R8-2014-0080
Attachment A – Specific Factors Considered – Civil Liability
Hearing Procedures
Waiver Form
ACL Fact Sheet
Ability to Pay Claim Form

cc w/encl: Regional Board
Mr. Kurt Berchtold, Executive Officer, RWQCB, Riverside (Regional Board
Advisory Team)
Mr. David Rice, Office of Chief Counsel, SWRCB, Sacramento (Regional
Board Advisory Team Attorney)
Ms. Naomi Kaplowitz, Office of Enforcement, SWRCB, Sacramento
Mr. Ivar Ridgeway, RWQCB, Los Angeles
Mr. Gonzalo Vazquez, City of Cypress, NPDES Coordinator
Mr. Steven Mendoza, City of Los Alamitos, NPDES Coordinator
Mr. Richard Boon, County of Orange

**State of California
California Regional Water Quality Control Board
Santa Ana Region**

IN THE MATTER OF:

| | | |
|--------------------------|---|--------------------------------|
| Los Alamitos Race Course |) | Complaint No. R8-2014-0080 |
| 4961 Katella Avenue |) | for |
| Los Alamitos, CA 90720 |) | Administrative Civil Liability |
| Attn: Mr. Edward Allred |) | |
| _____ |) | |

This Administrative Civil Liability Complaint (Complaint) is issued to the Los Alamitos Race Course (hereinafter Discharger) to assess administrative civil liability for discharges in violation of provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board) may impose civil liability. The discharge of storm water and wastewater from the Concentrated Animal Feeding Operations from the Los Alamitos Race Course (Facility) is regulated under Regional Board Order No. R8-2009-017, NPDES NO. CA0106348 (Permit). As shown in Attachment A, incorporated herein by reference, the Complaint alleges that the Discharger violated the Permit terms by discharging wastes to waters of the United States in violation of Section III. Discharge Prohibitions of the Permit.

The Division Chief of the Regional Board hereby gives notice that:

1. Los Alamitos Race Course is alleged to have violated provisions of law for which Regional Board may impose administrative civil liability pursuant to California Water Code section 13385. This Complaint proposes to assess **nine thousand eight hundred ninety dollars (\$9,890)** in administrative civil liability for violations cited based on considerations described herein.
2. This Complaint is issued pursuant to Water Code section 13323.
3. A hearing concerning this Complaint will be held before the Regional Board within 90 days of the date of issuance of this Complaint, unless, pursuant to Water Code section 13323, the Discharger waives its right to a hearing. Waiver procedures are specified in the attached Waiver Form. The hearing on this matter is scheduled for the Regional Board's regular meeting on March 20, 2015 at a to be determined location. The Discharger, or its representative, will have the opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
4. If a hearing is held on this matter, the Regional 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. 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 hearing.

FACTUAL BASIS FOR THE ALLEGATIONS

5. The Discharger owns and operates a 138-acre horse stabling, training, and racing facility located at 4961 Katella Avenue in Cypress, California. The Discharger is currently regulated under Waste Discharge Requirements contained in Order No. R8-2009-017, NPDES No. CA0106348 (Permit). The Permit was issued on March 27, 2009 and regulates the discharge of storm water runoff from the non-production areas and wastewater from the Concentrated Animal Feeding Operation (CAFO) area.
6. The Discharger's facility includes a racetrack, a grandstand, landscaped areas, horse stables, a maintenance area, and parking lots. Pursuant to Order No. R8-2009-017, the Discharger is permitted to confine and feed a maximum of 1500 horses on 23 acres in 36 barns. Ninety-four percent of the site is impervious, covered either by pavement, soil-covered pavement, or building footprints. The remaining six percent is covered by the track or landscaping.
7. The Discharger operates a wastewater collection system where the wash water produced by hosing down driveways, outside stables, and horse washing activities are all conveyed to a wastewater pump station. The process wastewater is then pumped to a collection basin with a design capacity to hold runoff from a 25-year, 24-hour storm event and the wash water.
8. The site map provided by the Discharger in their 2014 Permit Report of Waste Discharge (ROWD) indicates that all process wastewater is conveyed away from Lexington Drive, towards the wastewater detention basin, which discharges to a sanitary sewer line at a controlled discharge rate.
9. On July 10, 2014, Regional Board staff conducted an inspection of the property and observed evidence of a non-storm water discharge from the stable area located adjacent to Gate 3. This non-storm water discharge flowed through a row of inappropriately implemented straw wattle Best Management Practices (BMPs), across Lexington Drive, and then north towards the storm drain. This storm drain is tributary to Reach 1 of the San Gabriel River. The weather at the time of the inspection was dry and sunny and it had not rained for at least a week prior to the inspection. Non-storm water from these types of facilities generally contains elevated levels of nutrients, ammonia, suspended solids, bacteria, antibiotics, and degradable organic matter (high COD and BOD). Discharger representatives were notified of the observed discharge evidence at the time of the inspection.

STATEMENT OF PROHIBITIONS, PROVISIONS, AND REQUIREMENTS APPLICABLE TO THE DISCHARGER:

10. Federal regulations define an Animal Feeding Operation (AFO) as an operation where animals have been, are or will be confined and fed for a total of 45 days or more in any 12-month period and where vegetation is not sustained in the confinement area. An AFO is considered a CAFO based on either the facility's animal population or regardless of population if the facility is determined to be a significant contributor of pollutants to waters of the United States by the appropriate authority.
11. Pursuant to federal regulations, the Regional Board determined that the stable portion of the property is subject to the regulatory requirements for a CAFO and adopted Order No. R8-2009-017.
12. The Permit serves the purpose of regulating the discharge of storm water runoff from the non-production areas and wastewater from the CAFO area that might be discharged only from a facility designed, constructed, operated, and maintained to contain all process wastewater plus the runoff from a 25-year, 24-hour duration rainfall event.
13. The Permit prohibits the discharge of any wastes at a location different from that described in the Permit, except for permitted discharges to the sanitary sewer.
14. The Permit prohibits the discharge of liquids or materials (non-storm water discharges), other than storm water or landscape irrigation runoff, either directly or indirectly into waters of the U.S.

WATER CODE PROVISIONS UPON WHICH LIABILITY IS BEING ASSESSED

15. Water Code section 13385, subdivision (a), paragraph (2) provides that a discharger is subject to civil liability for violating a waste discharge requirement.
16. Pursuant to Water Code section 13385, subdivision (c), violations of Water Code section 13385, subdivision (a), are subject to administrative civil liability in an amount not to exceed the sum of \$10,000 for each day in which the violation occurs, and, where there is a discharge, \$10 for each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons.

ALLEGED VIOLATIONS

17. The Discharger is alleged to have violated the waste discharge requirements, Permit Section III, by discharging non-storm water to waters of the United States. As indicated above, non-storm water discharges from facilities such as this Discharger generally contains high levels of nutrients, suspended solids, bacteria, ammonia, antibiotics, and degradable organic matter (high COD and

BOD) and threaten to cause pollution, contamination, nuisance, and could adversely impact the beneficial uses of the receiving waters.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

18. On November 17, 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 May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision (e). The entire Enforcement Policy can be found at:

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

19. The specific factors to be considered per Water Code section 13385, subdivision (e), are the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, and the degree of toxicity of the discharge. With respect to the violator, the required factors are the ability to pay, the effect on the violator's 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 violation and other matters that justice may require.

20. The specific factors required by the Enforcement Policy are: the potential harm to beneficial uses; the physical, chemical, biological or thermal characteristics of the discharge; the discharge's susceptibility to cleanup; the violation's deviation from requirements; the discharger's culpability; cleanup and the discharger's cooperation; the history of violations; the discharger's ability to pay; other factors as justice may require; and economic benefit from the avoidance or delay of implementing requirements. These factors address the statute-required factors and also are used to calculate penalties consistent with both the Water Code and the Enforcement Policy.

21. The required factors have been considered for the violation using the methodology in the Enforcement Policy, as explained in detail in Attachment A.

PROPOSED ADMINISTRATIVE LIABILITY

22. Based on consideration of the above facts and after applying the penalty methodology, the Division Chief proposes that civil liability be imposed administratively on the Discharger in the amount of **nine thousand eight hundred ninety dollars (\$9,890)** pursuant to Water Code section 13385, subdivision (c). No penalty was assessed based on a per gallon basis as a

discharge volume could not be estimated from the information available to Regional Board staff.

23. 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, not administrative proceedings. 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.)
24. Notwithstanding the issuance of this Complaint, the Regional 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.
25. 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, subdivision (a), paragraph (2).

WAIVER OF HEARING

The Discharger may waive its right to a hearing. If the Discharger chooses to do so, please sign the attached Waiver Form and return it, together with a check for **\$9,890**. **Indicate "R8-2014-0080" on the check and make it payable to the State Water Pollution Cleanup and Abatement Account.** Send the check to the following address:

State Water Resources Control Board
Division of Administrative Services
Accounting Branch
P.O. Box 1888
Sacramento, CA 95814

The waiver and a copy of the check shall also be mailed to the Regional Board office at the following address:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348
Attention: Michelle Beckwith

If the Discharger waives its right to a hearing and pays the assessed amount, the Regional Board may not hold a hearing regarding this Complaint.

If you have any questions, please contact Michael Perez at (951) 782-4306. For legal questions, contact Naomi Kaplowitz, Office of Enforcement, at (916) 341-5677.

12/22/14
Date

Hope A. Smythe
Hope A. Smythe
Division Chief
Regional Board Prosecution Team

Attachment A
Administrative Civil Liability Complaint No. R8-2014-0080
Specific Factors Considered
Los Alamitos Race Course (Discharger)

This document provides details to support the proposed Administrative Civil Liability Complaint No. R8-2014-0080 (hereinafter "Complaint") that brings enforcement against Los Alamitos Race Course in response to the alleged violation of California Water Code (hereinafter "CWC") §13385 for the discharge of an unauthorized non-storm water discharge that discharged into the San Gabriel River (a water of the United States).

Each factor of the Enforcement Policy methodology and its corresponding category, adjustment, or amount for the non-discharge and discharge violations alleged in the Complaint is presented below:

STEP 1 – Potential for Harm for Discharge Violations

The potential for harm to the environment associated with the discharge from the Los Alamitos Race Course of non-storm water discharges is 7. This is determined by the sum of the factors for:

a) Potential for Harm to Beneficial Uses: **3 - Moderate**

The Discharger undertook activities that led to a discharge, which flowed from the facility's stables across Lexington Drive, and then north towards the storm drain. This storm drain is tributary to Reach 1 of the San Gabriel River. Regional Board staff discovered the discharge on a July 10, 2014 inspection. The discharge, which emanated from the horse stables, likely contained coliform, nitrates, ammonia, phosphates, and sediment.

Here, a factor of 3 is assigned because the high levels of bacteria, nutrients, and sediment load of the discharge poses a moderate threat to beneficial uses. The discharge flowed from the property into the storm drain, which flows to Coyote Creek and, ultimately, the San Gabriel River. While the facility is within the jurisdiction of the Santa Ana Regional Water Board, the San Gabriel River is within the jurisdiction of the Los Angeles Regional Water Board. Thus, both the Santa Ana and the Los Angeles Regional Water Quality Control Plans (Basin Plans) are applicable in this analysis.

Beneficial uses applicable to the San Gabriel River, Reach 1 are as follows: Municipal and Domestic Supply (MUN): Waters are used for community, military, municipal, or individual water supply systems; Water Contact Recreation (REC1): Waters are used for recreational activities involving body contact with water where ingestion of water is reasonably possible; Non-contact Water Recreation (REC2): Waters are used for recreational activities involving proximity to water, but not normally involving body contact with water where ingestion of water would be reasonably possible; Warm Freshwater Habitat (WARM): Waters support warm-water ecosystems that may include, but are not limited to, preservation and enhancement of aquatic habitats, vegetation, fish and wildlife, including

invertebrates; and Wildlife Habitat (WILD): Waters support wildlife habitats that may include, but are not limited to, the preservation and enhancement of vegetation and prey species used by waterfowl and other wildlife.

Beneficial uses for Coyote Creek include: Municipal and Domestic Supply (MUN): Waters are used for community, military, municipal, or individual water supply systems; Water Contact Recreation (REC1): Waters are used for recreational activities involving body contact with water where ingestion of water is reasonably possible; Non-contact Water Recreation (REC2): Waters are used for recreational activities involving proximity to water, but not normally involving body contact with water where ingestion of water would be reasonably possible; Warm Freshwater Habitat (WARM): Waters support warm-water ecosystems that may include, but are not limited to, preservation and enhancement of aquatic habitats, vegetation, fish and wildlife, including invertebrates; and Wildlife Habitat (WILD): Waters support wildlife habitats that may include, but are not limited to, the preservation and enhancement of vegetation and prey species used by waterfowl and other wildlife.

Possible adverse effects of discharging wastewater with potentially high levels of bacteria, nutrients, and sediment load on water quality and beneficial uses include the introduction of viruses and pathogens, which affects the recreation beneficial uses (REC1, REC2). Nutrient and sediment discharges affect the aquatic life beneficial uses (WARM, WILD). In addition, San Gabriel, Reach 1 is currently on the Clean Water Act, section 303(d) List of Impaired waters due, in part, to coliform bacteria. Bacteria discharge from the Los Alamitos Race Course contributed to the impairment status.

b) Physical, Chemical, Biological or Thermal Characteristics: **3 – Above Moderate Risk**

A factor of 3 (above moderate) is assigned because the discharge consisted of horse rinse water, which contains bacteria, nutrients, and sediment load and other pollutants that have the potential to adversely impact aquatic organisms and public health.

Rinse water from horses contains high concentrations of salts (total dissolved solids, including constituents such as sodium and chloride). Rinse water also contains elevated levels of nutrients (including nitrogen, ammonia, and phosphorus compounds). Oxidation of nitrogen compounds (i.e., ammonia and organic nitrogen compounds) to nitrites and nitrates has the potential to degrade the quality of surface water near the facility. Surface water can be degraded by the presence of ammonia in the water, which causes ammonia toxicity to aquatic life or suppresses dissolved oxygen concentrations. In addition, nitrogen and phosphorus compounds in the water can cause excessive algal growth in surface waters, resulting in lower oxygen levels and which in turn causes fish and other organisms

to die. The presence of bacteria in the rinse water can create a public health threat through contact with affected waters. The discharge of sediment can limit the passage of sunlight into waters, which in turn inhibits the growth of aquatic plants. Excessive sediment can also destroy spawning habitat, blanket benthic organisms and abrade the gills of larval fish.

c) Susceptibility to Cleanup or Abatement: **1**

The Discharger did not undertake any cleanup activities on Lexington Drive. When Regional Board staff inspected the facility and discovered the discharge, no ponding or left over debris were visible or susceptible to cleanup. Therefore, a score of 1 is assigned because less than 50% of the discharge was susceptible to cleanup.

STEP 2 – Assessments for Discharge Violations

On the basis of no known discharge volume, liability is proposed on a daily assessment, as shown below:

d) Deviation from the Requirement: **Major**

The Deviation reflects the extent to which the prohibition was violated. The Permit expressly prohibits the discharge of wastewater at locations different from those specified in its provisions and prohibits the discharge of water, materials, thermal wastes, elevated temperature wastes, toxic wastes, deleterious substances or wastes other than those authorized by the Permit to the San Gabriel River or other waters of the State. The discharge, therefore, is a major deviation from the requirements of the Permit.

e) Per Day Factor: **0.31** (Table 2, pg. 15 of the Enforcement Policy)

f) Days of Violation: **1**

On July 10, 2014, Regional Board staff conducted an inspection of the property and observed evidence of a non-storm water discharge from the stable area located adjacent to Gate 3. The duration of the discharge is, therefore, at least one day.

g) Initial Liability Amount: **\$3,100** (Number of days (1) x Maximum penalty (\$10,000) x Per Day Factor (0.31))

The Per Day Factor is multiplied by the maximum per day amount allowed under the Water Code to yield the Initial Liability Amount for this violation.

STEP 3 - Per Day Factor for Non-Discharge Violations

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

STEP 4 – Adjustment Factors

i) Culpability: 1.4

The Discharger is responsible for the violation alleged in the Complaint and for allowing the discharge to occur. The wash-down activity that led to the discharge was undertaken knowingly. Additionally, the Discharger had, prior to the incident, installed straw wattles at the point of discharge, which points to the Discharger's knowledge that the area was a potential problem area. However, the straw wattles were not an appropriate method of containing the subject discharge. Based on these facts, the Discharger failed to act with due standard of care. A factor of 1.4, which increases the penalty, is appropriate.

j) Cleanup and Cooperation: 1.3

The Discharger was given the score of 1.3. Although the Discharger was cooperative with Regional Board staff during the inspection, the Discharger did not respond to the incident adequately. The potential discharge location had been identified as evidenced by the prior placement of straw wattles in the area. Thus, the Discharger should have undertaken response actions to prevent the discharge from leaving the property and flowing across the street into the storm drain.

k) History of Violations: 1

The Discharger has no history of discharges in violation of its Permit. Therefore, a neutral score of 1 was selected.

STEP 5 – Determination of Total Base Liability Amount

l) Total Base Liability Amount: \$5,642

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2. Applying the adjustment factors yields \$5,642 (Initial Liability (\$3,100) X Adjustments (1.4)(1.3)(1)).

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

The ability to pay and to continue in business factor must be considered when assessing administrative civil liabilities. Below is a brief analysis of the Discharger's financial situation, which may be revised based on the submission of additional information by the Discharger.

The Discharger is a California General Partnership owned by Quarter Horse Racing, Inc. and by Los Alamitos Racing Association. The Discharger owns an ongoing business that generates profits that may be used to pay off the assessed penalty. Furthermore, the Discharger owns several land parcels (APNs 241-221-25, 241-221-27, 241-231-18, and 241-081-02), which are worth over \$10,000,000.

In all, based on the information publicly available, the Prosecution Team finds that the Discharger has the ability to pay the proposed administrative civil liability amount.

Based on the reasons discussed above, **an ability to pay factor of 1** has been applied to the Combined Total Base Liability Amount.

STEP 7 – Other Factors as Justice May Require

- a) Adjusted Combined Total Base Liability Amount: **\$7,142** (\$5,642 + \$1,500 (staff costs))

The Regional Board has incurred \$1,500 in staff costs (10 hours at \$150 per hour) associated with the investigation and enforcement of the violations alleged herein. This includes hours spent inspecting the Discharger's facility and drafting the Complaint. In accordance with the Enforcement Policy, this amount is added to the Total Liability Amount.

STEP 8 – Economic Benefit

- c) Estimated Economic Benefit: **\$8,991**

Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The violation of the Los Alamitos Race Course Permit was due to the failure to implement appropriate BMPs as listed in the site specific SWPPP. Furthermore, the violation was due to the Discharger's failure to comply with the facility's site plan and Flow Schematic, Attachment C, to the Permit, which indicates that all flow will be contained onsite. The Discharger's failure to implement appropriate BMPs in compliance with SWPPP requirements and the failure to comply with the site plan, as represented in the Flow Schematic, both contributed to the Discharger's violation. The Discharger gained an economic benefit by failing to undertake those compliance actions.

The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations." The Discharger incurred an economic benefit by not implementing non-

structural BMPs and by failing to comply with the facility's site plan prior to the discharge event.

The economic benefit associated with the discharge is the avoided costs of implementing BMPs, which would have prevented the discharge from occurring. Specifically, the Discharger failed to implement good housekeeping and preventative maintenance as evidence by the clogged drain gate described in the inspection report. However, these costs are minimal.

Upon request, the Discharger provided a design and cost estimation for the installation of a permanent berm that would result in consistency with the facility's Flow Schematic. The economic benefit for not installing a permanent berm was estimated based on construction costs of asphalt berms, asphalt resurfacing, updated internal stormwater drainage system, and concrete channels. The Water Board staff used the cost of the berm provided by the Discharger. The cost of the berm is estimated to be \$95,000, which includes the cost for design, permitting and construction.

The U.S. Environmental Protection Agency developed the BEN computer model to calculate the economic benefit a discharger derives from delaying and/or avoiding compliance with environmental regulations. The State Water Board's Economist used the BEN model and the above value to estimate that the overall economic benefit of noncompliance was \$8,991 for the permanent BMP.

STEP 9 – Maximum and Minimum Liability Amounts

d) Minimum Liability Amount: **\$9,890**

The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. The Regional Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the violations cited in this Complaint plus ten percent is \$9,890 (\$8,991 + 10%). The final proposed penalty amount, therefore, is the minimum liability amount required pursuant to the Enforcement Policy.

e) Maximum Liability Amount: **\$10,000**

The maximum administrative liability amount is the maximum amount allowed by Water Code section 13385: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs. The proposed liability falls between these maximum and minimum liability amounts.

STEP 10 – Final Proposed Liability Amount

- f) The final liability amount proposed for the violation is nine thousand eight hundred and ninety dollars (**\$9,890**).

California Regional Water Quality Control Board
Santa Ana Region

HEARING PROCEDURE
FOR TENTATIVE ADMINISTRATIVE CIVIL LIABILITY ORDER
PROPOSED TO BE ISSUED TO
LOS ALAMITOS RACE COURSE
ORANGE COUNTY

SCHEDULED FOR MARCH 20, 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.

Background

On December 22, 2014, the Division Chief, acting as head of the Santa Ana Regional Water Quality Control Board (Regional Board) Prosecution Team, issued Administrative Civil Liability (ACL) Complaint R8-2014-0080 pursuant to California Water Code (Water Code) section 13323 to Los Alamitos Race Course (Discharger). The Complaint alleges that the Discharger discharged material other than storm water to waters of the United States which violated Regional Board Order No. R8-2009-017, NPDES No. CA0106348 and Water Code section 13385.

The Complaint proposes that the Regional Board impose administrative civil liability in the amount of nine thousand eight hundred ninety dollars (\$9,890) pursuant to Water Code section 13385. Unless the Discharger pays the proposed liability, a hearing will be held before the Regional Board during its **March 20, 2015** meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the proposed ACL Order. At the hearing, the Regional Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability.

The public hearing will be held on **March 20, 2015**, and will commence no earlier than 9:00 a.m. or as soon thereafter as practical, or as announced in the Regional Board meeting agenda. The meeting will be held at a to be determined location.

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

http://www.waterboards.ca.gov/santaana/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 Regional 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. 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.

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: Kurt Berchtold, Executive Officer and David Rice, Staff Counsel. Members of the Prosecution Team are: Hope Smythe, Division Chief; Michael Perez, Water Resource Control Engineer; Michelle Beckwith, Senior Environmental Scientist, 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 Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

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 Regional Board, staff, or others, at the discretion of the Board Chair.

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

1. Regional Board Prosecution Team
2. Los Alamitos Race Course

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:**

David Rice, Staff Counsel
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5182
David.Rice@waterboards.ca.gov

Prosecution Team:

Michelle Beckwith, Senior Environmental Scientist
Regional Water Quality Control Board – Santa Ana Region
3737 Main Street, Suite 500, Riverside, CA 92501
Phone: (951) 782-4433
Michelle.Beckwith@waterboards.ca.gov

Discharger:

Los Alamitos Race Course
4961 Katella Avenue
Los Alamitos, CA 90720
Attn: Mr. Frank Sherren
fsherren@losalamitos.com

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 (see Gov. Code, § 11430.10 et seq.). 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 documentary evidence and exhibits to be offered at the hearing.
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. Alternatively, the testimony of any witness may be presented by declaration, so long as that witness will be available for cross-examination at the hearing.
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 Regional 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: For each evidentiary deadline, each Designated Party shall send one electronic copy of the above materials to each of the other Designated Parties at the address or addresses provided above by 5:00 p.m. on the deadline described above.

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 Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will *not* be considered by the Regional 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.

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.

| | |
|--------------------|---|
| December 22, 2014 | <ul style="list-style-type: none"> ▪ Prosecution Team issues Complaint and Hearing Procedure on Discharger and other parties. |
| January 22, 2015 | <ul style="list-style-type: none"> ▪ Discharger's deadline to submit 90-Day Hearing Waiver Form and payment <ul style="list-style-type: none"> ▪ Objections due on Hearing Procedure. <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> |
| January 30, 2015* | <ul style="list-style-type: none"> ▪ 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> <ul style="list-style-type: none"> ▪ <u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact |
| February 5, 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> <ul style="list-style-type: none"> ▪ <u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney |
| February 6, 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> |
| February 6, 2015 | <ul style="list-style-type: none"> ▪ Advisory Team issues decision on Hearing Procedure objections. ▪ Advisory Team issues decision on requests for designated party status. |
| February 13, 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 Order, and any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. <ul style="list-style-type: none"> ▪ 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> |
| February 25, 2015* | <ul style="list-style-type: none"> ▪ Prosecution Team's deadline to submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. <ul style="list-style-type: none"> ▪ 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> |

| | |
|-----------------------------|--|
| | <u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact |
| March 6, 2015* [†] | <ul style="list-style-type: none"> ▪ Prosecution Team submits Hearing binder on the parties and Board. <u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons <u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney |
| March 20, 2015* | 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.

Santa Ana Regional Water Quality Control Board

**WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR
DISCRETIONARY LIABILITY**

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

I am duly authorized to represent Los Alamitos Race Course (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2014-0080 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served with the complaint. The person(s) who have 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 the liability in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of nine thousand eight hundred ninety dollars (**\$9,890**) by submitting a check made payable to the "State Water Pollution Cleanup and Abatement Account," that references "ACL Complaint No. R8-2014-0080." Payment must be received by the Regional Water Board by **January 22, 2015** or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Division Chief may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board (or the Regional Board's delegee), and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the 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 Regional 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 Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1." In these discussions, the Discharger can raise settlement options, including supplemental environmental projects and enhanced compliance projects that meet the State Water Resources Control Board's requirements for such projects, see http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf and http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/rs2009_0013_sep_finalpolicy.pdf.

(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 Regional Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Regional 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 Regional Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

Administrative Civil Liability Complaint 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 Regional Water Board's Division Chief. 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 nine 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.

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; or (5) hearing. Each of these options is described below:

Withdrawal: May result if the Discharger provides information to the Prosecution Team

ACL Complaint Fact Sheet

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 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 Board

Except for mandatory penalties under Water Code Section 13399.33 and 13385 (i) and (h), 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

ACL Complaint Fact Sheet

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 (Water Code Section 13327, 13385(e) and 13399). During the period provided to submit evidence (set forth in the Hearing Notice) and at the hearing, a discharger may submit information that it believes supports its position regarding the complaint. If a 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,
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:
 - a. IRS Form 1120 for C Corporations
 - b. IRS Form 1120 S for S Corporations
 - c. IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the SWRCB 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;

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3. The following information can be substituted if income tax returns cannot be made available:
 - a. Audited Financial Statements for last three years;
 - b. A list of major accounts receivable with names and amounts;
 - c. A list of major accounts payable with names and amounts;
 - d. A list of equipment acquisition cost and year purchased;
 - e. Ownership in other companies and percent of ownership for the last three years;
 - f. Income from other companies and amounts for the last three years.

For a municipality, county, or district:

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

ACL Complaint Fact Sheet

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.

California State Water Resources Control Board

**BUSINESS ORGANIZATION
ABILITY TO PAY CLAIM
Financial Data Request Form**

This form requests information regarding your financial status. The data will be used to evaluate your ability to pay for environmental clean-up or penalties. If there is not enough space for your answers, please use additional sheets of paper. Note that we may request further documentation of any of your responses. We welcome any other information you wish to provide supporting your case, particularly, if you feel your situation is not adequately described through the information requested here. If a particular question does not apply to your business, please indicate that it does not apply and give the reason. **Failure to answer all the questions clearly and completely may result in denial of your claim of inability to pay.**

Certification

Under penalties of perjury, I declare that this financial statement submitted by me as a responsible officer of the organization is a true, correct, and complete statement of all organization income and assets, real and personal, whether held in the company name or otherwise to the best of my knowledge and belief. I further understand that I will be subject to prosecution by the United States Government to the fullest extent possible under the law should I provide any information that is not true, correct, and complete to the best of my knowledge.

Signature

Date

Name (printed or typed)

Corporate Position

California State Water Resources Control Board

Name and address of principal stockholders and number of shares owned by each. (If more than eight shareholders, list only those with five percent or more stock ownership). If your business is a partnership, list all partners and ownership percentage.

Total outstanding shares: _____

| Name | Address | Shares |
|------|---------|--------|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |

9. A. Name and address of current, (and for previous five years), officers and number of shares held by each. For partnerships, list all partners for last five years.

| Name | Address | Shares | Term |
|------|---------|--------|------|
| | | | |
| | | | |
| | | | |
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| | | | |
| | | | |

California State Water Resources Control Board

9. B. Name and address of current, (and for previous five years), members of board of directors and number of shares held by each.

| Name | Address | Shares | Term |
|------|---------|--------|------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

10. Has this organization ever issued a prospectus for the sale of stock? Yes ___ No ___
 If yes, list date, number and type of shares for each prospectus during the last five years.

| Date | Number of Shares | Type of Shares |
|------|------------------|----------------|
| | | |
| | | |
| | | |

11. A. Registration on international, national or local stock exchange(s). Give details, including date of registration and/or de-listing.

1. _____
2. _____
3. _____
4. _____

California State Water Resources Control Board

11. B. Total authorized shares for each type issued and present market value per share on each type of stock (or book value if not actively traded)

| Types of Shares | Total Shares | Book Value | Market Value |
|-----------------|--------------|------------|--------------|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |

C. Total outstanding shares of each type of stock currently being held as Treasury Stock.

D. Total outstanding shares of each type of stock.

E. Amount of bonded debt and principle bondholders.

12. List states and municipalities to which taxes have been paid and/or are being paid. Describe nature and amount of such taxes, state most recent year of payments thereof and whether tax payments are current.

California State Water Resources Control Board

13. Has this organization filed United States income tax returns during the last five years?
Yes _____ No _____

To what I.R.S. Office(s)

What Years?

Are Federal Taxes current? Yes _____ No _____

Provide **SIGNED** Federal income tax returns and **ALL** associated schedules for the last five years.

14. Name and address of:

A Organization's Independent Certified Public Accountants

B. Organization's Attorney(s) presently and during the past five years.

15. Has this organization filed Financial Forms with any organization or government entity?
List name of organization or entity, date and type of Financial Form.

California State Water Resources Control Board

Enter the organization's Balance Sheet data and the Profit and Loss Statement and for the years specified in the following table.

Submit audited documents if available.

A. Assets

| | | 2013 | 2012 | 2011 | 2010 | 2009 |
|----------------------------|-----------|------|------|------|------|------|
| <u>Cash</u> | \$ | | | | | |
| <u>Securities</u> | \$ | | | | | |
| <u>Facilities</u> | \$ | | | | | |
| <u>Depreciation</u> | \$ | | | | | |
| <u>Equipment</u> | \$ | | | | | |
| <u>Depreciation</u> | \$ | | | | | |
| <u>Inventory</u> | \$ | | | | | |
| <u>Accounts Receivable</u> | \$ | | | | | |
| <u>Other</u> | \$ | | | | | |
| TOTAL ASSETS | \$ | | | | | |

B. Liabilities and Stockholder's Equity

| | | 2013 | 2012 | 2011 | 2010 | 2009 |
|---------------------|----|------|------|------|------|------|
| Loans Principle | \$ | | | | | |
| Monthly Payment | \$ | | | | | |
| Mortgages Principle | \$ | | | | | |
| Monthly Payment | \$ | | | | | |
| Accounts Payable | \$ | | | | | |
| Deferred Taxes | \$ | | | | | |
| Insurance Premiums | \$ | | | | | |
| Other | \$ | | | | | |

California State Water Resources Control Board

Stockholder's Equity

| | | 2013 | 2012 | 2011 | 2010 | 2009 |
|-------------------|----|------|------|------|------|------|
| Common Stock | \$ | | | | | |
| Paid-in Capital | \$ | | | | | |
| Retained Earnings | \$ | | | | | |

| | | 2013 | 2012 | 2011 | 2010 | 2009 |
|----------------------------------|--|------|------|------|------|------|
| TOTAL LIABILITIES & EQUITY | | | | | | |

17. Loans Payable:

| | |
|-------------------|----------------|
| Owed to: | Purpose: |
| Term: | Interest Rate: |
| Collateral: | Cosigner: |
| Monthly Payments: | |
| Original Amount: | Date: |
| Present Balance | |

b.

| | |
|-------------------|----------------|
| Owed to: | Purpose: |
| Term: | Interest Rate: |
| Collateral: | Cosigner: |
| Monthly Payments: | |
| Original Amount: | Date: |
| Present Balance | |

California State Water Resources Control Board

c.

| | |
|-------------------|----------------|
| Owed to: | Purpose: |
| Term: | Interest Rate: |
| Collateral: | Cosigner: |
| Monthly Payments: | |
| Original Amount: | Date: |
| Present Balance | |

d.

| | |
|-------------------|----------------|
| Owed to: | Purpose: |
| Term: | Interest Rate: |
| Collateral: | Cosigner: |
| Monthly Payments: | |
| Original Amount: | Date: |
| Present Balance | |

18. Mortgages Payable:

| | |
|-------------------|----------------------|
| Owed To: | Address of Property: |
| Term: | Interest Rate: |
| Collateral: | Cosigner: |
| Monthly Payments: | |
| Original Amount: | Date: |
| Present Balance: | |

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b.

| | |
|-------------------|----------------------|
| Owed To: | Address of Property: |
| Term: | Interest Rate: |
| Collateral: | Cosigner: |
| Monthly Payments: | |
| Original Amount: | Date: |
| Present Balance: | |

c.

| | |
|-------------------|----------------------|
| Owed To: | Address of Property: |
| Term: | Interest Rate: |
| Collateral: | Cosigner: |
| Monthly Payments: | |
| Original Amount: | Date: |
| Present Balance: | |

d.

| | |
|-------------------|----------------------|
| Owed To: | Address of Property: |
| Term: | Interest Rate: |
| Collateral: | Cosigner: |
| Monthly Payments: | |
| Original Amount: | Date: |
| Present Balance: | |

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19. Income/Expenses:

| Gross Income: | | 2013 | 2012 | 2011 | 2010 | 2009 |
|-----------------|----|------|------|------|------|------|
| Net Sales | \$ | | | | | |
| Interest Income | \$ | | | | | |
| Dividends | \$ | | | | | |
| Other | \$ | | | | | |

Operating Expenses:

| | | | | | | |
|------------------|----|--|--|--|--|--|
| Wages | \$ | | | | | |
| Overhead | \$ | | | | | |
| Lease Payments | \$ | | | | | |
| Interest Expense | \$ | | | | | |
| Cost of Sales | \$ | | | | | |
| Net Income | \$ | | | | | |

20. Provide the following information that determines the size of the organization:

| | | | | | |
|----------------------|--|--|--|--|--|
| Number of Employees | | | | | |
| Size of Warehouse(s) | | | | | |
| Volume Shipped | | | | | |
| Other | | | | | |

21. Does this organization maintain bank accounts? Give names and addresses of banks, savings and loan associations, and other such entities, within the United States or elsewhere.

A. Checking

| Name of Bank | Address of Bank | Account # | Balance |
|--------------|-----------------|-----------|---------|
| | | | |
| | | | |
| | | | |

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B. Savings/Certificate of Deposit

| Name of Institution | Address of Bank | Account # | Balance |
|---------------------|-----------------|-----------|---------|
| | | | |
| | | | |
| | | | |

C. Other Accounts

| Name of Institution | Address of Institution | Account # | Balance |
|---------------------|------------------------|-----------|---------|
| | | | |
| | | | |
| | | | |
| | | | |

D. Savings & Loan Associations or other such entities

| Name of Institution | Address of Institution | Account # | Balance |
|---------------------|------------------------|-----------|---------|
| | | | |
| | | | |

E. Trust Account(s)

| Name of Institution | Address of Institution | Account # | Balance |
|---------------------|------------------------|-----------|---------|
| | | | |
| | | | |

F. Other Account(s)

| Name of Institution | Address of Institution | Account # | Balance |
|---------------------|------------------------|-----------|---------|
| | | | |
| | | | |

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22. List all commercial paper, negotiable or non-negotiable, in which the organization has any interest whatsoever, presently in transit or in the possession of any banking institution. Describe such paper and the organization's interest therein, and state its present location. List all loans receivable in excess of \$10,000 and specify if due from an officer, stockholder, or director.

23. Has this organization engaged in any Joint Loan Agreements, including Letters of Credits, with any other organization(s)? If yes, describe all such agreements.

24. Does this organization have any debt coinsured by another organization? If yes, describe such arrangements.

25. List all equity participation in other organizations, both domestic and foreign, in which this organization has an interest, including the type, amount and terms of such interest.

California State Water Resources Control Board

26. List all debt participation in other organizations, both domestic and foreign, in which this organization has an interest, including the type, amount and terms of such interest.

27. Is this organization presently:

- A. Active
(Answer No for inactive, but still in existence) Yes _____ No _____
- B. Void and/or terminated by State authority. Yes _____ No _____
- C. Otherwise dissolved Yes _____ No _____

- 1. Date _____
- 2. By Whom _____
- 3. Reason _____

28. A. List corporate salaries, bonuses to and/or drawings of the following personnel for the last five taxable years:

| Position | Name | 2013 | 2012 | 2011 | 2010 | 2009 |
|----------------|------|------|------|------|------|------|
| President | | | | | | |
| Vice President | | | | | | |
| Chairman | | | | | | |
| Secretary | | | | | | |
| Treasurer | | | | | | |

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B. List the five most highly compensated employees or officers other than the above, describe position and list annual salary and/or bonus for the last five taxable years:

| Name | Position/Title | 2013 | 2012 | 2011 | 2010 | 2009 |
|------|----------------|------|------|------|------|------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

C. Describe the nature of the compensation paid to the persons listed in (A) and (B) above and set forth any stock options, pensions, profit sharing, royalties, or other deferred compensation rights of said persons.

29. List the organizations commercial activity, (fields of activity resulting in income), and SIC Code.

| | <u>Commercial Activity</u> | <u>SIC Code</u> |
|----------|----------------------------|-----------------|
| Primary | _____ | _____ |
| Other 1. | _____ | _____ |
| Other 2. | _____ | _____ |
| Other 3. | _____ | _____ |

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30. List all other supplementary fields of activity in which this organization is engaged, either directly, through it affiliates, stating the name(s) and states(s) of incorporation of such subsidiaries or affiliates:

31. Has this organization at any time been the subject of any proceeding under the provisions of any State Insolvency Law, or the federal Bankruptcy Act, as amended? If so, supply the following information as to each such proceeding:

A. Date (Commencement) _____

B. Date (Termination) _____

C. Discharge or other disposition, if any, and operative effect thereof:

D. State Court _____ Docket No. _____
County

E. Federal Court _____ Docket No. _____
County

32. A. List all real estate, and personal property of an estimated value in excess of \$10,000 owned or under contract to be purchased by this organization with names and addresses of seller and contract price and where located:

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33. List and describe all judgments, recorded and unrecorded, this organization is a party of:

A. Against the organization

B. In favor of the organization

34. List and describe all other encumbrances (including but not limited to security interest, whether perfected or not) against any such personal property owned by the organization as is listed in 30 (A) above.

35. List all life insurance, now in force on any or all officers, directors, and/or Akey@ employees, setting forth face amounts, names of life insurance companies and policy numbers where this organization has an insurable interest and/or paying the premium or part of same. Where applicable, indicate under which policy(s) this organization is beneficiary, type of policy(s) this organization is a beneficiary, yearly premium, and location of policy(s). In addition, state the cash value if any and the conditions of any borrowing options available under each policy.

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36. For the following types of policies, list all primary and excess insurance policies, the deductible amount, per occurrence and aggregate coverage limit for each policy.

A. Comprehensive General Liability

B. Environmental Impairment Liability

C. Other policies for which coverage might apply including participation in risk retention pools.

37. List all transfers of assets (real) and/or (personal) (over \$10,000) made by this organization, OTHER THAN IN THE ORDINARY COURSE OF BUSINESS, during the last three calendar years and state to whom transfer was made. Describe compensation paid by recipient and to whom.

| Date | Value | Property Transferred | To Whom | Compensation Paid |
|------|-------|----------------------|---------|-------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

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38. Is this business organization a party in any law suit now pending?

Yes (Give details below) _____ No _____

39. List names and addresses of any persons or other business entity, holding funds in escrow or in trust for this organization, or any of its subsidiaries or affiliates.

40. Other information requested:

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