

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401**

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2021-0097
IN THE MATTER OF:
Chris Mathys, Rhine, L.P., Oro Financial of California, Inc.
Santa Barbara County**

This Administrative Civil Liability Complaint (Complaint) is issued to Chris Mathys, Rhine, LP and Oro Financial of California, Inc. (collectively, Dischargers) by the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) on behalf of the Prosecution Team (collectively Parties) pursuant to California Water Code sections (Water Code) 13268 and 13323. This Complaint proposes imposing an administrative civil liability of \$125,893 based on evidence that the Dischargers violated provisions of the California Water Code by failing to submit required monitoring and technical reports for the property located at 2936 Industrial Parkway, Santa Maria, California (Site).¹

The Assistant Executive Officer of the Central Coast Water Board alleges the following:

Background

1. From 1949 to approximately 2001, SEMCO Twist Drill and Tool Company, Inc. (SEMCO) manufactured drill bits and other cutting tools at the Site and used various organic solvents to degrease tools. Trichloroethylene (TCE) and 1,1,1-trichloroethane (TCA) were stored in aboveground tanks (AGT) east of the Site's shop building until its use was discontinued in 1985. Operations at the Site caused the release of solvents (stored in AGT), cutting oil (stored in underground sumps), and other potential spills to the environment between 1949 and 2001. Currently, the Site is zoned for industrial activity and the building at the Site is occupied by tenants.
2. On May 10, 1985, the city of Santa Maria first discovered groundwater at the Site when the city shut off a municipal supply well due to high TCE concentrations. The municipal supply well had detections of TCE at 59 micrograms per liter ($\mu\text{g/L}$) and is located adjacent to the Site.

¹ The Site is approximately 9.9 acres and includes nine parcels, identified as Santa Barbara County Assessor Parcel Numbers (APNs) 111-291-039, 111-291-038, 111-291-037, 111-291-036, 111-291-035, 111-291-043, 111-291-042, 111-291-041, and 111-291-040.

3. In August of 1987, Central Coast Water Board staff conducted an inspection at the Site and determined that the source of the well pollution were the various organic solvents that SEMCO used to degrease tools. Central Coast Water Board staff ordered SEMCO to clean up the degraded soil and groundwater beneath the Site pursuant to Cleanup and Abatement Order (CAO) No. 87-188 dated September 25, 1987 and CAO Order No. 90-88 dated May 11, 1990, and as amended on September 13, 1991. Cleanup and Abatement Order No. 90-88 was amended again on March 11, 1994, to include then property owner Henry A. and Rhea Stafford Revocable Trust, and trustee Rhea Stafford as dischargers.
4. From 1987 through 1991, preliminary assessments of the extent and severity of groundwater degradation were conducted. Groundwater was found in at least two distinct saturated zones beneath the Site: a shallow, perched water-bearing zone (shallow zone) approximately 5-40 feet below ground surface (bgs) and 150-200 feet in lateral extent and a deeper, regional water-bearing zone (deep zone) approximately 185-200 feet bgs. Groundwater monitoring wells were installed in both the shallow and deeper water-bearing zones to assess vertical and lateral extent of waste impacts beneath the Site. Assessment reports submitted to the Central Coast Water Board during this time indicated organic solvents (mainly TCE) and petroleum hydrocarbons (from cutting oil used at the Site) were impacting both shallow groundwater and deeper groundwater. Maximum concentrations of trichloroethylene (TCE) in the shallow water-bearing zone were reported up to 430,000 µg/L in 1990.²
5. In June 1992, SEMCO installed a groundwater extraction and treatment system (GETS) to dewater and treat the shallow water-bearing zone. The GETS operated for only a week before the carbon filter became saturated, and the system was shut down. SEMCO, the Henry A. and Rhea Stafford Revocable Trust, and Rhea Stafford went into non-compliance with the CAO due to their alleged financial inability to bring the system back into operation. The Central Coast Water Board required a review of the financial statuses of SEMCO, the Henry A. and Rhea Stafford Revocable Trust, and Rhea. As a result of the financial review, the Central Coast Water Board determined that those parties were financially incapable of proceeding with assessment and cleanup without going into bankruptcy.
6. In March 1994, the Central Coast Water Board requested funding from the State Water Resources Control Board's (State Water Board) Cleanup and Abatement Account to continue assessment and cleanup of groundwater pollution beneath the

² March 8, 1990, Investigation Report documenting maximum TCE concentrations on GeoTracker: <https://geotracker.waterboards.ca.gov/?surl=m0t8q>

Site³. In April 1994, the State Water Board denied Central Coast Water Board's request for funding for assessment and cleanup of the Site⁴. The Central Coast Water Board subsequently pursued funding options with the Department of Toxic Substances Control (DTSC), and in May 1994, the Site was successfully added to DTSC's California Superfund List⁵ to fund repairs to the GETS and continue the remediation and containment of the shallow water-bearing zone beneath the Site.

7. On June 13, 1994, DTSC issued an Imminent and Substantial Endangerment Determination. DTSC determined that the Site posed an imminent and substantial endangerment to public health because there were seven municipal wells within a one-mile radius at risk due to the system shut down. DTSC became the lead for remediation at the Site and subsequently contracted with Tetra Tech to investigate the reason for the system failure as well as evaluate how to bring the system back into operation at minimum cost and maximum effectiveness. DTSC determined that design and construction flaws caused the failure of the system and agreed to fund the repairs and get the system running. DTSC repaired and redesigned the existing groundwater treatment system bringing it back into operation on November 9, 1994, and subsequently terminated their oversight of the treatment system at the Site and referred the case back to Central Coast Water Board in December 1994.⁶ From 1994 through 2000, TCE was removed from groundwater by extracting polluted groundwater from the subsurface, passing it through granular activated carbon (GAC) canisters, and reinjecting treated groundwater back into the subsurface. In December 2000, the Central Coast Water Board issued a letter to request Henry A. Stafford to continue operation of the GETS⁷ and continue submitting the semiannual groundwater monitoring reports. Central Coast Water Board staff did not identify records in the file that indicate there was compliance from Henry A. Stafford related to the request.
8. In 2001, the Site owner, the Henry A. Stafford and Rhea L. Stafford Revocable Trust, defaulted on its loan and the Site was transferred in 2002 to Oro Financial of California, Inc. Oro Financial of California, Inc. is an active California corporation. Chris Mathys serves as the Chief Executive Officer and Chief Financial Officer of

³ March 31, 1994, Regional Board Memo – Request for Cleanup Funds from State Board on GeoTracker: <https://geotracker.waterboards.ca.gov/?surl=ayjy6>

⁴ April 15, 1994, State Board Memo responding to funding request for the Site on GeoTracker: <https://geotracker.waterboards.ca.gov/?surl=yr9h5>

⁵ May 13, 1994, Central Coast Water Board letter to DTSC regarding inclusion of the Site onto the California Super Fund List on GeoTracker: <https://geotracker.waterboards.ca.gov/?surl=t8pk4>

⁶ December 16, 1994, DTSC Site Referral to Central Coast Water Board Letter on GeoTracker: <https://geotracker.waterboards.ca.gov/?surl=5zpbm>

⁷ December 1, 2000 Central Coast Staff letter on GeoTracker: <https://geotracker.waterboards.ca.gov/?surl=7weqj>

Oro Financial of California, Inc. In November 2002, Mr. Mathys, on behalf of Oro Financial of California, Inc., submitted a signed Acknowledgement of Willingness to Participate in Cleanup or Abatement Cost Recovery Program form.⁸

9. In December of 2002, the Site was transferred to Concha Investments, Inc. Chris Mathys served as the Chief Executive Officer and Chief Financial Officer of Concha Investments, Inc., which was merged into Oro Financial of California, Inc. in 2007.
10. On July 18, 2003, the Central Coast Water Board issued an investigative order pursuant to Water Code section 13267(July 2003 Order) to Chris Mathys and Oro Financial of California Inc. requiring the submittal of a groundwater monitoring report including sampling results from all monitoring wells associated with the Site by October 20, 2003. The report was required because groundwater chemistry had not been monitored since 2000 (all work stopped at the Site with the transfer of property ownership to Oro Financial of California, Inc.) and there were concerns the waste impacts were migrating to a downgradient site. On December 3, 2003, the Central Coast Water Board issued a notice of violation (NOV) for failure to comply with the investigative order because the report submitted was incomplete and in draft form and did not meet the requirements set forth in the July 2003 Order. The investigative order was complied with on April 12, 2004.
11. The last groundwater monitoring and sampling event was completed in September of 2003, after which routine groundwater monitoring and sampling and remediation efforts stopped because the property owner at the time (Oro Financial of California, Inc.) began claiming financial hardship⁹. The September 2003 monitoring and sampling event identified measurable free floating petroleum product in the shallow water-bearing zone and TCE in groundwater monitoring well DMW2 was detected at 1,200 micrograms per liter ($\mu\text{g/L}$)¹⁰, the highest concentration detected in the deeper water-bearing zone to date. Increasing trends in groundwater pollutant concentrations suggested that polluted soils were continuing to release pollutants to groundwater. Therefore, the lateral and vertical extents of pollutants in the shallow and deeper water-bearing zones were needed. Between 2003 and 2011, Central

⁸ The Water Boards have statutory authority to recover reasonable costs for regulatory oversight of cleanups based on Water Code provisions, including sections 13304 and 13365. These sections allow the Central Coast Water Board to recover reasonable expenses from a responsible party for oversight of cleanup of illegal discharges, contaminated properties, and other unregulated releases potentially or actually adversely affecting waters of the State. Dischargers are given the option to voluntarily enroll in the program by signing the form and thereby acknowledge their intent to reimburse costs for cleanup oversight work.

⁹ July 24, 2004, letter from property owner discussing financial status on GeoTracker:
<https://geotracker.waterboards.ca.gov/?surl=6inx8>

¹⁰ The maximum contaminant level for TCE is 5 $\mu\text{g/L}$

Coast Water Board issued Annual Cost Recovery estimates to the property owners in an attempt to update the case and continue with Site work, but were told by the property owner that limited funds hindered their ability to continue work.

12. In June 2006, Site ownership transferred from Concha Investments, Inc. to Mr. Chris Mathys, who owned the Site until 2009, when Chris Mathys transferred the Site to Platino, LLC. Platino, LLC was solely managed by Chris Mathys. Platino, LLC was dissolved in 2011.
13. In August of 2010, the Site was transferred from Platino, LLC to Rhine, LP, which is the current property owner. Rhine, LP is an active California Limited Partnership. According to California Secretary of State filings from 2017, Rhine, LP is solely managed by Platino, LLC, even though Platino, LLC was dissolved in 2011. In 2010 and 2011, Mr. Mathys, on behalf of Oro Financial of California, Inc., submitted response letters to Central Coast Water Board's Annual Cost Recovery estimates claiming they were monitoring "an on-site groundwater cleaning system" but did not provide groundwater data related to the subject monitoring activities or specify what type of system they were monitoring. The only "on-site groundwater cleaning system" that Central Coast Water Board is aware of at that time was the GETS, installed to dewater and treat the shallow water-bearing zone.
14. From 2003 through 2014, the Site owners submitted correspondence in response to Central Coast Water Board's Annual Cost Recovery letters (2003 to 2011) and staff's numerous email and verbal inquiries¹¹ on project status, claiming financial hardship and an inability to fund any additional expenses related to the Site.¹² Due to an inability to charge cost recovery for staff oversight of this case, the case was considered an inactive case.
15. In 2015, the case was transferred, internally, to the current project manager and was reevaluated to assess how cleanup activities could move forward. In September 2015, Central Coast Water Board staff conducted a site visit¹³ in an attempt to reach out to current tenants and the property owner representative, Mr. Mathys. Central Coast Water Board inspected the Site's groundwater monitoring wells and condition

¹¹ October 21, 2010, Central Coast Water Board email on GeoTracker: <https://geotracker.waterboards.ca.gov/?surl=9hxgd> and the January 6, 2014, Case Status Summary on GeoTracker: <https://geotracker.waterboards.ca.gov/?surl=3f5ex>

¹² Referenced from the Dischargers' letters dated July 27, 2004, August 25, 2007, August 5, 2008, September 5, 2009, December 1, 2010, March 1, 2011, verbal communication on January 28, 2014, and petitions dated November 19, 2015, and June 19, 2019, available on GeoTracker.

¹³ September 10, 2015, Site inspection notes on GeoTracker: <https://geotracker.waterboards.ca.gov/?surl=2dj9r>

of the GETS. Only a few of the on-site monitoring wells were located through visual inspection and the GETS was not located and assumed to have been dismantled. Central Coast Water Board staff spoke with the tenant and left contact information for Mr. Mathys to make contact with Central Coast Water Board staff. Attempts to reach Mr. Mathys in 2015, via telephone were unsuccessful.

16. On October 20, 2015, the Central Coast Water Board issued a Water Code section 13267 Investigative Order (2015 Order) to the Dischargers requiring the submittal of a Site investigation and assessment workplan by December 14, 2015. The 2015 Order, which was issued by certified mail, was refused. The 2015 Order was subsequently delivered via process server on November 19, 2015. Central Coast Water Board staff deemed this workplan necessary to assess the current extent of pollution in soil, soil gas, and groundwater. On November 19, 2015, Chris Mathys filed a petition to review the Investigative Order with the State Water Resources Control Board (State Water Board), claiming a financial inability to comply with the 2015 Order and indicating that Chris Mathys was maintaining the groundwater cleaning system. On January 12, 2016, State Water Board issued a Notification of Incomplete Petition to Chris Mathys.
17. In 2018¹⁴, an incomplete SCAP¹⁵ funding application was submitted for the Site to the State Water Board Division of Financial Assistance by a consultant; however, Chris Mathys did not respond to repeated attempts by the State Water Board to contact him regarding completion of the application, which consisted, for the most part, a need for financial information to support the inability to pay contention.
18. On June 17, 2019, Central Coast Water Board staff issued the Dischargers a NOV for failing to submit a Site workplan in compliance with the 2015 Order. On June 19, 2019, Chris Mathys responded to the NOV disputing the need for site investigation and assessment and claiming a financial inability to comply with the Investigative Order.
19. In December of 2019, Central Coast Water Board staff received a Request for Agency Oversight Application from DTSC regarding a cleanup site in Morro Bay that was, in part, owned by Rhine L.P. Rhine L.P. had purchased the cleanup site, which

¹⁴ Between 2016 and 2018, staff resources were directed to other high priority projects (e.g., Buckley TCE Investigation) and this case was inactive.

¹⁵ The Site Cleanup Subaccount Program (SCAP) is a funding program established by Senate Bill (SB) 445 (Hill, 2014), allowing the State Water Board to issue grants for projects that remediate the harm or threat of harm to human health, safety, or the environment caused by existing or threatened surface water or groundwater contamination. Additional information is available here: [Financial Assistance Funding - Grants and Loans | California State Water Resources Control Board](#)

is a former old military fuel tank site, at auction. In response to the DTSC referral, on March 10, 2020, Central Coast Water Board staff issued a cost recovery letter for the Morro Bay Site to Chris Mathys, which was refused. Several months after the letter was refused Chris Mathys contacted Central Coast Water Board staff regarding the Morro Bay site and, in so doing, provided updated contact information. The updated contact information provided the necessary information to re-engage on the assessment and remediation actions that are necessary at the Site.

20. In November of 2020, Central Coast Water Board staff contacted Dischargers to engage in settlement negotiations prior to the issuance of a formal complaint. Settlement discussions continued through May of 2021.
21. On February 12, 2021, Analytical Consulting Group, Inc. (ACG) submitted a Site Assessment Workplan (Workplan) dated February 12, 2021 on behalf of the Dischargers. The scope of work included in the Workplan was in general compliance with the 2015 Order. In a January 20, 2021 discussion with Mr. Chris Mathys and ACG, Central Coast Water Board staff concurred with the Dischargers proposal to implement a phased approach to assess soil gas and the lateral and vertical extent of pollutants in groundwater. Therefore, the Workplan did not include a scope of work for collection of soil samples and/or the evaluation of pollution migrating offsite as required in the 2015 Order, but was consistent with a phased approach toward achieving compliance with the intent of the 2015 Order. In the Workplan, the Dischargers recommended that future phases should consist of additional borings and collection of soil and groundwater samples.
22. In a letter dated March 5, 2021, the Central Coast Water Board conditionally concurred with the scope of work included in the Workplan and required the Dischargers to implement the work according to the schedule identified in the Workplan. The Central Coast Water Board's letter required the Dischargers to submit indoor and outdoor air sampling results by April 7, 2021, and submit a site assessment report for a groundwater monitoring well evaluation (location, condition, and sampling where possible) and installation and sampling of soil vapor probes by July 18, 2021.
23. On April 9, 2021, the Dischargers submitted the final indoor and outdoor air sampling results to the Central Coast Water Board.
24. On July 15, 2021, the Dischargers requested the Central Coast Water Board extend the site assessment report submittal due date from July 18, 2021 to July 19, 2021.

On July 16, 2021, the Central Coast Water Board granted the one-day extension request.

25. On July 16, 2021, the Dischargers submitted a Soil Vapor Sampling Report dated July 16, 2021 to the Central Coast Water Board. On July 18, 2021, the Dischargers submitted the Monitoring Well Investigation Report dated July 16, 2021 to the Central Coast Water Board. The reports included a recommendation for additional remedial investigation to determine the vertical and lateral extent of soil and groundwater contamination. The report included a proposal for soil sampling and additional groundwater sampling to address items required in the 2015 Order. On September 10, 2021¹⁶, Central Coast Water Board staff issued a staff letter to the Dischargers responding to their 2021 assessment reports¹⁷. The September 10, 2021, staff letter conditionally concurs with the 2021 assessment reports submitted on behalf of the Dischargers and requires the submittal of an additional site assessment workplan that includes a proposed scope of work for additional onsite and offsite site assessment (e.g., confirmation indoor air sampling, deep and shallow soil and groundwater sampling, confirmation of existing groundwater monitoring well locations and potential abandonment of wells that are damaged or not functioning) and also requires the Dischargers to address the outstanding requirements from the 2015 Order (e.g., evaluation of all groundwater monitoring wells listed in the 2015 Order, collection and analysis of soil and groundwater samples for evaluation of lateral and vertical extent of waste impacts) by November 21, 2021.

Alleged Violation

26. California Water Code section 13267 confers to a regional board the authority to investigate state water quality and the authority to require a discharger or suspected discharger to submit technical or monitoring reports. The Prosecution Team alleges that the Dischargers violated Water Code section 13267 by failing to comply with the December 14, 2015 due date. In January of 2020, the Central Coast Water Board and Dischargers discussed the implementation of a phased approach to assessment. While the Dischargers, to date, have only completed the first phase of assessment required, the Prosecution Team has exercised discretion in selecting the February 12, 2021 submittal date as the violation period end-date. The

¹⁶ September 10, 2021, Central Coast Water Board staff letter on GeoTracker:
<https://geotracker.waterboards.ca.gov/?surl=11vya>

¹⁷ 2021 assessment reports include the *Indoor Air Sampling Report* dated April 7, 2021 on GeoTracker: <https://geotracker.waterboards.ca.gov/?surl=whufl>; and the *Soil Vapor Sampling Report* dated July 16, 2021, and *Monitoring Well Investigation Report* dated July 16, 2021 on GeoTracker: <https://geotracker.waterboards.ca.gov/?surl=tfods>

Prosecution Team reserves the right to seek additional civil liabilities for ongoing violation of the 2015 Order.

Calculation of Penalties Under Water Code Section 13268

27. Water Code section 13268 states, in relevant part:

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

(b)(1) Civil liability may be administratively imposed by a regional board in 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.

Proposed Administrative Civil Liability

28. Pursuant to Water Code section 13327, in determining the amount of any civil liability imposed, the Central Coast Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.

29. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020 amending the Enforcement Policy. The Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327.

30. The workplan is 1,888 days late as documented in Attachment A and, thus, the maximum penalty for the violations is \$1,888,000. The Enforcement Policy requires that the minimum liability imposed be at least 10% higher than the estimated economic benefit of \$225, so that liabilities are not construed as the cost of doing

business and that the assessed liability provides a meaningful deterrent to future violations. In this case, the economic benefit amount, plus 10%, is \$247.50. Based on consideration of the above facts and after applying the penalty methodology and allowing for staff costs pursuant to the Enforcement Policy, the Assistant Executive Officer of the Central Coast Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of \$125,893. The specific factors considered in this penalty are discussed in detail in Attachment A, which is incorporated herein.

Regulatory Considerations

31. Notwithstanding the issuance of this Complaint, the Central Coast Water Board retains the authority to assess additional penalties for violations which have not yet been assessed or for violations that may subsequently occur.
32. 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.

California Environmental Quality Act

33. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

1. The Central Coast Water Board's Prosecution Team proposes an administrative civil liability in the amount of one hundred and twenty-five thousand eight hundred and ninety-three dollars (\$125,893). The amount of the proposed civil liability is based upon a review of the factors cited in Water Code section 13327, as well as the Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations. 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.
2. A hearing on this matter will be conducted by the Central Coast Water Board or by a Hearing Panel of the Central Coast Water Board at a hearing scheduled on

December 9-10, 2021, unless the Dischargers waive the hearing by completing the Waiver Form included with this Complaint and returning it to the Central Coast Water Board, along with payment for the proposed civil liability of one hundred and twenty-five thousand eight hundred and ninety-three dollars (\$125,893) by October 11, 2021. The payment will be held until a 30-day public comment period on the proposed civil liability is held.

3. If a hearing before the Central Coast Water Board is held, the board 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 a hearing before a Hearing Panel of the Central Coast Water Board is held, the panel will hear testimony and arguments and make a recommendation to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. 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, section 405(2), p. 510.
5. Payment of the assessed liability amount does not absolve the Dischargers from complying with the 2015 Order, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Dischargers fail to comply with the 2015 Order and/or future orders issued by the Central Coast Water Board.

Signed:

Thea S. Tryon
Assistant Executive Officer

Attachments:

Attachment A: ACL Complaint No. R3-2021-0097, Penalty Calculation Methodology

Attachment B: ACL Complaint No. R3-2021-0097, Economic Benefit Analysis

ATTACHMENT A
FACTOR CONSIDERATION AND PENALTY CALCULATION METHODOLOGY FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2021-0097
CHRIS MATHYS, RHINE, L.P., ORO FINANCIAL OF CALIFORNIA, INC.
SANTA BARBARA COUNTY
(GEOTRACKER GLOBAL ID# SLT3S2411351)

This document provides details to support recommendations for enforcement in response to Chris Mathys; Rhine, L.P.; and Oro Financial of California, Inc.'s (collectively, Dischargers) failure to submit a workplan to assess pollution at the site located at 2936 Industrial Parkway, Santa Maria, California¹ (Site).² The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) Prosecution Team derived the proposed administrative civil liability amount following the State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy (Enforcement Policy).³

Application of State Water Board's Enforcement Policy

The Enforcement Policy establishes a methodology for assessing administrative civil liability to address the factors required by California Water Code section 13327, including "the 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 violation, and other matters as justice may require."

The Enforcement Policy calculations are discussed in detail below.

¹The Site is approximately 9.9 acres and includes nine parcels, identified as Santa Barbara County Assessor Parcel Numbers (APNs) 111-291-039, 111-291-038, 111-291-037, 111-291-036, 111-291-035, 111-291-043, 111-291-042, 111-291-041, and 111-291-040.

²All Central Coast Water Board files for this site are on the State Water Board's GeoTracker website: <http://geotracker.waterboards.ca.gov/?gid=SLT3S2411351>

³On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020 amending the 2010 Enforcement Policy. The Office of Administrative Law approved the 2017 Enforcement Policy effective October 5, 2017. This analysis applies the 2017 and not the 2010 policy because the "the last act or event necessary to trigger application of the statute" is determinative. (*People v. Grant* (1990) 20 Cal.4th 150, 157.)

Violation #1: Failure to Comply with a Water Code Section 13267 Investigative Order

On October 20, 2015, the Executive Officer of the Central Coast Water Board issued a Water Code section 13267 order (2015 Order),⁴ requiring the Dischargers to submit a workplan by December 14, 2015 that included a scope of work for additional site investigation to evaluate the current extent of organic solvent⁵ waste discharges in soil, soil gas, and groundwater underlying the Site.⁶ The Central Coast Water Board required the submittal of the workplan to ensure the protection of human health and the environment because elevated concentrations of wastes were present in groundwater at the Site during the last groundwater monitoring event in 2003.

The Dischargers failed to submit a workplan by the December 14, 2015 due date and are subject to civil liability pursuant to Water Code section 13268, subdivision (b), in an amount not to exceed \$1,000 per day of violation. Following discussions regarding the implementation of a phased approach to assessment, the Dischargers submitted the first phase workplan on February 12, 2021.⁷ Using that date, there are 1,888 days of violation.

The failure to submit a workplan as required by the 2015 Order is a violation of Water Code section 13267 and subjects the Dischargers to administrative civil liability pursuant to Water Code section 13268. Pursuant to Water Code section 13268, a violation of Water Code section 13267 subjects the Dischargers to administrative civil liability of up to \$1,000 per day for each day in which the violation occurs.

Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the alleged violations is presented below.

Step 1. Actual or Potential for Harm for Discharge Violations

This step is not applicable because Violation #1 is a non-discharge violation.

Step 2. Assessments for Discharge Violations

This step is not applicable because Violation #1 is a non-discharge violation.

Step 3. Per Day Assessments for Non-Discharge Violations

Factor Background: The “per day” factor is calculated for each non-discharge violation considering (a) the potential for harm and (b) the extent of deviation from the applicable

⁴ The 2015 Order: <https://geotracker.waterboards.ca.gov/?surl=l33kc>

⁵ Organic solvents or volatile organic compounds (VOCs) found in soil and/or groundwater beneath the Site include tetrachloroethylene (PCE), trichloroethylene (TCE), 1,1,1-trichloroethane (TCA), cis-1,2-dichloroethylene (1,2-DCE), 1,1-dichloroethene (1,1-DCE), and dichloroethane (DCA).

⁶ Cutting oil or petroleum hydrocarbons and 1,4-dioxane, a semi-volatile organic compound, were found in soil and/or groundwater at the Site.

⁷ While additional phases of assessment are still required pursuant to the 2015 Order, the Prosecution Team has exercised discretion in using the February 12, 2021, first phase workplan submittal as the violation period end-date.

requirements. In general, non-discharge violations include, but are not limited to, the failure to provide required information, to conduct routine monitoring and reporting, and the failure to prepare required plans.

Potential for Harm: (Moderate): The Dischargers have failed to submit a scope of work for further assessment of impacts to soil, soil gas, and groundwater beneath the Site by the 2015 Order due date. Historic investigations by former property owners and operators confirmed elevated concentrations of wastes in the subsurface. There are exceedances of water quality objectives in groundwater, and the release of wastes beneath the Site is suspected to be the cause of the permanent shutdown of a City of Santa Maria municipal supply well on May 10, 1985.⁸ Prior investigations have shown a potential risk to human health due to vapor intrusion. In September 1989, soil gas samples were collected from 34 locations adjacent to the aboveground storage tank pad and the main SEMCO building at the Site. In 1989, elevated concentrations of trichloroethylene (TCE) were detected in soil gas samples ranging from 9 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 5,300,000 $\mu\text{g}/\text{m}^3$.⁹

Additional evaluation of human health risk is needed to determine if TCE concentrations exceed the San Francisco Bay Water Quality Control Board's Environmental Screening Levels for TCE¹⁰ in soil gas ($16 \mu\text{g}/\text{m}^3$) and indoor air ($0.48 \mu\text{g}/\text{m}^3$). Failure to provide the required information precludes potential soil gas remediation and vapor intrusion mitigation in addition to groundwater remediation at the Site. The Dischargers' failure also substantially impairs the Central Coast Water Board's ability to perform its statutory and regulatory functions and results in at least a **moderate** potential for harm.

Deviation from Requirement: (Major) A "major" deviation from requirement is assigned when the "requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions)." The 2015 Order required the Dischargers to timely submit the workplan, which is necessary to evaluate the current extent of pollution beneath the Site to ensure the protection of human health and the environment. By failing to submit even part of the workplan for a period of approximately 5 years, the Dischargers have

⁸ July 2, 1985 city of Santa Maria's municipal supply well inventory inspection report:

<https://geotracker.waterboards.ca.gov/?surl=iwfub>

August 27, 1985 memo on meeting with SEMCO and county of Santa Barbara regarding impacts to city of Santa Maria's municipal supply well: <https://geotracker.waterboards.ca.gov/?surl=3a63v>

August 26, 1985 NOV from county of Santa Barbara: <https://geotracker.waterboards.ca.gov/?surl=i56pz>

September 25, 1987 internal memo on source of pollution found in municipal well:

<https://geotracker.waterboards.ca.gov/?surl=1wsl1>

⁹ October 1, 1989 Soil Gas Survey report: <https://geotracker.waterboards.ca.gov/?surl=466q0>

¹⁰ San Francisco Bay Environmental Screening Levels:

https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.html

essentially rendered the directive completely ineffective. Therefore, the Deviation from Requirement is **major**.

Per Day Factor: (0.55)

Using Table 3 in the Enforcement Policy, a moderate Potential for Harm and a major Deviation from Requirement results in a Per Day Factor of 0.55. The Per Day Factor is multiplied by the days of violation and the statutory maximum per-day liability.

Multiple Day Violations: (1,888)

The 2015 Order required the Dischargers to submit the workplan by December 14, 2015. The Dischargers submitted the first phase of the workplan on February 12, 2021. The Prosecution Team has discretion to allege this violation as ongoing since the additional phases of the workplan are still outstanding; however, in an exercise of discretion, it has selected to use February 12, 2021, as the violation period end date. Thus, the violation period is from December 14, 2015 to February 12, 2021.

The Enforcement Policy states that for certain violations that are assessed civil liability on a per-day basis, the number of days may be collapsed if at least one of three express findings are made. Here, the Dischargers' failure to submit a workplan has not resulted in a discrete economic benefit that can be measured on a daily basis.

Following the making of an express finding, the Prosecution Team has discretion to collapse days anywhere between the maximum allowed pursuant to the Enforcement Policy and the actual days of violation. Here, the Prosecution Team has elected to collapse the days of violation to the maximum extent as allowed pursuant to the Enforcement Policy, which reduces the days of violation from 1,888 days to 96 days.

Initial Liability Amount

The 2015 Order was issued pursuant to Water Code section 13267. Water Code section 13268, subdivision (b)(1) authorizes the Central Coast Water Board to impose administrative civil liability of \$1,000 per day for each violation of Water Code section 13267. The initial liability amount is the statutory maximum liability multiplied by the Per Day Factor multiplied by the collapsed days of violation.

$$\mathbf{\$1,000/day \times 0.55 \times 96 \text{ days} = \$52,800}$$

Step 4. Adjustment Factors

The Enforcement Policy requires a regional board to consider a discharger's conduct using three factors for modification of the initial liability amount determined in steps 1 through 3: The discharger's degree of culpability; the discharger's prior history of violations, and the extent to which the discharger voluntarily cooperated in returning to compliance including voluntary cleanup efforts.

Degree of Culpability: (1.4)

The culpability multiplier ranges between 0.75 and 1.5 with a lower multiplier for accidental incidents and a higher multiplier for intentional or negligent behavior. The Dischargers are highly culpable for the failure to timely submit a workplan. The Dischargers have been aware of the environmental pollution at the Site since at least November 15, 2002, when Chris Mathys and Oro Financial of California, Inc. sent Central Coast Water Board staff a cost recovery acknowledgement for environmental regulatory oversight. Additionally, the Dischargers received cost recovery letters from 2003 through 2011, which gave them further notice of the contamination and ongoing oversight.

The 2015 Order was issued to Rhine, L.P., c/o Mr. Mathys, via certified mail and other Dischargers via USPS mail. While the correspondence was refused by Rhine, L.P. on October 30, 2015, and again on November 7, 2015, it was successfully delivered by a process server, who was hired to find Mr. Mathys and personally deliver the 2015 Order. The 2015 Order clearly described what was required of the Dischargers and provided contact information for Central Coast Water Board staff if the Dischargers had any questions related to the order requirements. Furthermore, the Dischargers had knowledge regarding Central Coast Water Board investigative orders given the issuance of the prior investigative order to the Dischargers in 2003. Finally, the Dischargers have experience purchasing and owning other cleanup sites overseen by the Central Coast Water Board, among other government agencies and, should therefore, be familiar with regulatory directives. **A multiplier of 1.4 is assigned.**

History of Violations: (1.1)

The Enforcement Policy states that where a discharger has a history of similar or numerous dissimilar violations, a regional board should consider adopting a multiplier above 1.1. The 2015 Order is the second directive sent to Dischargers. On July 18, 2003, the Central Coast Water Board issued a Water Code section 13267 order¹¹ to the Dischargers¹² requiring the submittal of a groundwater monitoring report. The Central

¹¹ The July 18, 2003 order: <https://geotracker.waterboards.ca.gov/?surl=y0ajp>

¹² The July 18, 2003 order was issued to Oro Financial of California, Inc. (then property owner) and follow-up correspondence was issued to Concha Investments, Inc. (subsequent property owner, which was merged into Oro Financial of California, Inc. shortly thereafter).

Coast Water Board issued a notice of violation (NOV) on December 3, 2003,¹³ for failure to submit a complete report by the required due date. Therefore, the Dischargers have a history of failing to submit a workplan or report in response to a Water Code section 13267 order. **A multiplier of 1.1 is assigned.**

Cleanup and Cooperation: (1.5)

This factor reflects the extent to which the Dischargers have voluntarily cooperated in returning to compliance after the violation and can range from 0.75 to 1.5. Central Coast Water Board made efforts to assist the Dischargers in coming into compliance with the 2015 Order. These efforts included providing information regarding the Site Cleanup Subaccount Program (SCAP) in the 2015 Order to give the Dischargers information on potential grant funding and application requirements. Although the Dischargers have maintained they are “under no position to assume or pay any additional expenses for testing, inspections or other charges,”¹⁴ they failed to pursue potential grant funding opportunities.¹⁵ The Central Coast Water Board also issued a NOV to the Dischargers on June 17, 2019, alerting the Dischargers of the ramifications of failing to comply with the 2015 Order and providing the Dischargers with an opportunity to come into compliance despite years of recalcitrance. The Dischargers failed to adequately respond. Despite these efforts on the part of the Central Coast Water Board, the Dischargers did not make any efforts to submit the workplan until most recently. A multiplier of 1.5 is assigned.

Step 5. Determination of Total Base Liability

The Total Base Liability is calculated by multiplying the initial liability amount by the three adjustment factors.

$$\mathbf{\$52,800 \times 1.4 \times 1.1 \times 1.5 = \$121,968}$$

Step 6. Ability to Pay and Continue in Business

The Enforcement Policy states that the Water Board may adjust the Total Base Liability amount if financial information is available to assess the discharger’s ability to pay the Total Base Liability amount or the effect of that amount on the discharger’s ability to continue in business. The Central Coast Water Board determines a discharger’s ability to pay an ACL based on its revenues and assets.

¹³ The December 3, 2003 NOV: <https://geotracker.waterboards.ca.gov/?surl=b129y>

¹⁴ Referenced from the Dischargers’ letters dated July 27, 2004, August 25, 2007, August 5, 2008, September 5, 2009, December 1, 2010, March 1, 2011, verbal communication on January 28, 2014, and petitions dated November 19, 2015, and June 19, 2019, available on GeoTracker.

¹⁵ In 2018, an incomplete SCAP funding application was submitted for the Site to the State Water Board Division of Financial Assistance by a consultant; however, Mr. Mathys did not respond to repeated attempts by the State Water Board to contact him regarding completion of the application.

According to tax assessor records, Rhine, L.P. owns three real properties valued in 2019 at \$123,925 (Assessor's Parcel Number 111-291-037); in 2020 at \$151,073 (Assessor's Parcel Number 116-009-032-000); and in 2019 at \$110,580 (Assessor's Parcel Numbers 5104-028-027). In total, Rhine, LP's real property assets are valued at over \$385,500. Oro Financial of California, Inc. owns four real properties valued in 2019 at \$60,051 (Assessor's Parcel Number 098-270-021); in 2019 at \$63,509 (Assessor's Parcel Number 118-203-54); in 2011 at \$117,300 (Assessor's Parcel Number 118-203-21); and in 2008 at \$9,696 (Assessor's Parcel Number 017-140-07). In total, Oro Financial of California, Inc.'s real property assets are valued at over \$250,000. Chris Mathys owns real property valued in 2019 at \$105,000 (Assessor's Parcel Number 500-100-20S); in 2019 at \$84,466 (017-140-08S); in 2019 at \$49,357 (Assessor's Parcel Number 026-300-009-000); in 2019 at \$15,578 (Assessor's Parcel Number 026-300-001-000); in 2019 at \$62,347 (Assessor's Parcel Number 026-320-001-000); in 2006 at \$149,179 (Assessor's Parcel Number 111-291-027); and 2006 at \$67,022 (Assessor's Parcel Number 111-291-028) In total, Chris Mathys' real property assets are valued at over \$532,000. In addition, Dischargers in recent years have sold real property assets for significant sums. Therefore, according to publicly available information and information in the record, the Dischargers have the ability to pay the liability and continue in business.

Step 7. Economic Benefit

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN) penalty and financial modeling program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN Version 2021.0.0. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes.

Based on the violation, the compliance action that should have been implemented to avoid the violation is submittal of a work plan. The BEN model is the appropriate tool for estimating the economic benefit of failing to submit the work plan required by the 2015 Order.

Staff have estimated potential costs associated with the compliance action. The total implementation cost for submittal of the work plan is estimated to be \$3,954. Although the work plan has not been submitted, it is assumed that the Dischargers intend to comply with the conditions of the 2015 Order. Therefore, the compliance action is considered delayed.

For conservative purposes, it is assumed that these actions would be completed by December 10, 2021. Details regarding the cost estimates for these actions are included

in the attached table. Based on specific assumptions within the model, the total economic benefit of noncompliance was determined to be approximately \$255.

Step 8. Other Factors as Justice May Require

The cost of investigation and enforcement are “other factors as justice may require” and could be added to the liability amount. The Prosecution Team has incurred \$3,925 in staff costs to prepare this action. This represents five hours by a senior engineering geologist and 25 hours by an engineering geologist to prepare the 2019 NOV and this administrative civil liability complaint. The staff costs were calculated using different rates of \$181.48/hour in 2019 and \$164.72/hour in 2020 for the senior engineering geologist and a rate of \$114.95/hour in 2019 and \$102.44/hour in 2020 for the engineering geologist (hourly rate, overhead, and benefits). No attorneys’ fees or management staff rates were included in this calculation. It is appropriate to increase the Total Base Liability amount by \$3,925 in consideration of these investigation and enforcement costs. Increasing the final proposed liability amount in this manner serves to create a more appropriate specific and general deterrent against future violations.

Step 9. Maximum and Minimum Liability Amounts

Pursuant to the Enforcement Policy, the minimum liability is \$141 (economic benefit + 10%).

The maximum liability for the reporting violations pursuant to Water Code section 13268 is \$1,000 per day.

Violation #1: 1,888 days x \$1,000 per day = \$1,888,000

Step 10. Final Liability Amount

Considering the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the three violations discussed above, including staff costs, is [\$121,968 + \$3,925 staff costs] **\$125,893**.

Attachment B

Economic Benefit Analysis													
Project Name													
Compliance Action	Capital Investment				One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?	Amount	Basis	Date	Delayed?					
1	\$ -	ECI	1/1/2015	Y	\$ 3,954	ECI	11/17/2020	Y	12/14/2015	12/10/2021	12/10/2021	7.40%	255
Income Tax Schedule: Corporation												Total Benefit: \$	255
USEPA BEN Model Version: Version 2021.0.0 (April 2021) Analyst: Erin Garner													
Assumptions: 1. The work plan required by the 13267 order would be considered an operational, one-time expenditure. There are no associated capital or annual expenditures required by the order. 2. Personnel costs used for estimating work plan costs were based on data from payscale.com (11/17/2020) using average annual base salaries with a 2.5 multiplier. 3. The date that the work plan was ordered to be submitted by was 12/14/2015. This is the non-compliance date. 4. The compliance date and penalty payment date are the same, 12/10/2021.													