

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0536

IN THE MATTER OF

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
DEUEL VOCATIONAL INSTITUTION
WASTEWATER TREATMENT FACILITY
SAN JOAQUIN COUNTY

This Administrative Civil Liability Complaint (Complaint) is issued to the California Department of Corrections and Rehabilitation (CDCR or Discharger) pursuant to California Water Code (Water Code) section 13323, which authorizes the Executive Officer to issue this Complaint, and Water Code section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint proposes administrative civil liability pursuant to Water Code sections 13268 and 13385. The allegations in this Complaint are based on violations of Cleanup and Abatement Order (CAO) R5-2015-0704 and Waste Discharge Requirements Order R5-2014-0014 (NPDES CA0078093).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) alleges the following:

BACKGROUND

1. The Discharger owns and operates the Deuel Vocational Institution Wastewater Treatment Facility (Facility) a wastewater collection, treatment and disposal system, which provides sewerage service to the Deuel Vocational Institution, a California prison. Treated municipal wastewater is discharged into Deuel Drain, tributary to Paradise Cut and Old River, which are part of the Sacramento-San Joaquin Delta and waters of the United States.
2. In order to regulate discharges from the Facility, on 7 February 2014, the Central Valley Water Board adopted Waste Discharge Requirements (WDRs) Order R5-2014-0014, which contained new requirements and rescinded WDRs Order R5-2008-0164, except for enforcement purposes. On 9 October 2014, the Board amended the WDRs by adoption of Order R5-2014-0014-01, which allows for participation in the Delta Regional Monitoring Program. Otherwise, the amended WDRs contain the same requirements as WDRs Order R5-2014-0014.
3. On 30 March 2015, the Assistant Executive Officer issued Cleanup and Abatement Order (CAO) R5-2015-0704 to the Discharger for violations and threatened violations of the WDRs, including: chronic toxicity in the effluent, exceedance of the nitrate effluent limit, damage to the membrane bioreactor, use of expired chemical reagents, failure to develop standard operating procedures, lack of adequate staffing, poor housekeeping, and the potential for increased influent flows and lack of treatment capacity. These violations are likely occurring at the Facility due to 1) inadequate operation and maintenance of the Reverse Osmosis Groundwater Treatment Plant (RO Plant), which had been installed to treat groundwater from onsite supply wells to provide potable water to inmates and to reduce electrical conductivity in the influent to the wastewater treatment plant, and 2) inadequate operation and maintenance of the membrane bioreactor (MBR) at the Facility.
4. The CAO requires submittal of a number of reports which, if implemented, will bring the Discharger back into compliance with the WDRs and will allow continued, reliable operation of the Facility. The reports are described in detail in Attachment A to this Complaint.

**VIOLATIONS OF CAO R5-2015-0704:
FAILURE TO SUBMIT TECHNICAL REPORTS**

5. According to the Hereby Ordered section of the CAO, "... *technical reports shall contain the information and decisions required by the following paragraphs. If a report is submitted without the required information or decision, then the Discharger is in violation of this Order and subject to additional enforcement action.*"
6. The Discharger has a history of submitting late and incomplete technical and progress reports. Since the adoption of the CAO on 30 March 2015, the Discharger has been issued two Notices of Violations (NOVs) and multiple staff-enforcement emails regarding late and incomplete reports, as described below.
7. On 8 May 2015, Board staff issued a NOV for the non-submittal of three reports (*RO Plant Spare Parts Status Report, MBR Modules Replacement Time Schedule, and the First Quarter Progress Report*). The NOV informed the Discharger that the maximum liability as of 8 May 2015 for these delinquent reports was \$110,000. In addition, the NOV required the Discharger to submit these delinquent reports immediately to avoid further enforcement action.
8. On 11 May 2015, the Discharger responded submitted what it described as the *First Quarter Progress Report*. However, a review of the document shows that it does not contain the information required by the CAO and is therefore materially deficient. In addition, the Discharger stated that it had submitted the *RO Plant Spare Parts Status Report* and *MBR Modules Replacement Time Schedule* on 1 May, as required. Further review by Board staff found that although the *RO Plant Spare Parts Status Report* and *MBR Modules Replacement Time Schedule* had been submitted on time, these reports did not include all of the required information and therefore the Discharger did not comply with the CAO. The information which is missing is described in Attachment A to this Order.
9. On 30 June 2015, Board staff issued a NOV for delinquent technical reports, which included the *RO Plant Spare Parts Status Report, MBR Modules Replacement Time Schedule and O&M Manual and SOPs*¹. The NOV includes detailed explanations for why these technical reports are materially deficient and requested the Discharger to resubmit these reports forthwith. The Discharger was informed that the maximum liability as of 30 June 2015 for these delinquent reports was \$160,000. However, as of 1 May 2016, the Discharger has not submitted reports which contain the information required by the CAO.
10. On 4 September 2015, the Central Valley Water Board's Assistant Executive Officer emailed the Discharger to express concerns regarding compliance with CAO R5-2015-0704 and the failure to resubmit the three technical reports listed in the above Finding. The email informed the Discharger that the maximum liability as of 4 September 2015 for these delinquent reports is over \$350,000. In addition, it stated that the Board is extremely concerned about the poor performance of the Facility and the numerous recent violations of the effluent limitations. On 4 September 2015, the Associate Warden responded by email and stated that the Facility's Operations budget for FY 15-16 still had not been received, and that he would respond within a week with the status and options for moving forward. Board staff subsequently participated in a conference call with the Discharger to discuss the outstanding reports and what is required by the CAO.

¹ Submitted on 28 May 2015

11. The Discharger has submitted two reports which comply with the CAO: the *Time Schedule for Cleaning and Properly Maintaining Facility Grounds* and the *Third Party Selection Report*.
12. On 5 February 2016, Central Valley Board staff emailed the Discharger regarding the *Third and Fourth Quarter Progress Reports*. Board staff stated that these progress reports do not contain the information required by the CAO. Staff provided a detailed explanation as to what is to be submitted in each progress report, and requested the Discharger to resubmit these delinquent reports immediately. As of 1 May 2016, the Discharger has failed to respond.
13. Board staff met with the Discharger multiple times prior to issuance of the CAO, provided the Discharger with an opportunity to comment on the draft Order, and since the CAO's adoption, has spent considerable effort attempting to educate the Discharger so that it will comply. However, as of 1 May 2016, the Discharger continues to fail to comply with the CAO. The table below outlines the reporting violations.

Delinquent Monitoring Reports	Due Date	Received	Status	Days of Violation ¹
First Quarter 2015 Progress Report	4/30/15	5/11/15	Incomplete	366
RO Plant Spare Parts Status Report	5/1/15	5/1/15	Incomplete	365
MBR Modules Replacement Time Schedule	5/1/15	5/1/15	Incomplete	365
O&M Manual and SOPs	6/1/15	5/28/15	Incomplete	334
Second Quarter 2015 Progress Report	7/30/15	7/19/15	Incomplete	275
Third Quarter 2015 Progress Report	10/30/15	1/27/15	89 Days Late Incomplete	183
Fourth Quarter 2015 Progress Report	1/30/16	1/27/15	Incomplete	91
Total Days				1,979

¹As of 1 May 2016.

VIOLATIONS OF WDRS ORDER R5-2014-0014

14. The WDRs allow the discharge of treated wastewater to surface waters, under the condition that the Discharger complies with the effluent limitations and other limitations prescribed by the Board. Failure to comply with the WDRs subjects the Discharger to mandatory minimum penalties as well as discretionary penalties.
15. The purpose of the CAO was to compel the Discharger to take actions to upgrade its wastewater treatment facility such that it would continuously comply with its WDRs. However, between adoption of the CAO on 30 March 2015, and 31 December 2015, the Discharger violated the effluent limit for total coliform organisms 28 times, violated the effluent limit for nitrate plus nitrite effluent limit four times, and violated the effluent limit for ammonia three times. On 28 March 2016, the Assistant Executive Officer issued Administrative Civil Liability Complaint (ACLC) R5-2016-0523 to the Discharger. The ACLC assessed \$111,000 in mandatory minimum penalties for effluent limit violations that occurred between 1 April 2014 and 31 December 2015. The

Discharger has paid the penalty.

16. This Order assesses discretionary penalties for those effluent limit violations that occurred between 1 January 2016 and 30 April 2016, as shown on Attachment B to this Order. There were five total coliform violations and two nitrate plus nitrite violations. During the time in which the effluent limit was violated, over 2.8 million gallons of wastewater was discharged to the Deuel Drain. It is noted that the Discharger also exceeded the chronic toxicity limit for eight of the eleven toxicity tests that it conducted since issuance of the CAO. While these violations are considered as part of the penalty calculation (Attachment A), this Order does not specifically assess liability for the toxicity limit violations.
17. On 12 January 2016, Board staff issued a NOV for violating the final effluent limitations for ammonia, nitrate plus nitrite, and total coliform organisms between August 2015 and November 2015. Board staff requested a response summarizing actions the Discharger would immediately implement to properly treat its wastewater and comply with the NPDES permit until the damaged membrane bioreactor modules are replaced. The Discharger has not provided a specific response to this NOV; however, the Discharger did respond on 9 March 2016 as described below.
18. On 18 February 2016, Board staff issued a NOV for violating the final effluent limitations for total coliform organisms during December 2015. Board staff requested that the Discharger describe the preventative measures that would be implemented to prevent similar violations until the membrane bioreactors are replaced. On 9 March 2016, the Discharger responded to the February NOV and stated (a) on 6 August 2015 a contractor made changes to the "maintenance clean program", (b) in late October 2015, two of the UV trains were re-built, (c) on 26 January 2016 an additional UV train became operational, and (d) a purchase order was issued on 22 February 2016 to replace the membrane biofilters.
19. Standard Provision I.D of the WDRs Standard Provision I.D of WDRs Order R5-2014-0014-01 states in part: "The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order . . . This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a Discharger only when necessary to achieve compliance with the conditions of this Order." The Discharger has delayed upgrades and maintenance to the wastewater treatment plant thereby further causing pollution to the Deuel Drain. In particular, the CAO required that the Discharger replace the MBR modules by 31 March 2016. However, as of 1 May 2016, the modules have not been replaced.

REGULATORY CONSIDERATIONS

20. As described above, the Discharger has failed to submit technical and progress reports as required by CAO R5-2015-0704. The Discharger has also violated its WDRs Order R5-2014-0014 by discharging waste water in exceedance of permitted limits and by failing to properly operate and maintain its wastewater treatment facility.
21. The Central Valley Regional Water Board may impose administrative civil liabilities for violations of a discharger's WDR permit and/or applicable Board orders pursuant to the procedures described in Water Code section 13323. This Complaint alleges the Discharger violated WDRs Order R5-2014-0014 and CAO R5-2015-0704, and seeks the imposition of administrative civil liability in accordance with Water Code sections 13268 and 13385.

22. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board. Surface water drainage from the facility is the Sacramento San Joaquin Delta. The designated beneficial uses of the Sacramento San Joaquin Delta are municipal and domestic supply; agricultural supply; water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; migration of aquatic organisms; spawning, reproduction and/or early development; wildlife habitat; and navigation.
23. Pursuant to Water Code section 13385, in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, 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 the 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.
24. Issuance of this Complaint to enforce Division 7, Chapter 5.5 of the Water Code is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321, subdivision (a)(2) and all applicable law.

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13268

25. Water Code section 13268, subdivision (a)(1) states: *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).*
26. Water Code section 13268, subdivision (b)(1) states: *Civil liability may be administratively imposed by a regional board ...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.*
27. CAO R5-2015-0704 requires that reports be submitted pursuant to Water Code section 13267. As outlined in Finding 13, the Discharger has failed to submit seven technical and progress reports that contained the information required by the CAO. As of 1 May 2016, the reports are a total of 1,979 days late.
28. **Maximum Civil Liability:** Per Water Code section 13268, subdivision (b)(1) the maximum administrative civil liability that may be assessed for not submitting the monitoring reports required by the CAO is **one million nine hundred seventy nine thousand dollars (\$1,979,000).**

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13385

29. Water Code section 13385(a)(2) states that any person who violates a waste discharge requirement may be subject to civil liability.
30. Water Code section 13385(c) states, in relevant part:
 - (c) Civil liability may be imposed administratively by the state board or a regional board... in an amount not to exceed the sum of both of the following:

- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
- (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
- (e) At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

31. **Maximum Civil Liability for Discharge to Surface Waters:** Per Water Code section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per day of violation, plus \$10 per gallon for each gallon of waste discharged over 1,000 gallons. The discharge took place over 7 days, and therefore the maximum per-day penalty is \$70,000. A total of 2,876,049 gallons were discharged during the seven days of violation; of this amount, 2,869,049 gallons were discharged over 1,000 gallons per discharge event. The maximum per-gallon penalty is \$28,690,490. The maximum civil penalty is the sum of the per-day and per-gallon penalties, or \$28,760,490.
32. **Maximum Civil Liability for Failing to Comply with WDRs:** Per Water Code section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per day of violation. The Discharger has failed to comply with Provision I.D of the WDRs. In particular, the Discharger has failed to comply with the CAO requirement that the MBR modules be replaced by 31 March 2016. As of 1 May 2016, the Discharger is in violation for 30 days, for a maximum liability of \$300,000.
33. **Minimum Civil Liability for All Violations:** Pursuant to the State Water Board's Enforcement Policy, liability must be assessed to recover at a minimum ten percent more than the economic benefit of noncompliance derived from the acts that constitute each violation. The minimum civil liability for all violations is estimated to be \$2,293,251.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

34. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385, subdivision (e). The entire Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf.
35. The recommended administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, and Water Code sections 13268 and 13385, as explained in detail in Attachment A to this Complaint. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

36. As described above, the maximum penalty for all three types of violations is \$31,039,490 and the minimum penalty is \$2,293,251. Based on consideration of the above facts, and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of \$4,037,620. The specific factors considered in this penalty are detailed in Attachment A.
37. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's WDRs or CAO for which penalties have not yet been assessed or for violations that may subsequently occur.
38. On 14 February 2014, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Central Valley Region. The 14 February 2014 Delegation of Authority also authorizes Andrew Altevogt to issue administrative civil liability complaints.

THE CALIFORNIA DEPARTMENT OF CORRECTION AND REHABILITATION IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an administrative civil liability in the amount of **four million thirty seven thousand six hundred twenty dollars (\$4,037,620)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code section 13385, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **13/14 October 2016**, unless the Discharger does one of the following by **12 August 2016**:
 - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board. In addition, submit payment for the proposed civil liability in the amount **four million thirty seven thousand six hundred twenty dollars (\$4,037,620)** to the State Water Board with a copy of the check to the Central Valley Water Board; or
 - b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
 - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
4. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
5. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and

expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original Signed by

ANDREW ALTEVOGT, Assistant Executive Officer

22 July 2016

DATE

Attachment A: Penalty Calculation Methodology including Exhibit 1, Economic Benefit Analysis
Attachment B: Effluent Limit Violations

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the California Department of Corrections and Rehabilitations (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2016-0536 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **four million thirty seven thousand six hundred twenty dollars (\$4,037,620)** by check that references "ACL Complaint R5-2016-0536" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment at PO Box 1888, Sacramento, California, 95812-1888 by **12 August 2016**. The waiver and a copy of the check must be submitted to the Central Valley Water Board at 11020 Sun Center Drive #200, Attn: Wendy Wyels, Rancho Cordova, California, 95670 by **12 August 2016**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

Attachment A – ACL Complaint No. R5-2016-0536
Specific Factors Considered for Administrative Civil Liability
California Department of Corrections and Rehabilitation
Deuel Vocational Institution Wastewater Treatment Facility

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

Background

The Deuel Vocational Institution wastewater treatment facility discharges treated wastewater to the Deuel Drain, a water of the U.S. The Deuel Drain is part of the Southern Delta which is listed in the 303(d) list for chlorpyrifos, DDT, diazinon, electrical conductivity, group A pesticides, invasive species, mercury, and unknown toxicity. The Discharger is regulated by Waste Discharge Requirements Order R5-2014-0014-01 (NPDES CA0078093) (WDRs or Permit) which prescribes effluent limits and other conditions that must be met in order to discharge the wastewater.

On 30 March 2015, the Assistant Executive Officer issued Cleanup and Abatement Order R5-2015-0704 (CAO). Finding 23 of the CAO describes the reasons for issuance:

The Discharger is in violation of the WDRs because the reverse osmosis treatment plant, which removes salts and therefore allows the wastewater treatment plant to comply with effluent limits, has failed to operate reliably and has remained out of service for 66% of the time since it was permitted. Without the reverse osmosis plant, the discharged effluent will likely continue to exceed chronic toxicity limits. In addition, inadequate operation and maintenance has resulted in water quality exceedances above the permitted effluent limitations. When left unaddressed, there is a likely potential that the discharges of domestic wastewater will continue to contain levels exceeding the chronic toxicity and nitrate/nitrite limits in WDRs Order R5-2014-0014-01. Requiring the Discharger to comply with this Order, including the requirement to continuously operate the RO plant and reporting obligations related to the operations and maintenance of the RO plant, are necessary remedial actions to prevent wastewater from polluting Deuel Drain and its connected tributaries.

The CAO requires that the Discharger continuously operate the RO plant and to take certain actions if it is off-line. The Discharger has generally complied with this requirement and it is not the subject of this Complaint. The CAO also required the Discharger to submit a number of technical reports, which if implemented, will bring the Discharger back into compliance with the WDRs and will allow continued, reliable operation of the Facility.

Effluent Limitations and Discharge Specifications IV.A. of WDRs Order R5-2014-0014-01 states in part: "The Discharger shall maintain compliance with the following effluent limitations..." including the limitation for nitrate plus nitrite (as N) of 10 mg/L as a monthly average and a 7-day median for total coliform organisms of 2.2 MPN/100 ml. The Discharger has not complied with these requirements, as evidenced by the ongoing effluent limit violations and chronic toxicity violations.

Standard Provision I.D of WDRs Order R5-2014-0014-01 states in part: "The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order . . . This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a Discharger only when necessary to achieve compliance with the conditions of this Order." The Discharger has delayed upgrades and maintenance to the wastewater treatment plant thereby further causing pollution to the Deuel Drain.

The Complaint has been issued because the Discharger has (a) failed to submit technical reports required by the CAO, (b) continued to discharge in violation of the effluent limits in the WDRs, and (c) failed to properly operate and maintain the wastewater treatment plant in violation of the WDRs. These three violations will be addressed separately.

Violation #1: Failure to Submit Technical and Progress Reports Required by CAO R5-2015-0704

Background for Violation #1

The Discharger has submitted seven reports that are materially deficient and do not contain the information required by CAO R5-2015-0704. Therefore, each deficient report is a violation of the CAO. The required content of each report, as well as what was submitted, is summarized below.

1. Item #3 of the CAO required that a *RO Plant Spare Parts Status Report* be submitted by 1 May 2015. The report was to document “that the RO plant has adequate spare parts available, describe redundancy and/or features in place for continuous operation, and an action plan containing a schedule to prevent chronic toxicity when the RO plant is taken off-line for maintenance.” The Discharger submitted a document on 1 May 2015 which states that \$250,000 in funding has been secured to purchase parts, but fails to explain which spare parts are available now, which need to be purchased and when, the cost of the parts, or if adequate parts are on-site for repairs that are necessary to properly run and maintain the RO Plant. The report does not contain any information regarding the action plan and schedule to prevent chronic toxicity when the RO plant is off-line. Therefore, the report is materially deficient. The Discharger was notified of this fact in writing on 30 June 2015 and 4 September 2015. An adequate report has not been submitted.
2. Item #4 of the CAO requires that a *MBR Modules Replacement Time Schedule* be submitted by 1 May 2016. The report was to provide a time schedule for replacing the membrane bioreactor (MBR) modules, which was not to extend beyond 31 March 2016. The schedule was to include the process for all contracting actions necessary to complete the work. The Discharger submitted a document on 1 May 2015 which states that the Discharger has requested quotes; however, the Discharger failed to provide a schedule that includes the tasks to complete the MBR module replacement by 31 March 2016. Therefore, the report is materially deficient. The Discharger was notified of this fact in writing on 30 June 2015 and 4 September 2015. An adequate report has not been submitted, and as of 1 May 2016, the MBR modules have not been replaced.
3. Item #5 of the CAO requires that the Discharger update and submit the Facility’s *Operation and Maintenance (O&M) Manual and Standard Operating Procedures (SOPs)* by 1 June 2015. The purpose of the document was to “maximize efficiency of the MBR under current operating conditions such that the wastewater treatment plant effluent will meet all requirements of WDRs Order R5-2014-0014.” The Discharger submitted a document on 28 May 2015. However, it was just a copy of the 2011 O&M Manual, and was not an update as required by the CAO. The Discharger stated “A consultant has been retained to evaluate the operation of the plant. Changes to the plant and documents will be made if the consultant determines that corrections need to be made in order to improve the operation of the plant.” The CAO required an updated O&M Manual to reflect the current challenges of treating the wastewater; however, the Discharger did not submit this. Meanwhile, the Facility is not operating effectively and effluent

limits continue to exceed the permit's effluent limits. Therefore, the report is materially deficient. The Discharger was notified of this fact in writing on 30 June 2015 and 4 September 2015. An adequate report has not been submitted.

4. Item #10 of CAO R5-2015-0704 requires that the Discharger submit quarterly progress reports "describing the work completed to date to comply with each of the above requirements, as well as what work will be conducted in the next quarter."
 - a. The first progress report, covering the First Quarter 2015, was due on 30 April 2015. After receipt of a Notice of Violation, the document was submitted on 11 May 2015. However, the document described the work that had been completed under CAO R5-2015-0703, the Order issued to the Discharger for violations of the Title 27 WDRs. The report was deficient because it did not describe any of the work completed, or planned, in relation to CAO R5-2015-0704.
 - b. The Second Quarter 2015 progress report was due on 30 July 2015. The document was submitted on 30 July 2015. Once again, it contained information pertaining to the Title 27 CAO, R5-2015-0703. However, there are a few lines describing work that had been completed at the wastewater plant ("submitted purchase order request for purchase of the wastewater module membranes" and "replaced second RO train membranes") and work that will be done during the next quarter (establishing a contract with a consultant to complete Item #9 of the CDO, as well as some maintenance work at the Facility). However, the report did not contain the specificity needed to comply with the CAO and for Board staff to determine if the Discharger was making progress towards completing all of the tasks.
 - c. The Third Quarter 2015 progress report was due on 30 October 2015, but was not submitted until 27 January 2016. Again, the majority of the report described work completed in response to the Title 27 CAO. With respect to the work completed at the wastewater treatment plant, the Third Quarter progress report had the same statement as in the Second Quarter Progress Report: "submitted purchase order request for purchase of the wastewater module membranes". With respect to work that will be undertaken during the next quarter, the report had the same text as the previous report regarding establishing a contract with a consultant to complete Item #9 of the CAO. The report did not contain the specificity needed to comply with the CAO and for Board staff to determine if the Discharger was making progress towards completing all of the tasks.
 - d. The Fourth Quarter 2015 progress report was due on 30 January 2016 and was submitted on 27 January 2016. This report only described work completed in response to the Title 27 CAO. With respect to work that will be undertaken during the next quarter, the report had the same text as the previous two reports regarding establishing a contract with a consultant to complete Item #9 of the CAO. The report did not contain the specificity needed to comply with the CAO and for Board staff to determine if the Discharger was making progress toward completing all of the tasks. A review of the Second through Fourth Quarterly Progress reports shows that the Discharger has made no progress at all towards complying with the CAO.
 - e. On 5 February 2016, staff sent an email to the Discharger stating that the Quarterly Progress reports are materially deficient and do not comply with the CAO. The email gave details of what is expected in a progress report: "...for example, a completed task outlined in the CAO R5-2015-0704 should include the date it was completed and uncompleted tasks should

include detail such as a timeline, a budget if applicable, and/or any other pertinent information to allow Board staff to determine if completion is on schedule for the dates listed in the CAO R5-2015-0704. In addition, the Progress Reports should thoroughly describe all activities that were performed by the Discharger to achieve compliance with the CAO R5-2015-0704 in the previous quarter and list of steps the Discharger is taking to hasten completion of the remaining uncompleted tasks..." To date, the Discharger has not submitted adequate First through Fourth Quarter 2015 progress reports.

Step 1 – Potential for Harm for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

Step 2 – Assessment for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

Step 3 – Per Day Assessment for Non-Discharge Violations

The "per day" factor is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of the deviation from the applicable requirements.

Potential for Harm

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. In this case, a "Moderate" factor is appropriate because the submission of deficient technical reports suggests the Discharger has failed to take the necessary steps to operate the Reverse Osmosis plant in a manner that is most protective of water quality.

The Facility discharges domestic wastewater to Deuel Drain, a water of the United States, tributary to the San Joaquin River via Paradise Cut within the Sacramento – San Joaquin Delta. The designated beneficial uses of Deuel Drain that could be impacted by the discharge include municipal and domestic supply; agricultural irrigation; agricultural stock watering; industrial process water supply; industrial service supply; water contact recreation; other non-contact water recreation; warm freshwater aquatic habitat; cold freshwater aquatic habitat; warm fish migration habitat; cold fish migration habitat; warm spawning habitat; wildlife habitat; and navigation. The CAO contains requirements to submit reports to allow Board staff to evaluate whether the Discharger has taken the necessary steps to abate the ongoing pollution to Deuel Drain. The Discharger failed to submit a report that required a plan and schedule to prevent chronic toxicity when the RO plant was offline. No effort was made by the Discharger to provide an updated Operation and Maintenance Manual to maximize the efficiency of the membrane bioreactor modules. Quarterly progress reports were submitted late with little to no relevant content to determine the extent of compliance with requirements in the CAO. Meanwhile, because the Discharger failed to comply with the terms of the CAO, discharges of wastewater beyond permitted limits continued to cause pollution to the Deuel Drain. The failure to submit the required reports has an ancillary effect and/or threat to beneficial uses. The Discharger's existing operations are inadequate to meet effluent limitations in its permit. The intention behind the CAO was to require that the Discharger take short-term and long-term steps to improve its wastewater treatment system such that it could reliably comply with the effluent limits of its WDRs for the protection of the beneficial uses of the Deuel Drain. Without the information required by the reports in the CAO, the Discharger is presumed to be out of compliance with the actions necessary to abate the ongoing pollution to Deuel Drain. This

presents a substantial threat to beneficial uses. Therefore a moderate potential for harm was assessed.

A “Major” deviation from the requirement is also appropriate because the Discharger repeatedly submitted inadequate technical reports, which shows the Discharger’s disregard for compliance with regulatory requirements and inability to fulfill the specific requirements outlined in the CAO thereby rendering ineffective the Regional Board’s order to abate the effects of continuing pollution. Using Table 3 in the Enforcement Policy, the Per Day Factor of 0.55 is assigned. This value is to be multiplied by the days of violation and the maximum per day penalty, as shown in the Initial Liability table below.

Days of Violation

The Enforcement Policy provides that, for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation. In order to adjust the per-day basis, the Central Valley Water Board must make express findings that the violation: (1) is not causing daily detrimental impacts to the environment or the regulatory program; or (2) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (3) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. The Prosecution Team finds that it is possible to adjust the per-day basis for civil liability for the Progress Reports because no economic benefit can be measured on a daily basis for these reports that are considered a one-time cost.

The table below summarizes the date each required technical report was due. The days of violation are calculated from the due date of each report through 1 May 2016.

Delinquent Reports

Reports	Due Date	Received	Status	Days of Violation	Days of Violation (including reduced days, if applicable)
First Quarter 2015 Progress Report	4/30/15	5/11/15	Incomplete	366	18
RO Plant Spare Parts Status Report	5/1/15	5/1/15	Incomplete	365	365 ¹
MBR Modules Replacement Time Schedule	5/1/15	5/1/15	Incomplete	365	365 ¹
O&M Manual and SOPs	6/1/15	5/28/15	Incomplete	334	334 ¹
Second Quarter 2015 Progress Report	7/30/15	7/19/15	Incomplete	275	15
Third Quarter 2015 Progress Report	10/30/15	1/27/16	Incomplete	183	12
Fourth Quarter 2015 Progress Report	1/30/16	1/27/16	Incomplete	91	9
Total Days				1,979	1,118

¹ Reduction of the days of violation is not applicable.

Violation 1: Initial Liability

(0.55 factor from Table 3) x (1,118 days) x (\$1,000/day) = \$614,900

Step 4A – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean-up or cooperate with regulatory authority, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. This Discharger has multiple levels of management overseeing the wastewater treatment facility, and while certain individuals have attempted to cooperate with the Board and comply with the CAO, the multi-layered management system and insufficient cross-training of personnel to run the WWTP plant appears to be a few of the key deficiencies contributing to the lack of over-all compliance. Therefore, it is appropriate to use a culpability multiplier of 1.1 for this adjustment factor.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. Prior to issuance of the CAO, Board staff met with the Discharger to try and achieve voluntary compliance. When this was not possible, Board staff afforded the Discharger an opportunity to comment on the draft CAO, and incorporated the Discharger's requests for date changes. Since issuance of the CAO, Board staff has provided two Notices of Violation and several emails relating to the inadequate technical reports. Although the Discharger persists in submitting incomplete reports, the Facility operations staff has cooperated on several occasions such as notifying Regional Board staff in a timely manner when the RO Plant was taken off-line for maintenance and conducting additional chronic toxicity testing as required by the CAO. The Discharger was given a multiplier value of 1.0.

History of Violation

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1 to be used. The Discharger has a history of violations. This includes prior administrative civil liabilities assessing mandatory minimum penalties for effluent violations of the NPDES permit (see Orders R5-2010-0549, R5-2011-0575, R5-2014-0050, R5-2014-0518, and R5-2016-0523), as well as the issuance of three Cleanup and Abatement Orders for various violations of the NPDES permit, the Title 27 permit, and the Dairy General Order.

In addition, the Discharger has history of submitting late and/or incomplete reports. For example, on 12 January 2012, the Discharger exceeded the chronic toxicity trigger level of 1 Toxic Unit Chronic (TUc) with a reported result of 1.33 TUc for *Selenastrum capricornutum*. Consequently, the Discharger initiated accelerated monitoring but was unable to achieve four consecutive accelerated monitoring tests that did not exceed the monitoring trigger. Board staff made several requests to the Discharger to

submit a Toxicity Reduction Evaluation (TRE) Action plan (26 July 2012, 26 October 2012, and 30 January 2013) as required by its WDRs; finally, on 27 March 2013 the Discharger submitted a Toxicity Reduction Evaluation (TRE) Report. In addition, the Discharger was required to submit a Salinity Evaluation and Minimization Plan by 1 December 2014. The Discharger neglected to submit the report. After several phone conversations with the Discharger; finally, on 13 January 2015 the Discharger submitted the report 42 days late. Therefore, a multiplier value of 1.4 is appropriate given the frequency of late and delinquent reporting, as well as the nature of prior enforcement actions against CDCR related to this Facility.

Violation 1- Total Base Liability

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

$$\$614,900 \times 1.1 \times 1.0 \times 1.4 = \$946,946$$

**Violation #2: Effluent Limitation Violations from
1 January through 30 April 2016**

Background for Violation #2

The intention behind the CAO was that the Discharger would take short-term and long-term steps to improve its wastewater treatment system such that it could reliably comply with the effluent limits of its WDRs. Beyond not submitted the required reports in the CAO, the Discharger has not implemented the necessary actions to improve the performance of its wastewater treatment system. It comes at no surprise that wastewater discharged continues to exceed the effluent limits in its NPDES permit.

Between 1 January and 30 April 2016 (i.e., through submittal of the most recent monitoring report), the Discharger exceeded seven effluent limits, in violation of the WDRs: five for total coliform organisms and two for nitrate plus nitrite, as listed on Attachment B. The Complaint assesses discretionary penalties for these effluent limit violations. It is noted that the Discharger also exceeded the chronic toxicity limit for eight of the eleven toxicity tests that it conducted since issuance of the CAO. The Complaint does not specifically assess liability for the toxicity limit violations; however, these violations are considered in the Potential for Harm factor.

Step 1 – Potential for Harm for Discharge Violations

The “potential harm to beneficial uses” factor considers the harm that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Harm or Potential Harm to Beneficial Uses.

This factor evaluates direct or indirect harm or potential for harm from the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses ranges from negligible (0) to major (5). The Facility discharges domestic wastewater to Deuel Drain, a

water of the United States, tributary to the San Joaquin River via Paradise Cut within the Sacramento – San Joaquin Delta. The designated beneficial uses of Deuel Drain are described above in Violation 1. Discharges to surface water typically must be treated to a high standard to prevent adverse impacts to aquatic life and human health. Toxicity is the degree to which a substance can damage a living or non-living organism. Toxicity can refer to the effect on a whole organism, such as an animal, bacterium, or plant, as well as the effect on a substructure of the organism, such as a cell or an organ. In this case, the discharge consisted of partially treated wastewater. The Facility routinely exceeds the NPDES permit's chronic toxicity trigger level of 1 Toxic Unit Chronic (TUc) and according to the 27 March 2013 and 13 April 2015 Toxicity Reduction Evaluation (TRE) reports, one of the sources of toxicity in the Facility's effluent is high salinity. The wells which supply drinking water to the Deuel Vocational Institution's inmates and staff contain high salinity.

According to the Discharger's SMRs, the Discharger violated the nitrate plus nitrite monthly average effluent limitation. The Discharger stated that high nitrate plus nitrite is due to damaged membrane bioreactor (MBR) modules, which decreases the detention time in the denitrification process resulting in high nitrate plus nitrite in the effluent. The drinking water Maximum Contaminant Level (MCL) is the maximum concentration of a chemical that is allowed in public drinking water. The established MCLs by the U.S. Environmental Protection Agency (EPA) for nitrate and nitrite are 10 mg/L and 1 mg/L, respectively. Exposure to high levels of nitrate plus nitrite may cause serious health problems to aquatic species and human, such as the reduction of oxygen amount in the bloodstream. Elevated levels of nitrate and nitrite in drinking water have been known to cause a potentially fatal blood disorder in infants under six months of age called methemoglobinemia or "blue-baby" syndrome, and if untreated, may cause death. Therefore, the discharge from the Facility may have created a hazard to human health and aquatic life.

Finally, the Discharger violated the total coliform organism effluent limit. According to the Fact Sheet of the NPDES permit, "the undiluted effluent may be used for irrigation of food crops and/or for body-contact water recreation. Coliform organisms are intended as an indicator of the effectiveness of the entire treatment train and the effectiveness of removing other pathogens." The Discharger's continuing violation of the total coliform effluent limit puts the public at risk of disease and is an indicator that the Discharger's wastewater treatment system is not operating as intended and likely not removing other types of pathogens.

Because impacts are reasonably expected from toxicity, nitrate plus nitrite, and total coliform, it is appropriate to assign a "moderate" potential harm to beneficial uses. Hence, a score of 3 is assigned for this factor.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge.

A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. "Potential receptors" are those identified considering human, environmental, and ecosystem exposure pathways. The effluent was treated, however the damaged MBR modules did not filter adequately and the discharge contained elevated levels of nitrate plus nitrite and total coliform. Therefore, Regional Board staff considers the discharge to be partially treated at best. Elevated levels of these constituents can lead to low dissolved oxygen in the receiving water, impacts to aquatic life, and impacts to human health thereby posing a moderate risk or threat to potential receptors. It is appropriate to assign a "moderate" risk to this discharge and a score of 2 was assigned for this factor.

Factor 3: Susceptibility to Cleanup or Abatement.

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or

abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger. In this case, less than 50% of the discharge was susceptible to cleanup or abatement as the wastewater entered Deuel Drain. Therefore, a factor of 1 is assigned.

Final Score – “Potential for Harm”

The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, a **final score of 6** was calculated. The total score is then used in Step 2, below.

Step 2– Assessment for Discharge Violations

This step addresses administrative civil liabilities for the unauthorized discharge based on both a per-gallon and a per-day basis.

1. Per Gallon Assessments for Discharge Violations

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per gallon basis using the Potential for Harm score and the Extent of Deviation from Requirement of the violation.

The Potential for Harm Score was determined in Step 1, and is 6. The Extent of Deviation is considered “major” because the WDRs prohibit the discharge of wastewater that exceeds effluent limits and the requirement has been rendered ineffective where the effluent has exceeded permit limits for total coliform and nitrate plus nitrite. Table 1 of the Enforcement Policy (p. 14) is used to determine a “per gallon factor” based on the total score from Step 1 and the level of Deviation from Requirement. For this particular case, the factor is 0.22. This value is multiplied by the volume of discharge and the per gallon civil liability, as described below.

The Complaint only assesses penalties for the four violations which took place between 1 January and 30 April 2016. Due to the persistent nature of the effluent limit violations, the penalty is based on the days and volume of wastewater discharged. The discharge volume is based on figures reported by CDCR in its self-monitoring reports for the period in which the violation occurred.

Date	Effluent limit violated	Monitoring Period	Volume discharged, gallons	Volume minus 1,000 gallons
12 January 2016	Total Coliform	7-Day Median	410,173 ¹	409,173
26 January 2016	Total Coliform	7-Day Median	443,858 ¹	442,858
9 February 2016	Total Coliform	7-Day Median	417,126 ¹	416,126
31 March 2016	Nitrite Plus Nitrate (as N)	Monthly Average	409,768 ²	408,768
13 April 2016	Total Coliform	7-Day Median	430,516 ¹	429,516
27 April 2016	Total Coliform	7-Day Median	370,949 ¹	369,949
30 April 2016	Nitrite Plus Nitrate (as N)	Monthly Average	393,659 ²	392,659
TOTAL:			2,876,049	2,869,049

¹ Total daily volume of the day which the sample was collected.

² Average discharge, on a daily basis, for the month.

The Complaint assesses penalties for the 2,876,049 gallons of wastewater discharged on the days during which effluent limitations were exceeded. Water Code section 13385(c)(2) states that the civil liability amount is to be based on the number of gallons discharged—but not cleaned up—over 1,000

gallons discharged. That volume is 2,869,049. The maximum civil liability allowed under Water Code section 13385 on a per gallon basis is \$10/gallon. The Enforcement Policy allows for a reduced per gallon penalty for high volume discharges. Given this discharge can be considered partially treated, the Prosecution Team chose to apply a reduced per volume factor of \$2/gallon.

Therefore, the Per Gallon Assessment is calculated as:

Violation 2: Discharge Liability

$$0.22 \times 2,869,049 \text{ gallons} \times \$2 \text{ per gallon} = \$1,262,382$$

2. Per Day Assessments for Discharge Volumes

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per day basis using the same Potential for Harm and the Extent of Deviation from Requirement that were used in the per-gallon analysis. The “per day” factor (determined from Table 2 of the Enforcement Policy) is 0.22.

On three occasions, the Discharger exceeded the effluent limit for total coliform as a 7-day median. For each of these three violations, the Discharger was assumed to be in violation for only the day the sample was collected as opposed to the entire seven days. The Discharger also exceeded the monthly average limit for nitrate plus nitrate. The Discharger was assumed to be in violation for one day of the entire month. The total number of days of violation for these effluent limit exceedances is 7 days.

Water Code section 13385(c)(1) states that civil liability shall not exceed \$10,000 per day of violation.

Violation 2: Per Day Liability

$$0.22 \times 7 \text{ days} \times \$10,000 \text{ per day} = \$15,400$$

Initial Liability Amount: The value is determined by adding together the per gallon assessment and the per day assessment.

Violation 2: Initial Liability

$$\$1,262,382 \text{ per gallon assessment} + \$15,400 \text{ per day assessment} = \$1,277,781$$

Step 3 – Per Day Assessment for Non-Discharge Violation

This step is not applicable.

Step 4B – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator’s culpability, efforts to clean-up or cooperate with regulatory authority, and the violator’s compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Culpability

The Discharger constructed a Reverse Osmosis (RO) Plant to remove salt from its domestic water supply, provide higher quality drinking water to the inmates, and produce a higher quality effluent discharge from the Facility. When the RO Plant is not operational or not operating at its optimal condition, constituents that pose a concern to water quality are discharged in concentrations that the Facility cannot properly treat. In a letter from Siemens' project manager, Siemens observed in 2011 that debris that had been accumulating on the membrane bioreactor (MBR) modules. Siemens cautioned CDCR that the lack of maintenance and cleaning of the membranes could have damaged the membranes and reduced its long term integrity. Trash and debris was again observed during a 25 January 2013 inspection by a service technician. In a letter from Evoquo Water Technologies dated 24 July 2014, CDCR was once again cautioned that the membranes collected trash and debris. The lack of operation of the RO plant, coupled with the lack of proper cleaning of the membranes, have caused the modules to lose efficiency over a period of years, and eventually, the modules can no longer be cleaned sufficiently to properly operate. A higher culpability factor is appropriate because CDCR was aware of the risk of not properly maintaining the membrane bioreactor modules and chose not to employ adequate measures and processes to prevent the accumulation of trash and debris which likely severely impaired the functionality and effectiveness of the membranes. The compromised membranes prevented CDCR from adequately treating its wastewater thereby resulting in pollution to Deuel Drain. A factor of 1.3 is conservatively applied.

Cleanup and Cooperation

The Regional Board Prosecution Team has engaged in several meetings with CDCR to discuss compliance, however, this compliance assistance process has been insufficient. CDCR staff expressed the desire to comply contending that they "have taken every step necessary to correct the deficiency." (see Letter from Alan Price dated January 28 2016). However, CDCR has not complied with key requirements and actions in the CAO which were prescribed to improve its wastewater treatment system. Despite the numerous attempts to work cooperatively with CDCR, the Discharger continues to pollute Deuel Drain by discharging wastewater that contains constituents which exceed the mandatory limits protective of Deuel Drain's beneficial uses. A factor of 1.2 is conservatively applied.

History of Violation

See the history of violation rationale for Violation 1. A factor of 1.4 is appropriate.

Therefore, the total penalty for the effluent limitation violations is calculated as:

Violation 2: Total Base Liability

Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations
Multiplier = Total Base Liability
 $\$1,277,781 \times 1.3 \times 1.2 \times 1.4 = \$2,790,674$

Violation #3: Failure to Properly Operate and Maintain Facilities and Systems

Background for Violation #3:

Standard Provision I.D of WDRs Order R5-2014-0014-01 states in part: "The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order . . . This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a Discharger only when necessary to achieve compliance with the conditions of this Order." The Discharger has delayed upgrades and maintenance to the wastewater treatment plant thereby further causing pollution to the Deuel Drain. In particular, the CAO required that the Discharger replace the MBR modules by 31 March 2016. However, as of 1 May 2016, the modules have not been replaced.

Step 1 – Potential for Harm for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

Step 2 – Assessment for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

Step 3 – Per Day Assessment for Non-Discharge Violations

The "per day" factor is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of the deviation from the applicable requirements.

Potential for Harm

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. In this case, a "Moderate" potential for harm is appropriate because the discharge of partially treated wastewater presents a substantial threat to beneficial uses. Here, the failure to replace the MBR modules has resulted in partially treated wastewater which contained elevated levels of nitrate plus nitrite above the maximum contaminant levels allowed for drinking water, as well as total coliform organisms. The Discharger's continuing violation of the total coliform effluent limit puts the public at risk of disease and is an indicator that the Discharger's wastewater treatment system is not operating as intended and likely not removing other types of pathogens.

The deviation from requirement is "Major." The Discharger's WDRs require that it "properly operate and maintain all facilities and systems of treatment and control." (Standard Provision I.D.) In addition, the Discharger is required to operate a backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of this Order. *Id.* While the RO plant was installed to remove contaminants and provide potable water, its lack of operation has severely impaired the quality of wastewater discharged into the Wastewater Treatment Plant, and coupled with the Discharger's lack of proper operation and maintenance, has impaired the membrane bioreactor at the WWTP. The manual operation of the membrane bioreactor decreases the detention time in the denitrification process resulting in high nitrate plus nitrite in the effluent. The presence of total coliform in the effluent indicates that the treatment system is not operating as intended to properly treat waste constituents. The manufacturer of the membrane bioreactor, Siemens, recommended in its Operations and Maintenance Manual that the membranes be removed and cleaned at least once per year. The Discharger admitted that cleaning was delayed and the membranes were not properly pulled and cleaned for 2.5 years. In addition, the Discharger had not yet developed standard operating procedures (SOPs) for proper

operation and maintenance of the WWTP, including the necessity of training new operators. (See Regional Board staff Inspection Report dated 28 February 2015). The Discharger disregarded the requirement in its WDRs to properly operate and maintain its WWTP, warranting an assessment of a "Major" deviation from the requirement.

Using Table 3 in the Enforcement Policy, the Per Day Factor of 0.55 is assigned. This value is to be multiplied by the days of violation and the maximum per day penalty, as shown in the Initial Liability table below.

Days of Violation

The period of this violation of the NPDES permit extends back to in or around September 2011, when Siemens noted that debris accumulated in the membranes and pointed out concerns over the long term integrity of the membrane modules due to a lack of proper maintenance. However, for purposes of this action, the days of violation are calculated from the date the CAO requires replacing the membrane bioreactor (MBR) modules, which is 31 March 2016. As of 1 May 2016, the modules have not been replaced; therefore there is a total of 30 days of violation.

Violation 3: Initial Liability

$$(0.55 \text{ factor from Table 3}) \times (30 \text{ days}) \times (\$10,000/\text{day}) = \$165,000$$

Step 4A – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean-up or cooperate with regulatory authority, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Culpability

See culpability discussion under Violation 2. A score of 1.3 was conservatively assessed.

Cleanup and Cooperation

See Cooperation discussion under Violation 2. A score of 1.2 was conservatively assessed.

History of Violation

See History of Violation discussion under Violation 2. As score of 1.4 was assessed.

Violation 3- Total Base Liability

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

$$\$165,000 \times 1.3 \times 1.2 \times 1.4 = \$360,360$$

As described below in the "Maximum Liability" discussion, the maximum liability allowed by the California Water Code for violation #3 is \$300,000. Although the Penalty Calculation Methodology produced a higher penalty amount, the penalty is capped at the maximum allowed for by statute, or \$300,000.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is the sum of the liabilities for Violations 1 through 3.

Total Base Liability Amount
$\$946,946 \text{ (Violation 1)} + \$2,790,674 \text{ (Violation 2)} + \$300,000 \text{ (Violation 3)} = \$4,037,620$

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. The California Department of Correction and Rehabilitation is a state agency with a Fiscal Year 16-17 budget of over \$10 billion¹. As such, it should have the ability to pay a penalty in the millions of dollars.

Step 7 – Other Factors as Justice May Require

The costs of investigation and enforcement are “other factors as justice may require,” and could be added to the liability amount. The Central Valley Water Board incurred over \$37,500 (250 hours at a statewide average of \$150/hour) in staff costs associated with the investigation and enforcement of the violations alleged herein. The Prosecution Team, in its discretion, is not recommending an increase in the Total Base Liability amount in consideration of these costs incurred as the proposed liability amount serves as a sufficient general and specific deterrent against future violations.

Step 8 – Economic Benefit

Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit of noncompliance derived from the acts that constitute the violation. The economic benefit of noncompliance for the violations is estimated at \$2,084,774 (see Exhibit 1 to this document).

Final adjusted liability

The final adjusted liability is \$4,037,620.

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts must be determined for comparison to the proposed liability.

Maximum Liability Amount: The maximum penalty is the sum of the statutory penalties for Violations 1, 2 and 3.

Violation 1, the failure to submit technical reports, is a violation of Water Code section 13268. The maximum penalty is \$1,000 per day for 1,979 days, or \$1,979,000.

Violation 2, the discharge of partially treated or toxic wastewater, is a violation of Water Code section 13385. As described in this section, civil liability may not exceed \$10,000 per day of violation, plus \$10 per gallon for each gallon of waste discharged over 1,000 gallons. The discharge took place over 7

¹ Source: <http://www.cdcr.ca.gov/Budget/>

days, and therefore the maximum per-day penalty is \$70,000. A total of 2,876,049 gallons were discharged during the seven days of violation; of this amount, 2,869,049 gallons were discharged over 1,000 gallons per discharge event. The maximum per-gallon penalty is \$28,690,490. The maximum civil penalty is the sum of the per-day and per-gallon penalties, or \$28,760,490.

Violation 3, the failure to properly operate and maintain facilities and systems, is a violation of Water Code section 13385. The maximum penalty is \$10,000 per day for 30 days, or \$300,000. Although the Penalty Calculation methodology produced a higher value, the maximum penalty is capped at \$300,000.

Therefore, the maximum liability for Violations 1, 2 and 3 is \$31,039,490.

Minimum Liability Amount: The minimum liability is equal to the economic benefit of noncompliance plus 10%, which is estimated to be \$2,293,251.

Step 10 – Final liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. The proposed administrative civil liability is \$4,037,620.

Exhibit 1: Economic Benefit Analysis

EXHIBIT 1 TO ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0536

Economic Benefit Analysis																	
Deuel Vocational Institution, Wastewater Treatment Facility																	
Compliance Action	Capital Investment				One-Time Non-Depreciable Expenditure				Annual Cost			Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance	
	Amount	Basis	Date	Delayed?	Amount	Basis	Date	Delayed?	Amount	Basis	Date						
RO Plant Spare Parts Status Report		ECI	1/1/2015	Y	\$ 1,306.38	ECI	10/13/2016	Y		ECI	1/1/2015	5/1/2015	10/13/2016	10/13/2016	10/13/2016	3.60%	\$ 30
MBR Modules Replacement Time Schedule Report		ECI	1/1/2015	Y	\$ 653.19	ECI	10/13/2016	Y		ECI	1/1/2015	5/1/2015	10/13/2016	10/13/2016	10/13/2016	3.60%	\$ 16
Facility's O&M/SOP Updates		ECI	1/1/2015	Y	\$ 5,225.54	ECI	10/13/2016	Y		ECI	1/1/2015	6/1/2015	10/13/2016	10/13/2016	10/13/2016	3.60%	\$ 111
1st Quarter 2015 Report		ECI	1/1/2015	Y	\$ 979.79	ECI	10/13/2016	N		ECI	1/1/2015	4/30/2015	10/13/2016	10/13/2016	10/13/2016	3.60%	\$ 1,000
2nd Quarter 2015 Report		ECI	1/1/2015	Y	\$ 979.79	ECI	10/13/2016	N		ECI	1/1/2015	7/30/2015	10/13/2016	10/13/2016	10/13/2016	3.60%	\$ 997
3rd Quarter 2015 Report		ECI	1/1/2015	Y	\$ 979.79	ECI	10/13/2016	N		ECI	1/1/2015	10/30/2015	10/13/2016	10/13/2016	10/13/2016	3.60%	\$ 993
4th Quarter 2015 Report		ECI	1/1/2015	Y	\$ 979.79	ECI	10/13/2016	N		ECI	1/1/2015	1/30/2016	10/13/2016	10/13/2016	10/13/2016	3.60%	\$ 989
MBR Replacement	\$ 860,000	PCI	4/21/2015	Y		ECI	1/1/2015	N		ECI	1/1/2015	9/20/2012	10/13/2016	10/13/2016	10/13/2016	4.00%	\$ 2,042,025
Procurement of Spare Parts		ECI	1/1/2015	Y	\$ 250,000	PCI	4/30/2015	Y		ECI	1/1/2015	8/1/2015	10/13/2016	10/13/2016	10/13/2016	3.60%	\$ 4,844
Annual MBR Removal & Cleaning		ECI	1/1/2015	Y		ECI	1/1/2015	N	\$ 7,656	ECI	10/13/2016	9/20/2011	1/1/2016	1/1/2016	1/1/2016	4.10%	\$ 33,769
Income Tax Schedule: Municipality Analyst: Bryan Elder Total Benefit: \$ 2,084,774 USEPA BEN Model Version: Version 5.5.0 (July 2015) Date/Time of Analysis: 5/31/2016 11:40 Assumptions: <ol style="list-style-type: none"> 1 RO Plant Spare Parts Status Report based on 20 labor hours for CDCR Water & Sewage Plant Supervisor. 2 MBR Modules Replacement Time Schedule Report based on 10 labor hours for CDCR Water & Sewage Plant Supervisor. 3 Facilities O&M/SOP Updates based on 80 labor hours for CDCR Water & Sewage Plant Supervisor. 4 Quarterly Reports based on 15 hours for CDCR Water & Sewage Plant Supervisor. 5 MBR Replacement costs based on GE Water & Process Technologies Proposal (4/21/2015). Product warrantied for 24 months, which has been used as replacement life. 6 Spare parts cost based on 4/30/15 submittal from DVI indicating \$250,000 in spare parts being budgeted. 7 Annual MBR removal and cleaning based on annual rental of crane for membrane removal, and 40 hours for CDCR Water & Sewage Plant Supervisor. 8 CDCR Water & Sewage Plant Supervisor labor rate based on low range of salary published for position as of 4/11/2016 of \$5661 per month. A multiplier of 2.0 was used to correct the salary to include additional labor expenses such as benefits, administrative expenses, and personnel expenses. 9 Non-compliance dates for reporting violations are deadlines outlined in CAO. 10 Non-compliance date for MBR replacement is identified as 2 years following initial plant operation (9/20/10). 11 Non-compliance date for spare parts procurment estimated as 3 months following deadline for the RO Plant Spare Parts Status Report. 12 Non-compliance date for annual MBR removal and cleaning estimated as starting one year following initial plant operation. 13 Compliance date and Penalty Payment Date are estimated as 10/13/16, the projected date of hearing. 14 Costs based mostly on labor have been adjusted using an employment cost index (ECI) built into the BEN model. Costs based on equipment/parts have been adjusted using a plant cost index (PCI) built into the BEN model. 15 For the purposes of analysis, CDCR (responsible party) has been entered as a municipality into the BEN model. 																	

ATTACHMENT B TO ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0536

**California Department of Corrections and Rehabilitation
Deuel Vocational Institution**

Effluent limit violations between 1 January 2016 and 30 April 2016
(Data reported under Monitoring and Reporting Program R5-2014-0014-01)

	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>
1	12 Jan-16	Total Coliform Organisms	MPN/100 mL	2.2	240	7-Day Median
2	26 Jan-16	Total Coliform Organisms	MPN/100 mL	2.2	13	7-Day Median
3	9-Feb-16	Total Coliform Organisms	MPN/100 mL	2.2	7.8	7-Day Median
4	31-Mar-16	Nitrite Plus Nitrate (as N)	mg/L	10	12	Monthly Average
5	13-Apr-16	Total Coliform	MPN/100 mL	2.2	23	7-Day Median
6	27-Apr-16	Total Coliform	MPN/100 mL	2.2	4.5	7-Day Median
7	30-Apr-16	Nitrite Plus Nitrate (as N)	mg/L	10	14	Monthly Average

Administrative Civil Liability Fact Sheet

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

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

Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person/s named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to 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; (5) hearing. Each of these options is described below.

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

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

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

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

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

Factors that must be considered by the Regional Water Board

Except for Mandatory Minimum Penalties under Water Code section 13385 (h) and (i), the Regional Water Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Cal. Water Code §§ 13327, 13385(e) & 13399).

During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;

5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

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

For larger firms:

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

For a municipality, county, or district:

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

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

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

Petitions

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

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

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

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