



# California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair



Linda S. Adams  
Secretary for  
Environmental  
Protection

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Arnold  
Schwarzenegger  
Governor

1 March 2010

Mr. Jesse Hodges  
Quality System Supervisor  
Sconza Candy Company  
1 Sconza Candy Lane  
Oakdale, CA 95361

CERTIFIED MAIL  
7009 1410 0002 1421 7867

## **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0512 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, SCONZA CANDY COMPANY, STANISLAUS COUNTY**

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) section 13385, for violation of Waste Discharge Requirements Order R5-2002-0111 (NPDES No. CA0004146) by the Sconza Candy Company (Discharger) from its Oakdale facility. The Complaint charges the Discharger with administrative civil liability in the amount of **three thousand dollars (\$3,000)** which represents the sum of accrued Mandatory Minimum Penalties for effluent limit violations which occurred from 1 May 2008 through 31 December 2009.

On 24 December 2009, Central Valley Water Board staff issued a draft Record of Violations covering the period of 1 May 2008 through 30 September 2009. Although the Discharger, in its 7 January 2010 letter objected to the violation, staff retained the violation as discussed in Finding 6 of the Complaint. Staff has extended the period of record through 31 December 2009, during which there were no further violations subject to mandatory minimum penalties under CWC section 13385.

The Discharger may:

- Pay the proposed administrative civil liability and waive its right to a hearing (Option #1 on the attached waiver form);
- Ask that the hearing be postponed to facilitate settlement discussions or for other reasons (Options #2 or #3 on the attached waiver form); or
- Contest the Complaint and/or enter into settlement discussions without signing the enclosed waiver.

If the Central Valley Water Board does not receive a signed waiver **by 1 April 2010**, a hearing will be scheduled for the **27/28 May 2010** Board meeting in Rancho Cordova. This hearing will be governed by the attached Hearing Procedure, which has been approved by the Board Chair for use in adjudicating matters such as this one. Any objections to the Hearing Procedure must

**California Environmental Protection Agency**



be received by Lori Okun, whose contact information is listed in the Hearing Procedure, by **5 p.m. on 15 March 2010.**

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. The settlement will be considered final pending a 30-day comment period, starting from the date this Complaint is issued. Interested parties may comment on the proposed action during this period by submitting written comments to the Central Valley Water Board staff person listed below. Should the Central Valley Water Board receive new information or comments during this comment period, the Executive Officer may withdraw the complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

[http://www.waterboards.ca.gov/centralvalley/tentative\\_orders/](http://www.waterboards.ca.gov/centralvalley/tentative_orders/)

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Barry Hilton at (916) 464-4762 or [bhilton@waterboards.ca.gov](mailto:bhilton@waterboards.ca.gov).

Original signed by

WENDY WYELS

Supervisor

Compliance and Enforcement Section

Enclosure:     ACL Complaint R5-2010-0512  
                  Hearing Procedure  
                  Hearing Waiver

cc w/o encl:    Kenneth Greenberg, USEPA, Region 9, San Francisco  
                  Kenneth Landau, Central Valley Water Board, Rancho Cordova  
                  Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento  
                  Reed Sato, Office of Enforcement, SWRCB, Sacramento  
                  Lori Okun, Office of Chief Counsel, SWRCB, Sacramento  
                  Emel Wadhvani, Office of Chief Counsel, SWRCB, Sacramento  
                  Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova  
                  Stanislaus County Health Services Agency, Modesto  
                  Bill Jennings, California Sport Fishing Protection Alliance, Stockton

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0512

MANDATORY PENALTY  
IN THE MATTER OF

SCONZA CANDY COMPANY  
STANISLAUS COUNTY

This Complaint is issued to the Sconza Candy Company (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2002-0111 (NPDES No. CA0004146).

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

1. The Discharger owns and operates the Sconza Candy Company facility in Stanislaus County. Non-contact cooling water and reverse osmosis reject water are discharged to the Oakdale Irrigation District's Riverbank Lateral Canal, tributary to the Modesto Irrigation District Main Canal, tributary to the Stanislaus River, a water of the United States.
2. On 23 March 1996, the Regional Water Board adopted WDRs Order No. 96-072 to regulate discharges of waste from the facility. On 7 June 2002, the Regional Water Board issued WDRs Order No. R5-2002-0111 to the Hershey Company, the former owner, which rescinded Order 96-072 and established new requirements.
3. On 15 February 2007, the Hershey Company submitted a Report of Waste Discharge (ROWD) to renew the NPDES permit. The timely submittal of the ROWD allowed the NPDES permit to be administratively extended as provided in Code of Federal Regulations Title 40 section 122.6, and the permit remains in effect.
4. In March 2008, the Sconza Candy Company purchased the Oakdale Hershey Plant and subsequently submitted an ROWD and requested a transfer of ownership of WDRs Order R5-2002-0111. The Hershey Company also requested that the Order be transferred to Sconza Candy Company by letters dated 26 March 2008 and 7 January 2009. On 31 December 2009, the Executive Officer approved transfer of ownership to Sconza Candy Company.
5. On 25 February 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2008-0507 for mandatory minimum penalties for effluent violations from 1 January 2000 through 31 January 2008. The Hershey Company paid the administrative civil liability charged in Complaint R5-2008-0507 and the Board considers the matter resolved.

6. This Complaint covers the period of 1 May 2008 through 31 December 2009. On 24 December 2009, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations (ROV) for effluent limitation violations for the period of 1 May 2008 through 30 September 2009. On 7 January 2010, the Discharger responded and asked that the oil and grease violation be dismissed. The Discharger stated that the only units operating at the facility at that time were two wells and a reverse osmosis unit. The Discharger did not observe an oil sheen on the cooling pond, and believes that the oil and grease detection could be due to “the high population of mosquito fish residing in the weir just outside our pond gate from which our sample was drawn.” In addition, the Discharger points out that samples collected one week and two weeks after the sample in question did not have detectable oil and grease. Finally, the Discharger states that the positive result may have been due to laboratory error or sampling error.

Staff have evaluated the Discharger’s response and have retained the violation. The permit is for the discharge of non-contact cooling water, not process water, so the fact that Sconza was not operating at the time is moot. The Order’s fact sheet states that there are historic detections of oil and grease in the effluent, which is why the Order contains this effluent limitation and requires monitoring for this constituent. The Discharger has not shown that the presence of mosquito fish were an unusual occurrence, and in fact, mosquito fish are routinely planted in irrigation ditches and ponds. It is plausible that oil and grease could have leaked from the mechanical equipment associated with the non-contact cooling water, and that this leak could have stopped in the week between when the positive sample and negative sample were collected. The Discharger has not provided any evidence of a laboratory or sampling error. Self-monitoring reports, which are submitted by the Discharger under penalty of perjury, and the truth of the information contained therein, are critical components of the NPDES regulatory system administered by the Board. The Discharger has thus far failed to provide sufficient evidence to allow Central Valley Water Board to dismiss the violation.

7. CWC section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

CWC section 13385 (h)(2) states:

For the purposes of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC section 13385(i) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

8. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

9. WDRs Order R5-2002-0111 Effluent Limitations No. B.1. includes, in part, the following:

“Effluent shall not exceed the following limits:

<u>Constituent</u>	<u>Unit</u>	<u>30-Day Average</u>	<u>Daily Maximum</u>
COD <sup>4</sup>	mg/L	10 <sup>2</sup>	15 <sup>2</sup>
<u>Oil and Grease</u>	mg/L	10 <sup>2</sup>	15 <sup>2</sup>

<sup>2</sup> To be ascertained by a 24-hour composite

<sup>4</sup> Chemical Oxygen Demand

10. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) serious violation of the effluent limitations contained in Order R5-2002-0111 during the period beginning 1 May 2008 and ending 31 December 2009. The violation is defined as serious because the measured constituent exceeded the maximum prescribed level by more than 40 percent on this occasion. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**. The cited effluent violation is included in Attachment A, which is made a part of this Order.
11. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) non-serious violation of the above effluent limitations contained in WDRs Order R5-2002-0111 during the period beginning 1 May 2008 and ending 31 December 2009. The non-serious violation is not subject to mandatory penalties under CWC section 13385(i)(1) because this violation was not preceded by three or more similar violations within a six-month period.

12. The amount of the mandatory penalty assessed for the cited effluent violation is **three thousand dollars (\$3,000)**. The cited effluent violation is included in Attachment A, a part of this Order.
13. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

**SCONZA CANDY COMPANY IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **three thousand dollars (\$3,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **27/28 May 2010**, unless one of the following occurs by **1 April 2010**:
  - a) The Discharger 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, along with payment for the proposed civil liability of **three thousand dollars (\$3,000)**; or
  - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
  - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is conducted, the Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

If this matter proceeds to hearing, the 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 Frederick S. Moss for  
PAMELA C. CREEDON, Executive Officer

\_\_\_\_\_  
1 March 2010

DATE

Attachment A: Record of Violations  
BLH: 1 Mar 2010

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the Sconza Candy Company (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2010-0512 (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 **three thousand dollars (\$3,000)** by check that references "ACL Complaint R5-2010-0512" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **1 April 2010**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

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

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

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(Print Name and Title)

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(Signature)

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(Date)

**ATTACHMENT A  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0512**

**Sconza Candy Company**

DRAFT RECORD OF VIOLATIONS (1 May 2008 – 31 December 2009) MANDATORY PENALTIES  
(Data reported under Monitoring and Reporting Program R5-2002-0111)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period</u> <u>Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	1-Oct-08	Oil and Grease	mg/L	15	26	Daily	1	861641
2	7-May-09	COD	mg/L	15	16	Daily	3	861644

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

<u>VIOLATIONS AS OF:</u>	<u>12/31/2009</u>
Group I Serious Violations:	1
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	1
Non-serious Violations Subject to MPs:	0
<b><u>Total Violations Subject to MPs:</u></b>	<b><u>1</u></b>

**Mandatory Minimum Penalty = (1 Serious Violations + 0 Non-Serious Violations) x \$3,000 = \$3,000**

Central Valley Regional Water Quality Control Board  
HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R5-2010-0512

ISSUED TO  
SCONZA CANDY COMPANY  
STANISLAUS COUNTY

SCHEDULED FOR 27/28 MAY 2010

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

**Background**

The Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) section 13323 to the Sconza Candy Company, alleging violations of CWC section 13385 for discharges at its facility that exceeded permitted effluent limitations.

The Complaint proposes that an administrative civil liability in the amount of \$3,000 be imposed. A hearing is currently scheduled to be conducted before the Central Valley Water Board during its 27/28 May 2010 meeting.

**Purpose of Hearing**

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The meeting will be held at

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

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

[http://www.waterboards.ca.gov/centralvalley/board\\_info/meetings](http://www.waterboards.ca.gov/centralvalley/board_info/meetings)

## **Hearing Procedure**

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been approved by the Central Valley Water Board Chair in model format, and is subject to further revision by the Central Valley Water Board's Advisory Team or the Board Chair. A copy of the general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at: <http://www.waterboards.ca.gov> or will be made available upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648, subdivision (b) and herein, Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

**ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 15 MARCH 2010, OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.**

The Discharger shall contact the Prosecution Team to try to resolve objections regarding due dates, the hearing date and hearing time limits BEFORE submitting objections to the Advisory Team.

## **Hearing Participants**

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

The following participants are hereby designated as parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. The Sconza Candy Company

## **Requesting Designated Party Status**

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received no later than 5 p.m. on **22 March 2010**, by the Advisory Team attorney (contact information listed below). The request shall include an explanation of the basis for status as a designated party (i.e., how the issues to be addressed in the hearing and the potential actions by the Central Valley Water Board affect the person, and the need to

present evidence or cross-examine witnesses), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all other parties by 5 p.m. on **1 April 2010**. The parties will be notified by 5 p.m. on **12 April 2010** whether the request has been granted or denied.

### **Primary Contacts**

#### **Advisory Team:**

Kenneth Landau, Assistant Executive Officer  
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670  
Phone: (916) 464-4726  
[klandau@waterboards.ca.gov](mailto:klandau@waterboards.ca.gov)

Lori Okun, Senior Staff Counsel  
State Water Resources Control Board, Office of Chief Counsel  
Physical Address: 1001 I Street, Sacramento, CA 95814  
Mailing Address: P.O. Box 100, Sacramento, CA 95812  
Phone: (916)341-5165; fax: (916) 341-5199  
[lokun@waterboards.ca.gov](mailto:lokun@waterboards.ca.gov)

#### **Prosecution Team:**

Pamela Creedon, Executive Officer  
Rick Moss, Assistant Executive Officer  
Wendy Wyels, Environmental Program Manager  
Victor Vasquez, Senior Water Resources Control Engineer  
Barry Hilton, Water Resources Control Engineer  
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670  
Phone: (916) 464-4623; fax: (916) 464-4645  
[vvasquez@waterboards.ca.gov](mailto:vvasquez@waterboards.ca.gov)

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

#### **Discharger:**

Mr. Jesse Hodges, Quality System Supervisor  
Sconza Candy Company  
1 Sconza Candy Lane  
Oakdale, CA 95361

### **Separation of Functions**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Mr. Kenneth Landau and Ms. Lori Okun. Members of the Prosecution Team are: Ms. Pamela Creedon, Mr. Rick Moss, Ms. Wendy Wyels, Mr. Victor Vasquez, Mr. Barry Hilton, and Mr. Patrick Pulupa. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Pamela Creedon regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

### **Ex Parte Communications**

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

The following communications to the Advisory Board must be copied to all designated parties: Objections to this Hearing Procedure; requests for modifications to this Hearing Procedure; requests for designated party status, or objections thereto; and all written evidence, legal argument or policy statements from designated parties. This is not an all-inclusive list of ex parte communications.

### **Hearing Time Limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined **25** minutes to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received by

5:00 p.m. on **10 May 2010**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Discharger could not adequately provide the testimony, comments or legal argument in writing before the hearing.

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

### **Submission of Evidence and Policy Statements**

**Case in Chief:** The Prosecution Team, the Discharger and each other designated party must submit the following information in writing in advance of the hearing:

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

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

The Prosecution Team shall submit one hard copy and one electronic copy to Kenneth Landau and one electronic copy to Lori Okun. Each other designated party shall submit 3 hard copies and one electronic copy to Kenneth Landau and one electronic copy to Lori Okun. Kenneth Landau and Lori Okun must receive all submissions no later than 5:00 p.m. on the applicable due date under Important Deadlines, below.

**Rebuttal:** Any designated party that would like to submit written evidence, legal analysis or policy statements to rebut the information previously submitted by other designated parties shall submit 3 hard copies and one electronic copy of their rebuttal information to Kenneth Landau and one electronic copy of the information to Lori Okun so that they are received by 5 p.m. on the due date under Important Deadlines, below. "Rebuttal" means evidence,

analysis or comments offered to disprove or contradict other designated parties' submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Copies: Board members will receive copies of all materials submitted in hard copy or electronic format. The Board's copies will be printed in black and white from the designated parties' electronic copies. Designated parties who are concerned about print quality of all or any part of their written materials should submit a high-resolution pdf or provide an extra nine paper copies for the Board members. For items with voluminous submissions, Board members may receive copies electronically only. Electronic copies are also posted on the Board's website.

Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy and mailing center. However, the Board will not reject materials solely for failure to provide electronic copies.

Other Matters: By **11 May 2010**, the Prosecution Team shall prepare a summary agenda sheet ("buff sheet") for this item to be included in the Board members' agenda package and posted on the internet. The buff sheet shall clearly state that it was prepared by the Prosecution Team. The Prosecution Team shall provide a copy of the buff sheet to all parties by mail or email.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by **11 May 2010**. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Central Valley Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Designated parties must provide the Advisory Team with a printed copy of such materials at or before the hearing, for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

### **Evidentiary Documents and File**

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and

will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at:  
[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/tentative\\_orders/index.shtml](http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml)

Although the web page is updated regularly, to assure access to the latest information, you may contact Victor Vasquez. (contact information above).

### **Questions**

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

**IMPORTANT DEADLINES**

(Note: The Advisory Team will generally adhere to this schedule unless the discharger submits a waiver and it is accepted.)

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

1 March 2010 .....Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice

15 March 2010 .....Objections due on proposed Hearing Procedure

22 March 2010 .....Deadline for submission of request for designated party status.

1 April 2010 .....Deadline for opposition to request for designated party status.

1 April 2010 .....Discharger’s deadline for submitting signed form to waive right to hearing within 90 days.

12 April 2010 .....Advisory Team issues decision on requests for designated party status, if any.

8 April 2010 .....Prosecution Team’s deadline for submission of all information required under “Evidence and Policy Statements,” Items 1-4, above.

28 April 2010 .....Remaining Designated Parties’ (including the Discharger’s) deadline for submission of all information required under “Evidence and Policy Statements,” Items 1-4, above.

28 April 2010 .....Prosecution Team submits an electronic copy to Lori Okun and Kenneth Landau of all documents cited in the complaint or Staff Report, unless previously submitted.

6 May 2010.....All Designated Parties shall submit any rebuttal evidence, written rebuttal to legal argument and/or written rebuttal to policy statements; and all evidentiary objections to other Designated Parties’ submittals.

10 May 2010.....Requests for additional hearing time (see Hearing Time Limits, above).

11 May 2010.....Interested persons’ comments are due.

11 May 2010.....Prosecution Team’s deadline to submit Buff Sheet.

27/28 May 2010.....Hearing