

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2021-0504

IN THE MATTER OF

**JAKE, aka JAKOB WESTSTEYN AND STEPHEN WESTSTEYN
JG WESTSTEYN DAIRY, GLENN COUNTY**

This Administrative Civil Liability Complaint (Complaint) is issued by the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) to Jake aka Jakob Weststeyn and Stephen Weststeyn (together, Discharger). This Complaint is issued pursuant to California Water Code (Water Code) section 13268, which authorizes the imposition of civil liability, Water Code section 13323, which authorizes the Executive Officer to issue this Complaint, and Water Code Division 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case, the Assistant Executive Officer.

This Complaint is based on allegations that the Discharger, as owner and operator of JG Weststeyn Dairy, and/or as an agent of the owner and/or operator of JG Weststeyn Dairy, failed to comply with the monitoring requirements found in Individual Waste Discharge Requirements (WDRs) Order R5-2009-0082 and failed to submit certain monitoring and technical reports required by WDRs Order R5-2009-0082.

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

BACKGROUND

1. On 13 August 2009, the Central Valley Water Board adopted WDRs Order R5-2009-0082 for Bert Weststeyn and Weststeyn Dairy Farms, dba Weststeyn Dairy. The Weststeyn Dairy is located at 5745 County Road 65 near Willows in Glenn County.
2. On 18 February 2021, the Central Valley Water Board adopted Name Change Order R5-2021-0014, changing the dairy owner to the Weststeyn 2015 Irrevocable Trust, the dairy operator to Stephen Weststeyn, and the name of the dairy to the JG Weststeyn Dairy.
3. WDRs Order R5-2009-0082 contains a Monitoring and Reporting Program which requires the submittal of Annual Reports, Storm Water Reports, and Groundwater Reports. The WDRs also require the submittal of technical reports. These monitoring and technical reports are required pursuant to Water Code section 13267.
4. During a meeting with the Discharger on 22 October 2020, the Prosecution Team discussed the Discharger's reporting violations and subsequently issued a Notice of Violation dated 28 October 2020 (NOV). The NOV described the deficient and missing reports required by the WDRs and directed the Discharger to submit the deficient

groundwater monitoring reports by 20 November 2020 and the other missing reports by 30 November 2020.

5. WDRs Order R5-2009-0082 includes a Monitoring and Reporting Program which requires the submittal of Storm Water Reports on an annual basis, Annual Reports on an annual basis, and Groundwater Reports on a semi-annual basis. The status of each is described below.
 - a. Storm Water Reports are due by 30 June of each year and are to include the results of the previous year's storm water monitoring. The first report was due by 30 June 2010. The Discharger did not submit a Storm Water Report in 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, or 2020.
 - b. Annual Reports are due by 15 January of each year and are to describe facility operations from 1 November through 31 October of the previous year. The WDRs state that the first Annual Report was to cover the period through 31 October 2010, and therefore the report was due by 15 January 2011. However, the Discharger did not submit Annual Reports for the years 2010, 2011, 2012, 2013, 2014, or 2015. While Annual Reports were submitted for the years 2016 to 2020, all the reports have been submitted late except for the 2018 Annual Report.
 - c. Groundwater Reports are due by 30 June and 30 December of each year and are to include the results of semi-annual monitoring of two domestic wells, seven agricultural supply wells, and three¹ groundwater monitoring wells. The first report was due on 30 June 2010. However, the Discharger did not submit either of the semi-annual Groundwater Reports due in 2010, 2011, 2012, 2013, 2014, 2015 or 2016. For 2017, one report was submitted on 15 January 2018, covering both semi-annual periods. One report each for 2018 and 2019 was submitted on 20 November 2020, in response to the NOV. For 2020, neither of the reports have been submitted. The reports which have been submitted only contain results for the three groundwater monitoring wells; the Discharger did not sample the other wells required by WDRs Order R5-2009-0082.
6. WDRs Order R5-2009-0082 requires the submittal of certain technical reports. The following reports have not been submitted:
 - a. Section F.1.i. requires submittal of a Setback and Buffer Analysis and Irrigation Well Study. This document was to be submitted prior to the first application of wastewater or manure solids to Fields #2 or #3, and prior to housing animals in the barn closest to domestic well DW-2. The 2017 Annual Report shows that manure had been applied to Field #2 on 6 May 2017, so the report was due approximately 30 June 2017 but was not submitted by that date. In response to the NOV, the Discharger's consultant submitted a document titled "Setbacks, Buffers, and Other Alternatives to

¹ Three groundwater monitoring wells had been installed at the time the WDRs were adopted. The WDRs require installation of a fourth groundwater monitoring well but the Discharger has not yet installed that well.

Protect Surface Waters;” however that document does not contain any of the information required by WDRs Section F.1.i. The report is still outstanding.

- b. Section F.1.j. requires that a Composting Barn Soils Report be submitted “within 18 months of commencement of use of the composting barns”. The Discharger began using the barns in early 2016, so this report should have been submitted by 30 December 2017 but was not submitted by that date. In response to the NOV, the Discharger’s consultant submitted a laboratory analytical report for soil samples collected in September 2017. However, this document is insufficient, as the WDRs state that the report is to include the results of soil samples collected prior to housing the cows in the composting barns as well as soil samples collected after one year of use. This report is still outstanding.

ALLEGED VIOLATIONS

7. **Violation 1:** The Prosecution Team alleges that the Discharger violated WDRs Order R5-2009-0082 by failing to submit the 2020 Storm Water Report by the 30 June 2020 deadline.
8. **Violation 2:** The Prosecution Team alleges that the Discharger violated WDRs Order R5-2009-0082 by failing to submit the 2020 Annual Report by the 15 January 2021 due date. After repeated reminders, the 2020 Annual Report was submitted on 3 March 2021.
9. **Violation 3:** The Prosecution Team alleges that the Discharger violated WDRs Order R5-2009-0082 by failing to submit the Second Semiannual 2020 Groundwater Report by the 30 December 2020 deadline.
10. **Violation 4:** The Prosecution Team alleges that the Discharger violated WDRs Order R5-2009-0082 by failing to submit, by 30 June 2017, a Setback and Buffer Analysis and Irrigation Well Study containing the information found in Section F.1.i. of the WDRs.
11. **Violation 5:** The Prosecution Team alleges that the Discharger violated WDRs Order R5-2009-0082 by failing to submit, by 30 December 2017, a Composting Barn Soils Report containing the information found in Section F.1.j. of the WDRs.

REGULATORY CONSIDERATIONS

12. As described above, the Discharger has (a) failed to conduct monitoring and (b) failed to submit the monitoring and technical reports as required by WDRs Order R5-2009-0082. The WDRs require that monitoring and technical reports be submitted pursuant to Water Code section 13267.
13. Water Code section 13267 subdivision (b)(1) states the following: *In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging or who proposed to discharge waste within its region ... that could affect the quality of*

waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

14. The Central Valley Water Board relies on the submission of technical and monitoring reports required by the WDRs and MRP to assure compliance with waste discharge requirements, to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.
15. 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. If not controlled or retained, surface water drainage from the JG Weststeyn Dairy flows to Logan Creek, Hunter's Creek, and Baker Slough, all of which are tributary to the Sacramento River. The designated beneficial uses of the Sacramento River are municipal supply; industrial supply; agricultural supply; water contact recreation; warm freshwater habitat; cold freshwater habitat; migration of aquatic organisms; spawning, reproduction and/or early development; and wildlife habitat.
16. Activities at the JG Weststeyn Dairy have the potential to impact groundwater quality. The beneficial uses of the groundwater are municipal and domestic supply, agricultural supply, industrial service supply, and industrial process supply.
17. The Central Valley Water Board may impose administrative civil liability for violations of waste discharge requirements pursuant to the procedures described in Water Code section 13323. This Complaint alleges the Discharger violated WDRs Order R5-2009-0082 and seeks the imposition of administrative civil liability in accordance with Water Code section 13268.
18. Pursuant to Water Code section 13327, 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.
19. Issuance of this Order 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

20. 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, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in accordance with subdivision (b).*
21. Water Code section 13268, subdivision (b)(1) states: *Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.*
22. As outlined in Findings 7-11, the Discharger has failed to submit monitoring and technical reports required by WDRs Order R5-2009-0082. As of 22 March 2021, the 2020 Storm Water Report was 112 days late, the 2020 Annual Report was 47 days late, the Second Semiannual 2020 Groundwater Report was 82 days late, the Setback and Buffer Analysis and Irrigation Well Study was 1,361 days late, and the Compost Barn Soils Report was 1,178 days late. As of 22 March 2021, the five reports are a total of 2,780 days late.
23. **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 and technical reports required by the WDRs is one thousand dollars (\$1,000) per day of violation. Therefore, the maximum civil liability for the violations cited in this Complaint is **two million seven hundred eighty thousand dollars (\$2,780,000)**.
24. **Minimum Civil Liability:** Pursuant to the State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy (Enforcement Policy), the minimum civil liability should be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations (p. 21). The Central Valley Water Board Prosecution Team calculates that the economic benefit of non-compliance plus 10% is **sixteen thousand seven hundred and ninety-eight dollars (\$16,798)**.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

25. On 4 April 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the Enforcement Policy. The Enforcement Policy was approved by the Office of Administrative Law and became effective on 5 October 2017. The Central Valley Water Board Prosecution Team developed the proposed administrative civil liability based on the Enforcement Policy. 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. The Enforcement Policy can be found at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf.

26. The recommended administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy and Water Code sections 13327 and 13268, as explained in detail in Attachment A to this Complaint, which is attached and incorporated herein by reference. 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.
27. As described above, the maximum penalty for the violations is \$2,780,000 and the minimum penalty is \$16,798. Based on consideration of the above facts, and after applying the penalty methodology, the Prosecution Team proposes a final liability in the amount of **\$30,000**. The specific factors considered in this penalty are detailed in Attachment A.
28. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of WDRs Order R5-2009-0082 for which penalties have not yet been assessed, or for future violations.

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes an administrative civil liability in the amount of **thirty thousand dollars (\$30,000)**. The amount of the proposed administrative civil liability is based upon a review of the factors cited in Water Code section 13327 as well as the Enforcement Policy.
2. A hearing on this matter will be conducted by the Central Valley Water Board at a hearing scheduled on 17/18 June 2021, unless the Discharger does any of the following:
 - a. The Discharger waives the right to a hearing by completing the attached Waiver Form (checking the box next to Option 1) and returning it to the Central Valley Water Board, along with payment for the proposed administrative civil liability of **thirty thousand dollars (\$30,000)**; or
 - b. The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking the box next to Option 2 on the attached Waiver Form and returning it to the Central Valley Water Board Advisory Team contact as described in the Cover Letter to this Complaint; or
 - c. The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking the box next to Option 3 on the attached Waiver Form and returning it to the Central Valley Water Board Advisory Team contact as described in the Cover Letter to this Complaint, along with a letter describing the items to be discussed.

3. If a hearing is held, it will be governed by Hearing Procedures which will be issued by the Advisory Team. During the hearing, the Central Valley Water Board will hear testimony and arguments and affirm, reject, or modify the proposed administrative civil liability, or determine whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The Assistant Executive Officer reserves the right to amend the proposed amount of administrative civil liability to conform to the evidence presented.



John J. Baum
Assistant Executive Officer

3/22/2021

Date

Attachments:

Waiver Form

Attachment A: Penalty Calculation Methodology

Attachment B: Economic Benefit Calculation

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following: I am duly authorized to represent Jake aka Jakob Weststeyn and Stephen Weststeyn (together, Discharger) in connection with Administrative Civil Liability Complaint R5-2021-0504 (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 **thirty thousand dollars (\$30,000)** by check that references "ACL Complaint R5-2021-0504" made payable to the *State Water Board Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, California, 95812-1888. The waiver and a copy of the check must be submitted to the Central Valley Water Board at 11020 Sun Center Drive #200, Rancho Cordova, California, 95670, attention Robert Busby.
 - 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 R5-2021-0504
Specific Factors Considered for Administrative Civil Liability
JG Weststeyn Dairy, Glenn County

The State Water Resources Control Board's (State Water Board) *2017 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 13327. Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

Regulatory Background

Waste Discharge Requirements (WDRs) Order R5-2009-0082 was adopted by the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) on 13 August 2009. The WDRs contain monitoring and reporting provisions which are prescribed pursuant to Water Code section 13267. This Complaint alleges that Jake aka Jakob Weststeyn and Stephen Weststeyn (together, Discharger), as owners and operators of JG Weststeyn Dairy (Dairy) and/or as agents of the owners and operators of the Dairy, have failed to comply with WDRs Order R5-2009-0082.

Violation 1:
Failure to Submit 2020 Storm Water Report

WDRs Order R5-2009-0082 requires the Discharger to submit Storm Water Reports by 30 June of each year. These reports are to include the results of the previous year's storm water monitoring. The first report was due by 30 June 2010. However, the Discharger did not submit a Storm Water Report in 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, or 2020.

On 22 October 2020, the Prosecution Team met with the Discharger to discuss compliance with WDRs Order R5-2020-0082. During that meeting, the Prosecution Team noted the Discharger's failure to submit the Storm Water Reports. After the meeting, the Prosecution Team issued a Notice of Violation (NOV) dated 28 October 2020 describing the Discharger's failure to comply with WDRs Order R5-2020-0082. The NOV outlined the deficient and missing reports required by the WDRs and directed the Discharger to produce the outstanding reports.

With respect to the Storm Water Report, the NOV stated "By 30 November 2020, (a) submit the outstanding stormwater monitoring reports, and (b) describe the actions that will be taken to ensure that future monitoring reports contain the information required by the MRP and are submitted by 30 June each year. If the monitoring was not conducted as required and therefore certain reports cannot be prepared, please so state." The

Discharger did not submit the outstanding reports or describe the actions it would take to ensure that future reports were submitted in compliance with the WDRs. To date, the Discharger has not submitted any Storm Water Reports, including the 2020 Report.

This Complaint only assesses penalties for the failure to submit the 2020 Storm Water Report; penalties for failure to submit the 2010 through 2019 Storm Water Reports are not assessed.

Step 1 – Potential for Harm for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 2 – Assessment for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 3 – Per Day Assessment for Non-Discharge Violations

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

Potential for Harm: Moderate

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, the failure to submit a monitoring report as required by WDRs Order R5-2009-0082 prevents Central Valley Water Board staff from evaluating the Discharger’s compliance with the WDRs. The failure to submit reports has “substantially impaired the Water Board’s ability to perform their statutory and regulatory functions, present[s] a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.” Failure to submit the 2020 Storm Water Report has deprived Water Central Valley Water Board staff of the ability to conduct essential technical evaluations by reviewing monitoring and data to determine the extent and severity of the water quality impacts posed by the Discharger’s ongoing dairy operation. A value of moderate is therefore warranted.

Deviation from Requirement: Major

The Enforcement Policy requires determination of whether the violation represents a minor, moderate, or major deviation from the applicable requirements. A major deviation from requirement is appropriate when the applicable requirement was rendered ineffective in essential function. A major factor is appropriate in this case because the Discharger has never submitted a Storm Water Report, therefore rendering the applicable requirement ineffective.

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 Amount table below.

Days of Violation

The 2020 Storm Water Report was due by 30 June 2020. However, the Prosecution Team has elected to use the 30 November 2020 date found in the October 2020 NOV as the beginning date for which penalties will be assessed. There are 112 days between 30 November 2020 (the due date in the October 2020 NOV) and 22 March 2021 (the date of issuance of the Complaint).

Multiple Days Reduction

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: (a) is not causing daily detrimental impacts to the environment or the regulatory program; or (b) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (c) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. If one of these findings is made, an alternate approach to penalty calculation for multiple day violations may be used. For this violation, the Prosecution Team finds that the failure to submit the monitoring report does not result in an economic benefit that can be measured on a daily basis. Therefore, the Prosecution Team recommends compressing the days of violation. Following the Enforcement Policy, for violations lasting more than 30 days, the days are counted as follows: the first 30 days of violation, every fifth day of violation until the 60th day, and every 30 days thereafter. The 112 days for Violation 1 are compressed to 37 days by counting days 1-30, 35, 40, 45, 50, 55, 60, and 90.

Initial Liability Amount

The initial liability amount for the violations calculated on a per-day basis is as follows:

$$37 \text{ days} \times \$1,000/\text{day} \times 0.55 = \$20,350$$

Total Initial Liability = \$20,350

Step 4: Adjustment Factors

Culpability: 1.3

The Enforcement Policy directs that higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. A multiplier value of 1.3 is appropriate in this matter. The Discharger is responsible for the failure to submit the required report, as follows:

WDRs Order R5-2009-0082 clearly set forth the storm water reporting requirements. The Dairy began operation in 2016 and the Discharger has consistently been involved in the ownership and operation of the Dairy since then. The Discharger knew, or should have known, the requirements of WDRs Order R5-2009-0082 before it began operation.

Aside from the specific provisions of the WDRs, which provide specific instructions on how to comply with the permit, the Central Valley Water Board has played an active role in oversight of this Dairy. Since 2016, Central Valley Water Board staff have conducted 27 inspections of the Dairy, issued four NOVs, and one Cleanup and Abatement Order to JG Weststeyn Dairy.

Consistent interaction with Central Valley Water Board staff, and the October 2020 NOV, which specifically addressed the Discharger's compliance with the Storm Water Report requirements, have put the Discharger on notice of the reporting requirements in WDRs R5-2009-0082. The October 2020 NOV offered the Discharger an opportunity to state how it would comply with monitoring requirements and to submit late and missing reports. However, to date, the Discharger has not committed to complying with the requirement to submit Storm Water Reports, or other reporting requirements discussed herein and in the October 2020 NOV, continuing to submit late and insufficient reports and failing to communicate a plan for complying with these requirements to the Prosecution Team.

History of Violation: 1.0

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1, with higher values as appropriate. The Discharger does not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: 1.1

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. Despite multiple notifications of violations and outreach by the Central Valley Water Board, the Discharger has not cooperated or returned to compliance with WDRs Order R5-2009-0082. As discussed above, the October 2020 NOV directed the Discharger to submit its late and missing reports, including the Storm Water Report. However, the Discharger has still not submitted the Storm Water Report and has made no effort to explain its plan for complying with the WDRs to the Prosecution Team. Therefore, it is appropriate to use a cleanup and cooperation multiplier of 1.1.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount.

Total Base Liability Amount: Violation 1

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

\$20,350 x 1.3 x 1.0 x 1.1 = \$29,100

Total Base Liability = **\$29,100**

**Violation 2:
Failure to Submit 2020 Annual Report by Required Date**

WDRs Order R5-2009-0082 requires the Discharger to submit Annual Reports by 15 January of each year. The reports are to describe the Dairy's operations from 1 November through 31 October of the previous year. The WDRs state that the first Annual Report was to cover the period through 31 October 2010 and was due by 15 January 2011. However, the Discharger did not submit Annual Reports for the years 2010, 2011, 2012, 2013, 2014, or 2015. While Annual Reports were submitted for the years 2016 to 2020, all the reports have been submitted late except for the 2018 Annual Report.

During a meeting with the Discharger on 22 October 2020, the Prosecution Team discussed the Discharger's failure to submit timely Annual Reports and subsequently issued a Notice of Violation (NOV) dated 28 October 2020. The NOV did not address the late 2020 Annual Report because it was not late at that time. However, Central Valley Water Board staff reminded the Discharger of the 15 January 2021 due date for the 2020 Annual Report during meetings on 22 October 2020, 21 December 2020, and 14 January 2021. Central Valley Water Board staff sent at least two e-mail reminders to the Discharger's consultant to submit the 2020 Annual Report. Despite these reminders, the Discharger did not submit a signed 2020 Annual Report until 3 March 2021.

Step 1 – Potential for Harm for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 2 – Assessment for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 3 – Per Day Assessment for Non-Discharge Violations

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

Potential for Harm: Moderate

The discussion of the Potential for Harm for Violation 1 applies to this violation. The Discharger's failure to timely submit the 2020 Annual Report also has deprived Central

Valley Water Board staff of the ability to conduct essential technical evaluations by reviewing monitoring data to determine the extent and severity of the water quality impacts posed by the Discharger's ongoing dairy operation. A value of moderate is warranted.

Deviation from Requirement: Minor

A minor factor is appropriate. While the requirement was not timely met, the intended effect was not materially compromised because the report was submitted with sufficient time for Central Valley Water Board staff to review and analyze the information contained in the 2020 Annual Report.

Using Table 3 in the Enforcement Policy, the Per Day Factor of **0.25** 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 Amount table below.

Days of Violation

The 2020 Annual Report was due by 15 January 2021 but was not submitted until 3 March 2021, for a total of 47 days late. The Prosecution Team finds that the failure to submit the Annual Report does not result in an economic benefit that can be measured on a daily basis. Therefore, the Prosecution Team recommends compressing the days of violation. Using the method described for Violation 1, there are 33 compressed days of violation.

Initial Liability Amount

The initial liability amount for the violations calculated on a per-day basis is as follows:

$$33 \text{ days} \times \$1,000/\text{day} \times 0.25 = \$8,250$$

$$\text{Total Initial Liability} = \$8,250$$

Step 4: Adjustment Factors

Culpability: 1.3

The discussion of Culpability for Violation 1 applies to this violation. In addition, Central Valley Water Board staff reminded the Discharger of the 2020 Annual Report during meetings on 22 October 2020, 21 December 2020, and 14 January 2021, and Central Valley Water Board staff sent reminders to the Discharger's consultant at least two times before the report was submitted. Due to the repeated outreach by Central Valley Water Board staff the Discharger knew, or should have known, that the report was due on 15 January 2021. A multiplier of 1.3 is appropriate.

History of Violation: 1.0

The discussion of History of Violation for Violation 1 applies to this violation also. It is appropriate to use a History multiplier of 1.0.

Cleanup and Cooperation: 1.1

After Central Valley Water Board staff informed the Discharger that the 2020 Annual Report was late multiple times, the Discharger submitted the report. The Discharger did not submit the report on time and also took several additional months before correcting the violation, even after repeated reminders from Central Valley Water Board staff. Such a response is not reasonable. Therefore, it is appropriate to use a cleanup and cooperation multiplier of 1.1.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount.

Total Base Liability Amount: Violation 2

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

$$\$8,250 \times 1.3 \times 1.0 \times 1.1 = \$11,797$$

Total Base Liability = **\$11,797**

**Violation 3:
Failure to Submit Second Semiannual 2020
Groundwater Monitoring Report**

WDRs Order R5-2009-0082 requires the Discharger to submit Groundwater Reports by 30 June and 30 December of each year. These reports are to include the results of semi-annual monitoring of two domestic wells, seven agricultural supply wells, and three¹ groundwater monitoring wells. The first report was due on 30 June 2010. However, the Discharger did not submit either of the semi-annual Groundwater Reports due in 2010, 2011, 2012, 2013, 2014, 2015 or 2016. For 2017, one report was submitted on 15 January 2018, covering both semi-annual periods. As of mid-October 2020, the Discharger had not submitted either semi-annual Groundwater Report for 2018 or 2019 and had not submitted the first semi-annual report for 2020. The reports which have been submitted only contain results for the three groundwater monitoring wells; the Discharger did not sample the other wells required by WDRs Order R5-2009-0082.

During a meeting with the Discharger on 22 October 2020, the Prosecution Team discussed the Discharger's failure to submit the semiannual Groundwater Monitoring reports and subsequently issued a NOV dated 28 October 2020. With respect to

¹ Three groundwater monitoring wells had been installed at the time the WDRs were adopted. The WDRs require installation of a fourth groundwater monitoring well but the Discharger has not yet installed that well. A Proposed Cease and Desist Order, presented to the Central Valley Board in tandem with this Complaint, would require the Discharger to install the fourth monitoring well.

groundwater monitoring, the NOV states “By 20 November 2020, (a) submit the outstanding groundwater monitoring reports, and (b) describe the actions that will be taken to ensure that future monitoring reports contain the information required by the MRP and are submitted on a semi-annual basis. If the monitoring was not conducted as required and therefore certain reports cannot be prepared, please so state.”

The Discharger responded by submitting one insufficient report for 2018 and one insufficient report for 2019. Each report contains the results from two sampling events. However, the Discharger only sampled the three monitoring wells and failed to sample the two domestic wells and seven agricultural supply wells. Due to these substantive deficiencies, these reports are inadequate and do not satisfy the requirements of WDRs Order R5-2009-0082. The Discharger did not describe the actions it would take to ensure that future reports would be submitted timely and with all required data.

To date, the Discharger has not submitted either the First Semiannual 2020 or the Second Semiannual 2020 Groundwater Monitoring Reports. For purposes of enforcement, this Complaint only assess penalties for the failure to submit the Second Semiannual 2020 Groundwater Monitoring Report by 30 December 2020.

Step 1 – Potential for Harm for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 2 – Assessment for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 3 – Per Day Assessment for Non-Discharge Violations

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

Potential for Harm: Moderate

The discussion of the Potential for Harm for Violation 1 applies to this violation also. A value of moderate is warranted.

Deviation from Requirement: Major

The discussion of the Deviation from Requirement for Violation 1 applies to this violation also. A factor of major is warranted.

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 Amount table below.

Days of Violation/Multiple Days Reduction

The Second Semiannual 2020 Groundwater Monitoring Report was due by 30 December 2020. As of 22 March 2021 (the date of issuance of the Complaint) it is a total of 83 days late. The Prosecution Team finds that the failure to submit the groundwater monitoring report does not result in an economic benefit that can be measured on a daily basis. Therefore, the Prosecution Team recommends compressing the days of violation. Using the method described for Violation 1, there are 36 compressed days of violation.

Initial Liability Amount

The initial liability amount for the violations calculated on a per-day basis is as follows:

$$36 \text{ days} \times \$1,000/\text{day} \times 0.55 = \$19,800$$

Total Initial Liability = \$19,800

Step 4: Adjustment Factors

Culpability: 1.3

The discussion of Culpability for Violation 1 applies to this violation also. Due to the repeated outreach by Central Valley Water Board staff the Discharger knew, or should have known, that WDRs Order R5-2009-0082 required submittal Semiannual Groundwater Monitoring Reports. A multiplier of 1.3 is appropriate.

History of Violation: 1.0

The discussion of History of Violation for Violation 1 applies to this violation also. It is appropriate to use a History multiplier of 1.0.

Cleanup and Cooperation: 1.1

The discussion of Cleanup and Cooperation for Violation 1 applies to this violation also. It is appropriate to use a cleanup and cooperation multiplier of 1.1.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount.

Total Base Liability Amount: Violation 3

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

$$\$19,800 \times 1.3 \times 1.0 \times 1.1 = \$28,314$$

Total Base Liability = **\$28,314**

Violation 4: Failure to Submit Setback and Buffer Analysis and Irrigation Well Study

Section F.1.i. of WDRs Order R5-2009-0082 requires submittal of a Setback and Buffer Analysis and Irrigation Well Study. This document was to be submitted prior to the first application of wastewater or manure solids to Fields #2 or #3, and prior to housing animals in the barn closest to domestic well DW-2. The 2017 Annual Report shows that manure was applied to Field #2 on 6 May 2017. Therefore, the report should have been submitted by at least 30 June 2017. However, the report remains outstanding as of the issuance of this Complaint.

During a meeting with the Discharger on 22 October 2020, the Prosecution Team discussed the Discharger's failure to submit the Setback and Buffer Analysis and Irrigation Well Study and subsequently issued a NOV dated 28 October 2020. With respect to the Setback and Buffer Analysis and Irrigation Well Study, the NOV states "By 30 November 2020, either (a) submit the Setback and Buffer Analysis and Irrigation Well Study, or (b) propose a date by which it will be submitted." In response, the Discharger's consultant submitted a document titled "Setbacks, Buffers, and Other Alternatives to Protect Surface Waters." However, this document does not contain any of the information required by WDRs Order R5-2009-0082, Section F.1.i. The report is still outstanding.

Step 1 – Potential for Harm for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 2 – Assessment for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 3 – Per Day Assessment for Non-Discharge Violations

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

Potential for Harm: Moderate

The discussion of the Potential for Harm for Violation 1 applies to this violation also. A value of moderate is warranted.

Deviation from Requirement: Major

The discussion of the Deviation from Requirement for Violation 1 applies to this violation also. A factor of major is warranted.

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 Amount table below.

Days of Violation/Multiple Days Reduction

The Setback and Buffer Analysis and Irrigation Well Study was due by 30 June 2017. However, the Prosecution Team has elected to use the 30 November 2020 date found in the 22 October 2020 NOV as the beginning date for which penalties will be assessed. There are 113 days between 30 November 2020 (the due date in the NOV) and 22 March 2021 (the date of issuance of the Complaint). The Prosecution Team finds that the failure to submit the Setback and Buffer Analysis and Irrigation Well Study does not result in an economic benefit that can be measured on a daily basis. Therefore, the Prosecution Team recommends compressing the days of violation. Using the method described for Violation 1, there are 37 compressed days of violation.

Initial Liability Amount

The initial liability amount for the violations calculated on a per-day basis is as follows:

$$37 \text{ days} \times \$1,000/\text{day} \times 0.55 = \$20,350$$

Total Initial Liability = \$20,350

Step 4: Adjustment Factors

Culpability: 1.3

The discussion of Culpability for Violation 1 applies to this violation also. A multiplier of 1.3 is appropriate.

History of Violation: 1.0

The discussion of History of Violation for Violation 1 applies to this violation also. It is appropriate to use a History multiplier of 1.0.

Cleanup and Cooperation: 1.1

The discussion of Cleanup and Cooperation for Violation 1 applies to this violation also. In addition, the Discharger was provided with an opportunity to submit the outstanding report but chose not to do so. It is appropriate to use a cleanup and cooperation multiplier of 1.1.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount.

Total Base Liability Amount: Violation 4

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

\$20,350 x 1.3 x 1.0 x 1.1 = \$29,100

Total Base Liability = **\$29,100**

**Violation 5:
Failure to Submit Composting Barn Soils Report**

Section F.1.j. of WDRs Order R5-2009-0082 requires that a Composting Barn Soils Report be submitted “within 18 months of commencement of use of the composting barns”. The Discharger began using the barns in early 2016, so this report should have been submitted by 30 December 2017, but it was not. Finding No. 9 of the WDRs describes the rationale for the report as follows “...To verify that waste constituents are not moving into the earthen floor, soil samples will be taken before the barns are put into operation and at the end of the first year of operation. If sampling indicates that waste constituents are moving into the soil beneath the barns, the resting areas will be retrofitted with concrete floors.”

During a meeting with the Discharger on 22 October 2020, the Prosecution Team discussed the Discharger’s reporting violations and subsequently issued a NOV dated 28 October 2020. With respect to the Composting Barn Soils Report, the NOV states “By 30 November 2020, either (a) submit the Composing Barn Soils Report or (b) propose a date by which it will be submitted.”

In response to the NOV, the Discharger’s consultant submitted a laboratory analytical report for soil samples collected in September 2017. These samples were collected after the composting barns had been in use for over a year. This laboratory report does not meet the purpose of the WDRs, as Section F.1.j. states that the Discharger is to (a) propose sample locations to Central Valley Water Central Valley Water Board staff, (b) collect samples prior to use of the composting barn, and (c) collect samples after one year of use. In addition, the Discharger did not submit a map or other information about the sample locations or depth. The Discharger did not propose a date by which a complete report would be submitted or propose a method to obtain the information. This report is still outstanding.

Step 1 – Potential for Harm for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 2 – Assessment for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 3 – Per Day Assessment for Non-Discharge Violations

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

Potential for Harm: Moderate

The discussion of the Potential for Harm for Violation 1 applies to this violation also. In addition, failure to submit this report has prevented Central Valley Water Central Valley Water Board staff from evaluating whether the use of the composting barns has the potential to impact groundwater. A factor of moderate is warranted.

Deviation from Requirement: Major

The discussion of the Deviation from Requirement for Violation 1 applies to this violation also. The fact that cattle have now been housed in the composting barns for five years makes it impossible for the Discharger to collect the soil samples as intended by the WDRs. A value of major is warranted.

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 Amount table below.

Days of Violation/Multiple Days Reduction

The Composting Barn Soils Report was due by at least 30 December 2017. However, the Prosecution Team has elected to use the 30 November 2020 date found in the 22 October 2020 NOV as the beginning date for which penalties will be assessed. There are 113 days between 30 November 2020 (the due date in the NOV) and 22 March 2021 (the date of issuance of the Complaint). The Prosecution Team finds that the failure to submit the Composting Barn Soils Report does not result in an economic benefit that can be measured on a daily basis. Therefore, the Prosecution Team recommends compressing the days of violation. Using the method described for Violation 1, there are 37 compressed days of violation.

Initial Liability Amount

The initial liability amount for the violations calculated on a per-day basis is as follows:
37 days x \$1,000/day x 0.55 = \$20,350

Total Initial Liability = \$20,350

Step 4: Adjustment Factors

Culpability: 1.3

The discussion of Culpability for Violation 1 applies to this violation also. In addition, the fact that the Discharger failed to collect samples prior to use and one year later means

that the Discharger has continued to use the composting barns without the potential of having to retrofit them with concrete floors. A multiplier of 1.3 is appropriate.

History of Violation: 1.0

The discussion of History of Violation for Violation 1 applies to this violation also. It is appropriate to use a History multiplier of 1.0.

Cleanup and Cooperation: 1.1

The discussion of Cleanup and Cooperation for Violation 1 applies to this violation also. In addition, the Discharger failed to submit the outstanding report and failed to propose an alternate option as required by the NOV. A cooperative Discharger, knowing that it was no longer possible to collect these samples, should have proposed another method to determine whether the composting barns have the potential to impact water quality. It is appropriate to use a cleanup and cooperation multiplier of 1.1.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount.

Total Base Liability Amount: Violation 5

Total Initial Liability x Culpability Multiplier x History of Violations Multiplier x
Cleanup and Cooperation Multiplier = Total Base Liability
 $\$20,350 \times 1.3 \times 1.0 \times 1.1 = \$29,100$

Total Base Liability = **\$29,100**

Step 5: Combined Total Base Liability for all Violations

The combined total base liability is the sum of the total base liability for each of the five violations, as follows:

Violation 1: \$29,100

Violation 2: \$11,797

Violation 3: \$28,314

Violation 4: \$29,100

Violation 5: \$29,100

Total: \$127,411

Step 6: Ability to Pay and Continue in Business

The ability to pay and to continue in business must be considered when assessing administrative civil liability. The Prosecution Team conducted a preliminary asset search of publicly available information and finds that the Discharger has the ability to pay the proposed liability because the Dairy is a business that continues to operate and generate profits. According to the Discharger's most recent Annual Report, the Dairy

houses approximately 2,000 milk cows, 300 dry cows, 650 bred heifers, 800 heifers, and 550 calves. In addition, publicly available information indicates that the land assets associated with Dairy are significant.

Based on publicly available information, the Prosecution Team believes that the Discharger has the ability to pay the proposed liability and remain in business. However, the Enforcement Policy recognizes that it is difficult to evaluate a violator's ability to pay and continue in business because many financial records are private and within the exclusive possession of the Discharger.

The Enforcement Policy provides that "staff may issue a subpoena for financial documents to make an assessment of whether, and the extent to which, an adjustment to the Total Base Liability should be made ..." At the same time that this Complaint was issued, the Prosecution Team issued subpoenas requesting financial documents from the Discharger, which requires submission of financial records, if the Discharger wishes to contest the Prosecution Team's initial finding on this factor.

Since the Prosecution Team has made an initial showing that the Discharger has an ability to pay, the Enforcement Policy shifts the burden to the Discharger to provide evidence of an inability to pay. The Enforcement Policy goes on to state the Water Boards should treat that failure to produce financial documents in response to a subpoena as a waiver of the Discharger's right to challenge its ability to pay or effect on its ability to continue in business at the hearing, or an admission that the Discharger is able to pay the proposed liability and that the proposed liability will not affect its ability to continue in business.

Step 7 – Other Factors as Justice May Require

The costs of investigation and enforcement are "other factors as justice may require." These costs could be added to the liability amount. The Central Valley Water Board Prosecution Team has spent at least 50 hours in connection with the investigation and enforcement of the violations alleged herein. While this amount could be added to the penalty, the Prosecution Team, in its discretion, is not adding this amount to the total proposed liability.

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require" but only if express findings are made to justify this.

In this case, application of the Enforcement Policy results in a liability of \$127,411. The amount is the result of the application of the Enforcement Policy to the violations alleged herein. However, the Prosecution Team has determined that a penalty of \$127,411 is not appropriate in this matter because the Discharger is also subject to a separate enforcement action; a proposed Cease and Desist Order.

Concurrent with this action, the Prosecution Team has proposed a Cease and Desist Order (Proposed CDO; available at https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/weststeyn/weststeyn_cdo.pdf). The Proposed CDO requires the Discharger to invest significant resources to correct compliance issues at the Dairy, including compliance related to the violations alleged herein. Compliance with the Proposed CDO will require the Discharger to focus its financial resources on improving operations and management at the Dairy. It is a priority for the Prosecution Team that the Discharger makes the necessary investment of resources at the Dairy such that the Dairy operates in compliance with its WDRs and the Proposed CDO.

In light of this, the Prosecution Team proposes a reduction in the liability in this matter in order to allow the Discharger to appropriately prioritize compliance with WDRs Order R5-2009-0082 and the Proposed CDO over payment of a higher administrative civil liability. The Prosecution Team asserts that the goals of the Water Code and Enforcement Policy can be met here with a smaller, though still substantial, final liability in the amount of \$30,000, which would recover substantially more than the economic benefit of the Discharger's noncompliance. The proposed final liability in the amount of \$30,000 is still adequate to provide a deterrent effect because it recovers a liability amount in excess of the minimum liability, described in more detail below.

This application of discretion is a result of the specific circumstances peculiar to this case.

Step 8 – Economic Benefit

Pursuant to Water Code section 13327, civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The economic benefit of noncompliance is any savings or monetary gain derived from the act or omission that constitutes the violation. In other words, the Discharger realized a gain by not expending the resources to comply with water quality laws, including not submitting certain technical reports and not completing the monitoring and reporting as required by WDRs Order R5-2009-0082. In addition, the Enforcement Policy states that the total liability shall be at least 10% higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations."

It is possible to determine the economic benefit accrued from the Discharger's failure to comply with its WDRs. This determination can be made using the U.S. Environmental Protection Agency's BEN computer model, which calculates the economic benefit a discharger derives from delaying and/or avoiding compliance with environmental regulations. As shown in the attached Exhibit 1, the State Water Board's Economist used the BEN model and the estimates provided by staff for the costs to monitor storm water, groundwater, and the composting barn soils, and to compile and submit the technical and monitoring reports. These estimated costs are based on actual billed

work, bid proposals, and/or estimated costs provided by other dischargers for completing similar type work and/or consulting firms that complete similar work.

Using the BEN model, the economic benefit for not completing the required monitoring and not submitting the required monitoring and technical reports is estimated to be \$15,271. Pursuant to the Enforcement Policy, the total proposed liability amount should be at least 10% higher than the calculated economic benefit. Therefore, the minimum liability is \$16,798.

Step 9 – Maximum and Minimum Liability Amounts

The statutory maximum and minimum liabilities must be determined and compared to the proposed liability. The maximum liability is detailed in the Findings 22-23 of the ACL Complaint. The minimum amount is described in Step 8, above, as well as in Finding 24 of the ACL Complaint. The values are repeated here.

Maximum Liability Amount: \$2,780,000

Minimum Liability Amount: \$16,798

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 maximum and minimum amounts. Based on the foregoing analysis, and consistent with the Enforcement Policy, the final proposed Administrative Civil Liability is **thirty thousand dollars (\$30,000)**.