

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

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2014-0002**

**IN THE MATTER OF:**

**THE INN AT PASATIEMPO  
PASATIEMPO INVESTMENTS, PASATIEMPO II INVESTMENTS, RICHARD S  
GREGERSEN, AND ADVENTO HOLDING CORPORATION**

**SANTA CRUZ COUNTY**

**PASATIEMPO INVESTMENTS, PASATIEMPO II INVESTMENTS, RICHARD S  
GREGERSEN AND ADVENTCO HOLDING CORPORATION ARE HEREBY GIVEN  
NOTICE THAT:**

1. Pasatiempo Investments, a California Limited Partnership; Pasatiempo II Investments, a California Limited Partnership; Richard S. Gregersen, an individual; and Adventco Holding Corporation, a California corporation (collectively Dischargers) own and/or operate the Inn at Pasatiempo (Inn or Facility), a motel with conference rooms and restaurant located at 555 Highway 17, Santa Cruz County.
2. Dischargers are alleged to have violated provisions of law for which the Regional Water Quality Control Board, Central Coast Region (hereafter "Central Coast Water Board") may impose civil liability pursuant to California Water Code section 13268. Water Code section 13323 authorizes the Executive Officer to issue this Complaint; that authority has been delegated to the Assistant Executive Officer.
3. This Complaint is based on findings that the Dischargers failed to submit Self-Monitoring Reports required under Waste Discharge Requirements (WDR) Order No. 99-136, adopted by the Central Coast Water Board on November 19, 1999.
4. The Central Coast Water Board will hold a public hearing on this matter on **January 31, 2014**, in Watsonville, California, unless the Dischargers agree to waive the right to a public hearing by filling out, signing, and submitting the enclosed "Waiver of Hearing." The meeting is scheduled to begin at 8:30 a.m.; however, no specific time has been set for consideration of this item.
5. If the Dischargers choose not to waive the right to a public hearing, an agenda will be mailed to the Dischargers separately, not less than ten days before the public hearing date. The Dischargers and their authorized representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Central Coast Water Board.

6. At the public hearing, the Central Coast Water Board will receive evidence and hear arguments and consider whether to recommend that the full Central Coast Water Board affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the State Attorney General for recovery of judicial civil liability. At a later meeting, the full Central Coast Water Board may impose a higher or lower amount of administrative civil liability, or refer the matter to the State Attorney General.

## **LEGAL PROVISIONS**

7. The Central Coast Water Board regulates the Facility by Waste Discharge Requirements (WDR) Order No. 99-136, adopted by the Central Coast Water Board on November 19, 1999. Order No. 99-136 permits the discharge of wastewater to two independent on-site treatment and disposal facilities.
8. WDR Order No. 99-136, Provision D.4, requires the Dischargers to comply with Monitoring and Reporting Program No. 99-136 (revised February 28, 2001), and that requirement is made pursuant to California Water Code section 13267. The Central Coast Water Board requires the monitoring reports in a timely manner in order to determine the Dischargers' compliance with WDR Order No. 99-136.
9. Water Code section 13268, subdivision (a), provides that any person failing or refusing to furnish a technical or monitoring program reports as required under section 13267, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
10. Water Code section 13268, subdivision (b), provides that 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.

## **ALLEGATIONS**

11. Central Coast Water Board Staff conducted a ten-year file review and found that Dischargers' monitoring report submittals were chronically late and in the case of the 4<sup>th</sup> quarter 2006, 1<sup>st</sup> quarter 2009, and 3<sup>rd</sup> quarter 2011, were never submitted.

**Violations**

Table 1. Recent Violations

<b>Late Submitted Quarterly Report</b>	<b>Due Date</b>	<b>Date Submitted</b>	<b>Days Late</b>
3 <sup>rd</sup> Quarter 2010	October 15, 2010	August 27, 2012	683
4 <sup>th</sup> Quarter 2010	January 15, 2011	August 27, 2012	591
1 <sup>st</sup> Quarter 2011	April 15, 2011	August 27, 2012	501
3 <sup>rd</sup> Quarter 2011	October 15, 2011	Not submitted	752 as of November 4, 2013
1 <sup>st</sup> Quarter 2012	April 15, 2012	September 17, 2012	156
2 <sup>nd</sup> Quarter 2012	July 15, 2012	September 6, 2013	419
3 <sup>rd</sup> Quarter 2012	October 15, 2012	September 6, 2013	326
4 <sup>th</sup> Quarter 2012	January 15, 2013	September 6, 2013	234
1 <sup>st</sup> Quarter 2013	April 15, 2013	September 6, 2013	144
2 <sup>nd</sup> Quarter 2013	July 15, 2013	September 6, 2013	53

Table 1 demonstrates the most recent late submittals and missing reports from the Dischargers. The Central Coast Water Board notified the Dischargers of the third quarter 2010 through the first quarter 2012 report violations via a Notice of Violation (NOV) dated August 21, 2012. In response, the Dischargers submitted the late reports except for the third quarter of 2011, which has not been submitted. Even after the issuance of the NOV, the Dischargers continued the pattern of not furnishing monitoring reports in a timely manner. After the NOV, the Dischargers did not submit further monitoring reports until staff sent emails, made phone calls, and scheduled a site compliance inspection.

- Central Coast Water Board staff chose the following violations to be representative of the Dischargers' repeat violations. The Central Coast Water Board reserves the right to seek enforcement of the remaining violations listed in Table 1.

**Alleged Violation #1**

13. The Dischargers failed to submit their third quarter of 2011 Self-Monitoring Report on or before the October 15, 2011 due date in violation of WDR Order No. 99-136, Provision D.4.
14. On August 21, 2012, Central Coast Water Board staff sent a Notice of Violation to the Dischargers notifying them of their failure to submit this monitoring report. As of November 4, 2013, the Dischargers have not submitted the report, resulting in **752** days of violation.
15. As of November 4, 2013, the Dischargers' report was seven hundred fifty two (752) days late, subjecting the Dischargers to a maximum civil liability under Water Code section 13268 equal to seven hundred fifty two thousand dollars (\$752,000), or 752 multiplied by \$1,000. This maximum civil liability increases by \$1,000 for each additional day the Dischargers' report is late.

**Alleged Violation #2**

16. The Dischargers failed to submit their third quarter 2012 Self-Monitoring Report on or before the October 15, 2012 due date in violation of WDR Order No. 99-136, Provision D.4.
17. On February 11 and March 7, 2013, Central Coast Water Board staff sent emails to the Dischargers' representatives informing them of this violation. Water Board staff also spoke to the Dischargers' representative by telephone regarding this violation. The report was submitted September 6, 2013, resulting in **327** days of violation.
18. The Dischargers' report was submitted three hundred twenty seven (327) days late, subjecting the Dischargers to a maximum civil liability under Water Code section 13268 equal to three hundred twenty seven thousand dollars (\$327,000), or 327 multiplied by \$1,000.

**Alleged Violation #3**

19. The Dischargers failed to submit their fourth quarter 2012 Self-Monitoring Report on or before the January 15, 2013 due date in violation of WDR Order No. 99-136, Provision D.4.
20. On February 11 and March 7, 2013, Central Coast Water Board staff sent emails to the Dischargers' representatives informing them of this violation. Water Board staff also spoke to the Dischargers' representative by telephone regarding this violation. The report was submitted September 6, 2013 resulting in **235** days of violation.
21. The Dischargers' report was submitted two hundred thirty five (235) days late, subjecting the Dischargers to a maximum civil liability under Water Code section

13268 equal to two hundred thirty five thousand dollars (\$235,000), or 235 multiplied by \$1,000.

## **CALCULATING ADMINISTRATIVE CIVIL LIABILITY**

22. The Dischargers' failure to submit Self-Monitoring Reports is a violation of Water Code section 13267, subject to penalty under Water Code section 13268.
23. **Maximum Penalty.** Pursuant to Water Code section 13268 the maximum penalty for the violations described above is **\$1,314,000**, based on a calculation of the total number of per-day violations times the statutory maximum penalty (1314 total days of violation X \$1,000).
24. **Liability Factors.** On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability, including those set forth in Water Code section 13327. This policy can be found at:  
  
[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf).
25. The administrative civil liability here was derived from the use of the penalty methodology in the Enforcement Policy based on a consideration of the Dischargers' failure to comply with the terms of the Waste Discharge Requirements. The proposed civil liability takes into account factors set forth in Water Code section 13327, including the Dischargers' culpability, history of violations, ability to pay and continue in business, and other factors as justice may require. The specific application of the Enforcement Policy methodology here is described in Attachment A and shown in the Penalty Calculation for Civil Liability contained in Attachment B.
26. **Alternative Violation Days Calculation.** Violations under Water Code section 13268 are assessed on a per day basis. However, the violations at issue are primarily reporting violations and therefore qualify for the alternative approach to penalty calculation under the Enforcement Policy (at page 18). The failure to submit self-monitoring reports does not cause daily detrimental impacts to the environment or the regulatory program. It is appropriate to assess daily penalties for the first day of each violation, plus an assessment for each five day period of violation until the 30<sup>th</sup> day, plus one violation for each additional thirty-day period. In accordance with this approach, the number of violation days here is reduced to **60 days** (Attachment A).

**PROPOSED ADMINISTRATIVE CIVIL LIABILITY**

27. Based on consideration of the above facts and after applying the penalty methodology as shown in Attachments A and B, the Assistant Executive Officer of the Central Coast Water Board proposes that civil liability be imposed administratively on the Dischargers pursuant to Water Code section 13268, subdivision (b), in the amount of **twenty-four thousand seven hundred dollars (\$24,700)**, of which \$3,900 be accounted for as reimbursement of staff costs. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to seek in this action additional liability to cover the costs of investigation and enforcement incurred after the issuance of this ACL Complaint, including, but not limited to, all costs and expenses (including legal and expert witness costs) incurred in preparing for and appearing at the hearing.

**GENERAL**

28. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
29. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. (*See City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
30. Notwithstanding the issuance of this Complaint, the Central Coast Water Board retains the authority to assess additional penalties for violations of the requirements of the Waste Discharge Requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
31. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).
32. Payment of the assessed liability amount does not absolve the Dischargers from complying with WDR Order 99-136, as amended or modified. Additional civil liability may be assessed in the future if the Dischargers fail to comply with WDR Order 99-136 or future orders issued by the Central Coast Water Board.
33. **WAIVER OF A HEARING:** The Dischargers may waive the right to a hearing. If the Dischargers wish to waive the right to a hearing, an appropriate representative must sign the attached waiver, select one of the waiver options provided, and return it **by**

**December 6, 2013**, along with any checks or documentation required by the Discharger's selected waiver option, to the Central Coast Water Board, Attention: Harvey Packard, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401-7906.

If you have any questions, please contact Cecile Demartini at (805) 542-4782 or [cecile.demartini@waterboards.ca.gov](mailto:cecile.demartini@waterboards.ca.gov), Jill North at (805) 542-4762 or [jill.north@waterboards.ca.gov](mailto:jill.north@waterboards.ca.gov), Harvey Packard at (805) 542-4639 or [harvey.packard@waterboards.ca.gov](mailto:harvey.packard@waterboards.ca.gov), or State Water Board Office of Enforcement attorney Andrew Tauriainen at (916) 323-6847 or [andrew.tauriainen@waterboards.ca.gov](mailto:andrew.tauriainen@waterboards.ca.gov).



cn=Harvey C. Packard, o=Central Coast  
Regional Water Quality Control Board,  
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email=hpackard@waterboards.ca.gov,  
c=US  
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for Michael J. Thomas  
Assistant Executive Officer

Date: November 6, 2013

**Attachment A – ACL Complaint No. R3-2014-0002**  
**Specific Factors Considered – Civil Liability**  
**Pasatiempo Investments, Pasatiempo II Investments, Richard S. Gregersen,**  
**Adventco Holding Corporation**

The proposed administrative civil liability was derived following the State Water Resources Control Board's Water Quality Enforcement Policy (the "Enforcement Policy") and using the "Penalty Calculation Methodology Worksheet, version date 6/24/2010" (the "Penalty Calculation Worksheet," see Attachment B). The proposed civil liability takes into account such factors as the Dischargers' culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

Each factor of the Enforcement Policy and its corresponding score for the violation is presented below:

- 1. Failure to submit self-monitoring reports:** WDR Order 99-136 requires that the Dischargers must submit quarterly self-monitoring reports. To date, the Dischargers have failed to submit the third quarter 2011 self-monitoring report, and submitted the third quarter 2012 and fourth quarter 2012 self-monitoring reports late.

**Calculation of Penalty for Failure to Pay Cooperative Monitoring Fees**

**Step1. Potential for Harm for Discharge Violations**

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

**Step 2. Assessment for Discharge Violations**

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

**Step 3. Per Day Assessment for Non-Discharge Violations**

The per day factor is 0.20.

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements in accordance with Step 3 of the Enforcement Policy analysis (Enforcement Policy, pages 15-16). The **potential for harm** was determined to be **minor** because the failure to submit self-monitoring reports did not increase the amount of pollution discharged or threatened to discharge into Waters of the State. The **deviation from requirements** was determined to be **moderate** because the requirement to submit reports was not met and the effectiveness of the WDR Order was partially compromised. Using these categories as applied in Table 3 of the Enforcement Policy, the per day factor is 0.20.

## Initial Liability

Pursuant to California Water Code section 13268, violations of Water Code section 13267 are subject to administrative civil liability of up to one thousand dollars (\$1,000) for each day the violation occurs.

As of 4 November 2013, the Dischargers have accrued a total of **1,314 days of violation** for failing to submit the third quarter 2011 self-monitoring report (total 752 days late), submitting the third quarter 2012 self-monitoring report 327 days late and submitting the fourth quarter 2012 self-monitoring report 235 days late. The Dischargers are subject to an initial liability amount of **\$1,314,000**.

The Enforcement Policy (page 18) provides an alternative approach to penalty calculation where the violation does not cause daily detrimental impacts to the environment or the regulatory program. The alternative approach calls for daily penalties for the first violation, plus an assessment of one day for each five day period of violation until the 30<sup>th</sup> day, plus one violation for each additional thirty day period. The alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable as the failure to submit required fees does not cause a daily detrimental impact to the environment or the regulatory program.

In cases eligible for the alternative approach and where a water board elects to use it, the methodology provides that liability shall not be less than the liability for the first day of the violation, plus an assessment for each five-day period of violation until the 30<sup>th</sup> day, plus an assessment for each subsequent 30 days of violation. Using the third violation as an example, as of June 7, 2013, the Dischargers' violation lasted 234 days. Using the alternative approach, the Dischargers accrue a per day assessment for days 1 (for the first day), 5, 10, 15, 20, 25, 30 (for each 5-day period up to the 30<sup>th</sup> day), 60, 90, 120, 150, 180, and 210, (for each 30 days thereafter), for a total of 13 days' worth of violations. Prosecution staff used this alternative approach in Step 3 of the penalty calculation in Attachment B, which also shows the Penalty Day Range Generator for each violation.

Applying the per-day factor to the adjusted number of days of violation rounded to the nearest full day equals **60 total days of violation**. A calculation of initial liability totals **\$12,000** (0.2 per day factor X 60 adjusted days of violation X \$1,000 per day). This equates to the following breakdown by alleged violation:

- a) Alleged violation #1:  $(.2 \times 31 \times \$1,000) = \$6,200$
- b) Alleged violation #2:  $(.2 \times 16 \times \$1,000) = \$3,200$
- c) Alleged violation #3:  $(.2 \times 13 \times \$1,000) = \$2,600$

#### **Step 4. Adjustment Factors**

- a) *Culpability*: For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 and 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior.
- i. In this case a multiplier of 1.2 has been selected for all three alleged violations because a reasonable and prudent person would have turned in the monitoring reports on time.
- b) *Cleanup and Cooperation*: For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.
- i. In the case of Violation 1, a multiplier of 1.3 is used because the Dischargers have not turned in this monitoring report despite numerous communications between Central Coast Water Board Staff and the Dischargers, including a notice of violation. For Violations 2 and 3 a multiplier of 1.1 was selected because the monitoring reports were late but they were turned in.
- c) *History of Violations*: The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used for this factor.
- i. In this case a multiplier of 1.2 has been chosen for all three alleged violations. This is because the Dischargers are chronically late with their monitoring reports; they have received numerous NOVs for late or missing monitoring reports and have also received a previous Administrative Civil Liability for late monitoring reports.

#### **Step 5. Determination of Total Base Liability Amount**

The Total Base Liability amount of \$20,793.60 is determined by adding the amounts for each violation above. Accordingly, the Total Base Liability amount for the violations is calculated by multiplying the initial amount by the adjustment factors and adding the three alleged violations together (Initial Liability) x (Culpability) x (Cleanup) x (History of Violations):

- a) Alleged Violation #1:  $(\$6,200) \times (1.2) \times (1.3) \times (1.2)$
- b) Alleged Violation #2:  $(\$3,200) \times (1.2) \times (1.1) \times (1.2)$
- c) Alleged Violation #3:  $(\$2,600) \times (1.2) \times (1.1) \times (1.2)$

## **Step 6. Ability to Pay and Continue in Business**

The Enforcement Policy states that if the Central Coast Water Board has sufficient financial information to assess the Dischargers' ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the Dischargers' ability to continue in business, then the Total Base Liability amount may be adjusted downward.

The Inn at Pasatiempo generates income from 54 rooms, a pool and conference rooms. This corresponds with the Dischargers' apparent ability to pay the recommended liability. Prosecution staff recommends a multiplying factor of 1 in Step 6 of the penalty calculation in Attachment B, which has a neutral influence on the initial liability established above.

## **Step 7. Other Factors as Justice May Require**

- a) *Adjusted Combined Total Base Liability Amount:* \$20,793.60+\$3,900 (Staff Costs) = **\$24,693.60.**
- b) The State and Regional Water Board has incurred \$3,900 in staff costs associated with the investigation and enforcement of the violations alleged herein. Central Coast Water Board staff, including technical staff, management, and legal counsel, time informing the Dischargers by letter, email, telephone and in person of its responsibilities, investigating the alleged violations, reviewing past monitoring reports, and preparing enforcement documents. This represents approximately 26 hours of staff time devoted to investigating and drafting the complaint at \$150 an hour. Staff costs continue to accrue through any hearings held on this matter. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liability Amount.

## **Step 8. Economic Benefit**

- a) *Estimated Economic Benefit:* **\$300**

Water Board staff estimates 2 hours of the Discharger's consultant time needed to prepare and submit each quarterly report at a cost of \$150 per hour. This equates to estimated cost savings of \$300 for the monitoring report not submitted.

## **Step 9. Maximum and Minimum Liability Amounts**

- a) *Minimum Liability Amount:*

There is no statutory minimum for Water Code section 13268 violations.

b) *Maximum Liability Amount: \$1,314,000*

The maximum administrative liability amount is the maximum amount allowed by Water Code section 13268: one thousand dollars (\$1,000) for each day in which the violation occurs. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Dischargers could face penalties for the total number of days in violation (1,314 total days X \$1,000 per day).

The proposed liability falls within these maximum and minimum liability amounts.

**Step 10. Final Liability Amount**

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit monitoring reports is rounded to **\$24,700**. Attachment B is a spreadsheet that demonstrates the use of the penalty calculation methodology.

Password for Workbook Protection: enforcement

- Instructions**
1. Select Potential Harm for Discharge Violations
  2. Select Characteristics of the Discharge
  3. Select Susceptibility to Cleanup or Abatement
  4. Select Deviation from Standard
  5. Click "Determine Harm & per Gallon/Day..."
  6. Enter Values into the Yellow highlighted fields

Select Item Potential Harm for Discharge Violations  
 Select Item Characteristics of the Discharge  
 Select Item Susceptibility of Cleanup or Abatement  
 Select Item Deviation from Requirement

Select Item Potential Harm for Discharge Violations  
 Select Item Characteristics of the Discharge  
 Select Item Susceptibility of Cleanup or Abatement  
 Select Item Deviation from Requirement

Select Item Potential Harm for Discharge Violations  
 Select Item Characteristics of the Discharge  
 Select Item Susceptibility of Cleanup or Abatement  
 Select Item Deviation from Requirement

Discharger Name/ID:	Pasatiempo Investments	Violation 1: Failure to Submit 3rd Qtr. 2011 Rpt.	Violation 2: Late Submittal 3rd Qtr. 2012 Rpt.	Violative
<b>Step 1</b>	Potential Harm Factor (Generated from Button)			
<b>Step 2</b>	Per Gallon Factor (Generated from Button)			
	Gallons			
	Statutory / Adjusted Max per Gallon (\$)			
	<b>Total</b>	\$ -	\$ -	
	Per Day Factor (Generated from Button)			
	Days			
	<b>Total</b>	\$ -	\$ -	
<b>Step 3</b>	Per Day Factor (PFH minor; Dev moderate)	0.2	0.2	0.2
	Days [Adj for Multiple Days of Violation per EP Step 4 & below]	31	16	13
	Statutory Max per Day [Water Code 13385(c)]	1,000	1,000	1,000
	<b>Total</b>	\$ 6,200.00	\$ 6,200.00	\$ 3,200.00
	<b>Initial Amount of the ACL</b>	\$ 6,200.00	\$ 6,200.00	\$ 3,200.00
<b>Step 4</b>	Culpability [High]	1.2	1.2	1.2
	Cleanup and Cooperation [Poor cooperation]	1.3	1.1	1.1
	History of Violations	1.2	1.2	1.2
<b>Step 5</b>	<b>Total Base Liability Amount</b>	\$ 20,793.60	\$ 20,793.60	\$ 11,606.40
<b>Step 6</b>	Ability to Pay & to Continue in Business [see Notes]	\$ 20,793.60	\$ 20,793.60	\$ 11,606.40
<b>Step 7</b>	Other Factors as Justice May Require [see Notes]	\$ 3,900	\$ 3,900	\$ 3,900
	Staff Costs [26 hours at \$150/hour]	\$ 3,900	\$ 3,900	\$ 3,900
<b>Step 8</b>	Economic Benefit [est. \$300 per report]	\$ 300	\$ 300	\$ 300
<b>Step 9</b>	Minimum Liability Amount	\$ 1,314,000	\$ 1,314,000	\$ 1,314,000
<b>Step 10</b>	<b>Final Liability Amount</b>	\$ 24,693.60	\$ 24,693.60	\$ 24,693.60

**Rounded Amount for Recommendation: \$24,700**

**Penalty Day Range Generator**

**Violation 1**

Start Date of Violation= 10/15/11  
 End Date of Violation= 11/4/13

Maximum (Actual) Days of Violation (Step 3) = 752 Days  
 Minimum (Alternative) Days of Violation (Step 3) = 31 Days (for Multiple Days of Violation >30)

**Penalty Day Range Generator**

**Violation 2**

Start Date of Violation= 10/15/12  
 End Date of Violation= 9/6/13

Maximum (Actual) Days of Violation (Step 3) = 327 Days  
 Minimum (Alternative) Days of Violation (Step 3) = 16 Days (for Multiple Days of Violation >30)

**Penalty Day Range Generator**

**Violation 3**

Start Date of Violation= 1/15/13  
 End Date of Violation= 9/6/13

Maximum (Actual) Days of Violation (Step 3) = 235 Days  
 Minimum (Alternative) Days of Violation (Step 3) = 13 Days (for Multiple Days of Violation >30)

**Abbreviations:**  
 PFH = Potential For (Environmental) Harm  
 EP = Enforcement Policy  
 NOV = Notice of Violation

Statutory Maximum is:  
 Proposed Amount is:

Potential Harm for Discharge Violations  
 Characteristics of the Discharge  
 Susceptibility of Cleanup or Abatement  
 Deviation from Requirement

<b>in 3: Late Submittal 4th Qtr 2012 Rpt.</b>	
	-
\$	-
	-
\$	-
	2,600.00
\$	<b>2,600.00</b>
\$	3,120.00
\$	3,432.00
\$	4,118.40

of the maximum

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2014-0002**

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

I am duly authorized to represent Pasatiempo Investments, LP; Pasatiempo II investments, LP; Richard S. Gregersen; and Adventco Holding Company (hereinafter "Dischargers") in connection with Administrative Civil Liability Complaint No. R3-2014-0002 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

**Total Proposed Civil Liability: \$24,700.**

***(OPTION 1: Check here if the Dischargers waive the hearing requirement and will pay the total proposed liability in full.)***

- a. I hereby waive any right the Dischargers may have to a hearing before the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board).
- b. I certify that the Dischargers will remit payment for the total proposed civil liability in the full amount of \$24,700 by check that references "ACL Complaint No. R3-2014-0002" made payable to the "State Water Resources Control Board." The Central Coast Water Board must receive payment with this Waiver Form or the Water Board may adopt an administrative civil liability order requiring payment.
- c. I understand that this proposed settlement is subject to approval by the Water Board, and that the Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Dischargers' 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 Dischargers to further enforcement, including additional civil liability.

- (OPTION 2: Check here if the Dischargers waive the hearing requirement and will pay the total proposed civil liability divided between liability and suspended liability for the available Supplemental Environmental Projects (SEPs). The Dischargers will pay up to the maximum allowable portion of the total proposed civil liability towards the SEPs as indicated within this option, and will pay the remainder of the total proposed civil liability to the State Water Resources Control Board.)***

The Central Coast Water Board prosecution staff will not accept SEP proposals other than the Dischargers' selection from among the following projects:

1. **Low Impact Development Initiative (LIDI):** The mission of the LIDI is to support the vision of healthy watersheds through the implementation of LID design principles, hydromodification controls, and sustainable development throughout the Central Coast Region. In 2008, the Central Coast Water Board established a LID Endowment Fund with the Bay Foundation of Morro Bay. This fund provides support for the LIDI, which is housed under a branch of the UC Davis Extension's Land Use and Natural Resources Program. LIDI services focus on the planning, design, and implementation of LID projects and programs. This includes regional training, regulatory compliance, site specific project designs, hydromodification criteria development, technical consulting services, and large-scale, long-term, community-level planning. More information is available at:

[http://www.centralcoastlidi.org/Central\\_Coast\\_LIDI/Home.html](http://www.centralcoastlidi.org/Central_Coast_LIDI/Home.html)

2. **Central Coast Ambient Monitoring Program (CCAMP):** CCAMP consists of both surface water and groundwater monitoring components, and has built a significant data resource over the years to characterize the Central Coast Region's waters. The CCAMP endowment, held at the Bay Foundation of Morro Bay, is used for staffing, equipment, contract services (such as software and web support), some analytical costs, and special projects. More information is available at:

<http://www.ccamp.org/>

Each option is an established, on-going, region-wide project administered by an approved third party, which allows the Dischargers to satisfy the selected project obligations by transferring the agreed-upon funds in a timely manner. Upon approval, the Dischargers will have the option of paying toward one or more SEPs up to 50 percent of the total liability amount minus Central Coast Water Board prosecution staff costs. Funds derived from suspended liability related to the alleged violations are appropriate for these SEPs because the projects are implemented throughout the region and are related to waters associated with the Dischargers' waste discharge. The State Water Board Office of Enforcement has approved both LIDI and CCAMP as appropriate SEPs. The Central Coast Water Board has

established LIDI and CCAMP as top priorities for SEP funding. Water Board prosecution staff will not accept SEP proposals other than those listed above.

The Dischargers will pay up to the maximum allowable portion of the total proposed civil liability towards the SEPs it indicates with an “X” in the first column of the table below. The Dischargers will indicate in the second column of the table below how much of the maximum allowable portion it will direct to each selected SEP. If selecting multiple SEPs, the amounts entered in the second column must be equal to or less than the maximum allowable portion.

**Total Proposed Civil Liability: \$24,700.**

**Central Coast Water Board Prosecution Staff Costs: \$3,900.**

**Total Proposed Civil Liability Without Staff Costs: \$20,800.**

**Maximum Allowable Portion for SEPs: \$10,400.**

Discharger Selects the Following SEPs	Amount (\$) of Maximum Allowable Portion for each SEP	SEP Name
		Low Impact Development Initiative
		Central Coast Ambient Monitoring Program

- a. I hereby waive any right the Dischargers may have to a hearing before the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board).
- b. I certify that the Dischargers will remit payment for the proposed civil liability in the ***adjusted*** amount of the total proposed civil liability less the amount shown in the above table for SEPs<sup>1</sup> by check that references “ACL Complaint No. R3-2014-0002” made payable to the “*State Water Resources Control Board.*” The Central Coast Water Board must receive payment with this Waiver Form or the Water Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I certify that the Dischargers will remit payment for the selected SEPs in the amounts shown in the above table by separate checks that reference “ACL Complaint No. R3-2014-0002” made payable to the “*Bay Foundation of Morro Bay.*” The Central Coast Water Board must receive payment with this Waiver Form or the Water Board may adopt an administrative civil liability order requiring payment.

<sup>1</sup> For example, if the Dischargers elect to pay the maximum allowable portion of \$10,400 towards SEPs, then the amount it must pay to the Cleanup and Abatement Account would be \$24,700 - \$10,400 = \$14,300.

- d. I understand that this proposed settlement is subject to approval by the Water Board, and that the Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Dischargers having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- e. I understand that payment of the above amounts is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Dischargers to further enforcement, including additional civil liability.

***(OPTION 3: Check here if the Dischargers waive the 90-day hearing requirement in order to engage in settlement discussions.)***

I hereby waive any right the Dischargers may have to a hearing before the Central Coast 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 Dischargers will promptly engage the Water Board prosecution staff in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Dischargers request that the Water Board delay the hearing so that the Dischargers and the prosecution staff can discuss settlement.

In these discussions, the Dischargers can raise settlement options including supplemental environmental projects (SEP) and enhanced compliance projects that meet the State Water Resources Control Board's requirements for such projects.

For the purposes of the settlement discussions, the Water Board prosecution staff will not accept SEP proposals other than the Dischargers' selection from among the SEPs listed above under "Option 2."

It remains within the discretion of the Central Coast Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1" and "Option 2."

***(OPTION 4: Check here if the Dischargers waive 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 Dischargers may have to a hearing before the Central Coast Water Board within 90 days after service of the Complaint. By checking this box, the Dischargers request that the Water Board delay the hearing and/or hearing deadlines so that the Dischargers may have additional time to prepare for the hearing. It remains within the discretion of the Water Board to approve the extension.

NOTICE OF PUBLIC HEARING & PROCEDURES  
TO CONSIDER ADMINISTRATIVE CIVIL LIABILITY  
COMPLAINT NO. R3-2014-0002  
ISSUED TO

Pasatiempo Investments, LP, Pasatiempo II investments, LP, Richard S. Gregersen and  
Adventco Holding Company

Santa Cruz County

**NOTICE IS HEREBY GIVEN THAT HEARINGS WILL BE HELD  
BEFORE THE CENTRAL COAST WATER BOARD ON MARCH 7, 2014 and MAY 23, 2014**

**Background**

The Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board or Water Board) Assistant Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code section 13323 against Pasatiempo Investments, Pasatiempo II Investments, Richard S. Gregersen and Adventco Holding Company (Dischargers) alleging that it has violated Water Code section 13267 by failing to submit monitoring reports as established in WDR Order No. 99-136 and Monitoring and Reporting Program No. 99-136. The Complaint proposes the imposition of administrative civil liability in the amount of \$24,700 as authorized by Water Code section 13268. The Dischargers waived their right to a hearing within 90 days, so the hearings for the Cease and Desist Order (CDO) and ACL Complaint will be heard separately. Unless the Dischargers waive the right to a hearing and pay the proposed liability, a hearing on the CDO will be held before the Central Coast Water Board during its meeting of March 7, 2014 and a hearing on the ACL Complaint will be held before the Central Coast Water Board during its meeting of May 23, 2014.

**Purpose of Hearing**

The purpose of the hearings is to receive relevant evidence and testimony regarding the proposed CDO and proposed ACL Complaint. At the hearings, the Central Coast Water Board will consider whether to adopt the proposed cease and desist order and whether to adopt the assessment, modify it or reject it. If it adopts an assessment the Water Board will issue an administrative civil liability order.

The public hearings on March 7, 2014 and May 23, 2014, will commence as announced in the Central Coast Water Board's pending meeting agenda. The March 7, 2014 meeting is scheduled to be held in Salinas and the May 23, 2014 is scheduled to be held in San Luis Obispo. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Central Coast Water Board's web page at

[http://www.waterboards.ca.gov/centralcoast/board\\_info/agendas/2014/2014\\_agendas.shtml](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2014/2014_agendas.shtml).

**Hearing Procedures**

A copy of the procedures governing an adjudicatory hearing before the Central Coast Water Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at [http://www.waterboards.ca.gov/laws\\_regulations/](http://www.waterboards.ca.gov/laws_regulations/) or upon request. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not

apply to adjudicatory hearings before the Water Board. This Notice provides additional requirements and deadlines related to the proceeding. THIS NOTICE MAY BE AMENDED BY THE ADVISORY STAFF AS NECESSARY. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

### **Hearing Participation**

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. Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Coast Water Board, staff or others, at the discretion of the Water Board.

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

- (1) Central Coast Water Board Prosecution Staff
- (2) Dischargers Pasatiempo Investments, Pasatiempo II Investments, Richard S. Gregersen and Adventco Holding Company

### **Contacts**

#### **Advisory Staff:**

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**Dischargers:**

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Richard Gregersen  
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**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 Coast Water Board (Prosecution Staff) have been separated from those who will provide advice to the Water Board (Advisory Staff). Members of the Advisory Staff are John Robertson, Supervising Engineering Geologist, Jessica Jahr, Staff Counsel, and Kenneth A. Harris Jr., Executive Officer. Members of the Prosecution Staff are Andrew Tauriainen, Staff Counsel; Michael Thomas, Assistant Executive Officer; Harvey Packard, Enforcement Coordinator; Jill North, Enforcement Unit; Cecile DeMartini, Permitting Unit; and Chris Adair, Permitting Unit Supervisor. This Notice has been issued by the Advisory Staff based on a draft proposed by the Prosecution Staff.

**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 Staff or members of the Central Coast 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 party on the one hand, and a Water Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

### **Requesting Designated Party Status**

Persons who wish to participate in the hearing as a designated party shall request party status by submitting a request in writing (with copies to the designated parties) no later than 5 p.m. on **November 22, 2013**, to Jessica Jahr, Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812, or electronically to [Jessica.Jahr@waterboards.ca.gov](mailto:Jessica.Jahr@waterboards.ca.gov). The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Central Coast Water Board affect the person), 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 submitted by 5 p.m. on **December 2, 2013**. By 5 p.m. on **December 10, 2013**, Advisory Staff will notify the parties in writing or electronically whether the request has been granted or denied.

### **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 30 minutes to testify, present evidence, and cross-examine witnesses, 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. Additional time may be provided at the discretion of the hearing officer upon a showing that additional time is necessary.

### **Written Evidence, Testimony, Exhibits and Policy Statements**

For the CDO hearing on March 7, 2014, designated parties shall submit in writing (1) one paper copy and an electronic file (e.g., pdf via email or CD) of the following information to Jessica Jahr, Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812, or [Jessica.Jahr@waterboards.ca.gov](mailto:Jessica.Jahr@waterboards.ca.gov) no later than 5 p.m. on **January 17, 2014** (for Prosecution Staff), or **February 7, 2014** (for all other designated parties).

1. All evidence, testimony (except rebuttal testimony) and exhibits proposed to be offered at the hearing on the CDO.
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.
4. The qualifications of each expert witness, if any.

In addition to the foregoing, each designated party shall send (1) one electronic copy of the above written materials to each of the other designated parties at the address or addresses provided above by 5 p.m. on **January 17, 2014** (for Prosecution Staff), or **February 7, 2014** (for all other designated parties).

Interested persons may submit one (1) written or electronic copy of non-evidentiary policy statements by 5 p.m. on **February 14, 2014**.

For the ACL Complaint hearing on May 23, 2014, designated parties shall submit in writing (1) one paper copy and an electronic file (e.g., pdf via email or CD) of the following information to Jessica Jahr, Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812, or [Jessica.Jahr@waterboards.ca.gov](mailto:Jessica.Jahr@waterboards.ca.gov) no later than 5 p.m. on **March 21, 2014** (for Prosecution Staff), or **April 4, 2014** (for all other designated parties).

1. All evidence, testimony (except rebuttal testimony) and exhibits proposed to be offered at the hearing on the CDO.
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.
4. The qualifications of each expert witness, if any.

In addition to the foregoing, each designated party shall send (1) one electronic copy of the above written materials to each of the other designated parties at the address or addresses provided above by 5 p.m. on **March 21, 2014** (for Prosecution Staff), or **April 4, 2014** (for all other designated parties).

Interested persons may submit one (1) written or electronic copy of non-evidentiary policy statements by 5 p.m. on **April 11, 2014**.

In accordance with Title 23, CCR, Section 684.4, the Central Coast Water Board endeavors to avoid surprise testimony or evidence. Accordingly, oral testimony offered at the hearing that is beyond the scope of the previously submitted written testimony may be excluded. Power Point and other computer-assisted visual presentations may be submitted (not required) prior to the hearing as long as the contents do not exceed the scope of other submitted written material. Any witness providing written testimony shall appear at the hearing and affirm that the written testimony is true and correct.

### **Request for Pre-hearing Conference**

A designated party may request that a pre-hearing conference be held before the hearing. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Staff with a written or electronic copy to all other designated parties by 5 p.m. on **February 14, 2014** for the CDO hearing or **April 11, 2014** for the ACL Complaint. Such a conference may or may not be scheduled at the discretion of the Advisory Staff.

### **Evidentiary Objections**

A party objecting to evidence or testimony proposed by another party regarding the CDO must submit to the Advisory Staff a written objection by 5 p.m. on **February 14, 2014**, with copies to all other designated parties. A party objecting to evidence or testimony proposed by another party regarding the ACL Complaint must submit to the Advisory Staff a written objection by 5 p.m. on **April 11, 2014**, with copies to all other designated parties. The Advisory Staff will notify the parties about further action to be taken on such objections.

### **Evidentiary Documents and File**

The Complaint, related evidentiary documents and comments received are on file and may be inspected or copied at the Central Coast Water Board office at 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401. To schedule a file review, please see *Requests to View Public Records (File Review)* and other related information on our website at:

[http://www.waterboards.ca.gov/centralcoast/resources/public\\_records.shtml](http://www.waterboards.ca.gov/centralcoast/resources/public_records.shtml)

Interested persons may also find many of these documents posted on our website at:

[http://www.waterboards.ca.gov/centralcoast/water\\_issues/programs/enforcement/index.shtml](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/enforcement/index.shtml)

Although the web page is updated regularly, to confirm access to the latest information, you may contact Jill North at [Jill.North@waterboards.ca.gov](mailto:Jill.North@waterboards.ca.gov).

### **Questions**

Questions concerning this proceeding may be addressed to Jessica Jahr, Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812, (916) 341-5168, or [Jessica.Jahr@waterboards.ca.gov](mailto:Jessica.Jahr@waterboards.ca.gov).

### **IMPORTANT DEADLINES**

November 6, 2013	Prosecution Staff issues ACL Complaint to Discharger and Advisory Staff, and sends Draft/Proposed Hearing Notice & Procedures to Discharger and Advisory Staff.
November 14, 2013	Deadline for comments/objections, if any, to Draft/Proposed Hearing Notice & Procedures.
December 16, 2013	Advisory Staff publishes Final Hearing Notice & Procedures.
November 22, 2013	Deadline for submissions of requests for designated party status.
December 2, 2013	Deadline for oppositions to requests for designated party status.
December 5, 2013	Discharger's deadline for waiving right to hearing.
December 10, 2013	Advisory Staff issues decision on requests for designated party status, if any.
January 17, 2014	Prosecution Staff's deadline for all information required under "Written Evidence, Testimony, Exhibits and Policy Statements" for the CDO Hearing
February 7, 2014	Remaining Designated Parties' Deadline for all information required under "Written Evidence, Testimony, Exhibits and Policy Statements" for the CDO Hearing

**IMPORTANT DEADLINES**

February 14, 2014	All Designated Parties' deadline for rebuttal information, evidentiary objections, requests for additional time at the hearing, or requests for pre-hearing conference, if any for the CDO Hearing
February 14, 2014	Interested Persons' deadline for written non-evidentiary policy Statements for the CDO Hearing.
February 21, 2014	Advisory Staff issues decision on requests for pre-hearing conference, and rulings on evidentiary objections, if any, for the CDO Hearing.
March 7, 2014	Hearing Date.
March 21, 2014	Prosecution Staff's deadline for all information required under "Written Evidence, Testimony, Exhibits and Policy Statements" for the ACL Complaint Hearing
April 4, 2014	Remaining Designated Parties' Deadline for all information required under "Written Evidence, Testimony, Exhibits and Policy Statements" for the ACL Complaint Hearing
April 11, 2014	All Designated Parties' deadline for rebuttal information, evidentiary objections, requests for additional time at the hearing, or requests for pre-hearing conference, if any for the ACL Complaint Hearing
April 11, 2014	Interested Persons' deadline for written non-evidentiary policy Statements for the ACL Complaint Hearing.
April 18, 2014	Advisory Staff issues decision on requests for pre-hearing conference, and rulings on evidentiary objections, if any, for the ACL Complaint Hearing.
May 23, 2014	Hearing Date.

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Kenneth A. Harris Jr.  
Executive Officer

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December 16, 2013  
Date