

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0627  
IN THE MATTER OF  
TOWN OF DISCOVERY BAY  
DISCOVERY BAY WASTEWATER TREATMENT PLANT  
CONTRA COSTA COUNTY

This Complaint is issued to the Town of Discovery Bay (hereafter Discharger) pursuant to California Water Code (CWC) sections 13350, 13385, and 13268, which authorize the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 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 findings that the Discharger violated provisions of the State Water Resources Control Board (State Water Board) Order 2006-0003-DWQ, General Waste Discharge Requirements (WDRs) for Sanitary Sewer Systems and WDRs Order R5-2003-0067 (NPDES No. CA0078590).

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

**Background**

1. The Discharger owns a wastewater collection, treatment, and disposal system, and provides sewerage service to the community of Discovery Bay. The treatment facility is operated by Southwest Water Company (formerly ECO Resources, Inc.) under contract with the Discharger.
2. On 25 April 2003, the Central Valley Water Board issued WDRs Order R5-2003-0067 to regulate the collection, treatment, and disposal of waste from the Discovery Bay wastewater treatment plant. The WDRs contain, among other items, prohibitions, effluent limitations, and monitoring and reporting requirements with which the Discharger must comply.
3. On 2 May 2006, the State Water Board issued Order 2006-0003-DWQ, Statewide General WDRs for Sanitary Sewer Systems (Sanitary Sewer General Order). The Sanitary Sewer General Order contains, among other items, sanitary sewer overflow (SSO) requirements including monitoring and reporting requirements, Sewer System Management Plan (SSMP) requirements, and an implementation time schedule.
4. The sewage collection system conveys a dry weather design flow of 1.3 million gallons of wastewater per day through approximately 60 miles of gravity lines and four miles of force mains. The sewer system services a population of approximately 14,000 with 5,600 lateral connections. This collection system is relatively new, with 50% built from 1980 through 1999, and 45% built since 2000, according to the Collection System Questionnaire submitted by the Discharger.

5. The Discharger is required to operate and maintain its sewage collection system to prevent sanitary sewer overflows and spills in compliance with requirements of the Sanitary Sewer General Order and WDRs Order R5-2003-0067. The Discharger was required to obtain coverage under the General Order as of 2 November 2006, and was required to comply with the WDRs as of the date of issuance.
6. On 17 July 2008, a power failure caused a power interruption to the Discharger's Newport pump station. After power was restored, three of the four pumps did not restart and one pump ran at a reduced flow capacity. The inflow at the Newport pump station wet wells was larger than the flow rate of the single working pump, raising the wastewater level in the wet wells and surcharging the system. The Discharger's SCADA system generated "high level" and "high high level" alarms that were dismissed without confirming proper operation of the Newport pump station.
7. Due to the surcharge generated at the Newport pump station, the Discharger's collection system experienced a sanitary sewer overflow (SSO) at a sewer cleanout located at the residential community of Lakeshore in Discovery Bay. The SSO had a duration of approximately 11 hours and 20 minutes. The Discharger calculated the volume of raw sewage spilled over 17/18 July 2008 to be between 77,000 and 111,000 gallons. The raw sewage entered a storm drain that discharges to a 37 million gallon manmade lake at the Lakeshore community. Because the discharge was located next to a storm inlet that led directly to the lake, all the raw sewage spilled is assumed to have reached the lake.
8. On 14 August 2008, the Central Valley Water Board conducted an inspection of the 17/18 July 2008 Lakeshore spill and subsequently provided the Discharger with an inspection report dated 28 August 2008 (found as Attachment A to this Order). The inspection report included a CWC section 13267 Order for Information (Inspection Report/13267 Order), signed by the Executive Officer, requiring the Discharger to submit technical reports by 10 September 2008, which were needed by Board staff to complete the SSO investigation.
9. On 10 September 2008, the Central Valley Water Board received the Discharger's response to the Inspection Report/13267 Order. The Discharger did not submit all of the information required by the Inspection Report/13267 Order. After reviewing the Discharger's incomplete response and other documents, Board staff determined that the Discharger failed to comply with several provisions of WDRs Order R5-2003-0067 and General Order 2006-0003-DWQ before, during, and after the 17/18 July 2008 Lakeshore SSO.
10. On 9 October 2008, the Central Valley Water Board issued a Notice of Violation (NOV) to the Discharger for the 17/18 July 2008 Lakeshore SSO, as well as response and reporting deficiencies before, during, and after the event. A memorandum with a detailed description of the violations was provided to the Discharger. The NOV required the Discharger to submit the missing information required in the 28 August 2008 Inspection Report/13267 Order. The Discharger submitted a report on 21 October 2008. That submittal has been considered in this Complaint.

### Regulatory Considerations

11. The *Water Quality Control Plan Central Valley Region—Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan), designates beneficial uses, establishes water quality objectives, and contains implementation plans and policies for all waters of the Basin.

The designated beneficial uses of the Sacramento-San Joaquin Delta, as specified Table II-1 of the Basin Plan, are municipal and domestic supply, agricultural supply, industrial supply, contact and non-contact water recreation, freshwater habitat, migration habitat, wildlife habitat, and navigation.

12. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

### Violations under CWC section 13350

13. The Sanitary Sewer General Order, as described in Finding No. 3, was issued under the authority of CWC section 13263.

14. CWC section 13350(a) states, in relevant part,

(a) Any person who ... in violation of any waste discharge requirement ... or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

Administrative civil liability may be imposed for violations of the Sanitary Sewer General Order pursuant to CWC section 13350.

15. CWC section 13350(e) states, in relevant part,

(e) The state board or a regional board may impose civil liability administratively ... either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

...

(2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.

Administrative civil liability may be assessed on a per-gallon basis pursuant to CWC section 13350 or section 13385. This Complaint only assesses penalties under CWC section 13385 for the gallons of waste that were discharged. However, the violations of the Sanitary Sewer General Order may be assessed independently of violations under WDRs Order R5-2003-0067.

16. The Sanitary Sewer General Order, section C.2. states,

Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited.

CWC section 13050(m) states,

“Nuisance” means anything which meets all of the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of annoyance or damage inflicted upon individuals may be unequal. (3) Occurs during, or as a result of, the treatment or disposal of wastes.

The 17/18 July Lakeshore SSO created a nuisance, as defined by CWC section 13050(m) because it interfered with the comfortable enjoyment of the Lakeshore Lake and the surrounding facilities, affected the entire Lakeshore community in varying degrees, and occurred due to a prohibited discharge of raw sewage and is therefore a violation of Section C.2. of Sanitary Sewer General Order 2006-0003-DWQ, and Prohibition A.4. of WDRs Order R5-2003-0067.

17. The Sanitary Sewer General Order, provision D.5. states,

All SSOs must be reported in accordance with Section G of the General WDRs.

The Sanitary Sewer General Order, provision G.2. states, in part,

The Enrollee shall comply with the attached Monitoring and Reporting Program 2006-0003...

The Sanitary Sewer General Order, Monitoring and Reporting Program section A.4., states:

Category 1 SSOs – All SSOs that meet the above criteria for Category 1 SSOs must be reported as soon as: (1) the Enrollee has knowledge of the discharge, (2) reporting is possible, and (3) reporting can be provided without substantially impeding cleanup or other emergency measures. Initial reporting of Category 1 SSOs must be reported to the Online SSO System as soon as possible but no later than 3 business days after the Enrollee is made aware of the SSO. Minimum information that must be contained in the 3-day report must include all information identified in section 9 below, except for item 9.K. A final certified report must be completed through the Online SSO System, within 15 calendar days of the conclusion of SSO

response and remediation. Additional information may be added to the certified report, in the form of an attachment, at any time.

The above reporting requirements do not preclude other emergency notification requirements and timeframes mandated by other regulatory agencies (local County Health Officers, local Director of Environmental Health, Regional Water Boards, or Office of Emergency Services (OES)) or State law.

The Discharger did not report the 17/18 July 2008 Lakeshore SSO in accordance with the Sanitary Sewer General Order's Monitoring and Reporting Program Provision A.4. The Discharger was aware of the SSO on 18 July 2008 at 9:17 hours, and therefore the deadline for reporting was 22 July 2008 at 9:17 hours. The Discharger entered the initial draft on 11 August 2008, nearly 20 days late. A final, certified report is required 15 calendar days after the conclusion of SSO response and remediation. The Discharger certified that the response was complete on 18 July 2008 at 13:30 hours, however it did not enter the report in CIWQS until 10 September 2008, nearly 39 days late.

18. The Sanitary Sewer General Order, provision D.7. states:

When a sanitary sewer overflow occurs, the Enrollee shall take all feasible steps and necessary remedial actions to 1) control or limit the volume of untreated or partially treated wastewater discharged, 2) terminate the discharge, and 3) recover as much of the wastewater discharged as possible for proper disposal, including any wash down water. The Enrollee shall ... [provide] (vi) Adequate public notification to protect the public from exposure to the SSO.

The Discharger did not properly clean up wastewater debris collected at the overflow site until requested by Central Valley Water Board staff on 14 August 2008. The Discharger also failed to provide adequate public notification by not posting signs where the spill originated and failing to report the SSO in CIWQS within the required timeframe. These actions are violations of Provision D.7. of the Sanitary Sewer General Order.

19. The Sanitary Sewer General Order, section G.3. states:

...Additionally, within 30 days of receiving an account and prior to recording spills into the SSO Database, all Enrollees must complete the "Collection System Questionnaire", which collects pertinent information regarding a Enrollee's collection system. The "Collection System Questionnaire" must be updated at least every 12 months.

The Discharger enrolled in the SSO Database in 2006. However, the Discharger did not complete or update the "Collection System Questionnaire" until 10 September 2008. This is a violation of Section G.3. of the Sanitary Sewer General Order.

20. Findings 16 through 19 describe 42 distinct violations (39 of which are described in Finding 17). Pursuant to CWC section 13350, up to \$5,000 may be assessed per day, per violation. Therefore, the maximum penalty for these violations under CWC section 13350 is **two hundred and ten thousand dollars (\$210,000)**.

### Violations under CWC section 13268

21. CWC section 13267(b)(1) states, in relevant part:

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 proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of 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 28 August 2008 Inspection Report/13267 Order (found as Attachment A to this Complaint) required the Discharger to submit a number of technical reports. On 9 September 2008, the Discharger submitted an incomplete response to Item No. 1 because it did not address the cause, remedy, or prevention of non-compliance due to inadequate reporting. The Discharger did not submit a report to address Item No. 2, which required an analysis of the frequency, duration, and impact of power failures experienced over the past five years. The Discharger did not submit a report to address Item No. 3, which required a description of the preventive (failsafe) and contingency (cleanup) plans for controlling accidental discharges, and for minimizing the effect of such events.

22. CWC section 13268(a)(1) states, in part:

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

23. CWC section 13268(b)(1) states, in part:

Civil liability may be administratively imposed by a regional board... for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

24. The Discharger did not submit all the requested reports, due 10 September 2008, pursuant to the Inspection Report/13267 Order letter issued on 28 August 2008. The reports were submitted on 22 October 2008, which was 42 days late. Currently, for late submittal of reports required by the Inspection Report/13267 Order, at \$1,000 per day, the maximum liability is **forty-two thousand dollars (\$42,000)**

**Violations under CWC section 13385**

25. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and CWC section 13376 prohibit discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.

26. CWC section 13376 states, in relevant part:

Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States ... shall file a report of the discharge in compliance with the procedures set forth in Section 13260... The discharge of pollutants...except as authorized by waste discharge requirements [NPDES permit]...is prohibited.

27. CWC section 13385(a) states, in relevant part:

(a) Any person who violates any of the following shall be liable civilly in accordance with subdivisions (b), (c), (d), (e), and (f):

(1) Section 13375 or 13376

...

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.

28. CWC section 13385(c) states, in relevant part:

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

29. Order R5-2003-0067, Prohibition A.1 states,

Discharge of wastewater at a location or in a manner different from that described in Finding No. 2 [to the Reclamation District 800 ditch] is prohibited.

The 17/18 July 2008 SSO was not treated nor discharged at an authorized waste discharge location, in violation of Prohibition A.1.

30. Order R5-2003-0067, Prohibition A.4 states,

Neither the discharge nor its treatment shall create a nuisance as defined in Section 13050 of the California Water Code.

As described in Finding 16, the discharge created a nuisance as defined in CWC section 13050. Therefore, the discharge violated Prohibition A.4.

31. Order R5-2003-0067, Prohibition A.3 states,

The bypass or overflow of untreated or partially treated wastes to surface waters is prohibited...

The 17/18 July 2008 SSO discharged into a private lake that is hydraulically connected to the Delta, a water of the United States. The discharge violated Prohibition A.3.

32. Order 2006-0003-DWQ, Prohibition C.1 states,

Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.

The 17/18 July 2008 SSO discharged into a private lake that is hydraulically connected to the Delta, a water of the United States. The discharge violated Prohibition C.1.

33. WDRs Order R5-2003-0067 Standard Provisions B.1 states:

In the event the Discharger does not comply or will be unable to comply for any reason, with any prohibition, daily maximum effluent limitation, or receiving water limitation of this Order, the Discharger shall notify the Board by telephone ...within 24 hours of having knowledge of such noncompliance, and shall confirm this notification in writing within five days, unless the Regional Board waives confirmation. The written notification shall state the nature, time, duration, and cause of noncompliance, and shall describe the measures being taken to remedy the current noncompliance and, prevent recurrence including, where applicable, a schedule of implementation. Other noncompliance requires written notification as above at the time of the normal monitoring report.

The Discharger did not comply with the requirement to submit a written report within five days of the spill. This is a violation of WDRs Standard Provision B.1. The report was not submitted until after Central Valley Regional Water Board staff required its submittal pursuant to the 13267 Order. The 13267 Order gave the Discharger reprieve from administrative civil liability, but in the 42 days between the spill (17/18 July 2008) and the issuance of the 13267 Order (28 August 2008), the Discharger accrued violations of Standard Provision B.1.

34. WDRs Order R5-2003-0067 Standard Provisions B.2.b. states:

Upon written request by the Board the Discharger shall submit a written description of safeguards. Such safeguards may include alternate power sources, standby generators, retention capacity, operating procedures, or other means. A description of the safeguards provided shall include an analysis of the frequency, duration, and impact of power failures



experienced over the past five years on effluent quality and on the capability of the Discharger to comply with the terms and conditions of the Order. The adequacy of the safeguards is subject to the approval of the Board.

The 13267 Order required that the Discharger submit the above information by 10 September 2008. The Discharger did not submit the information until after a second request from staff. The information was received 42 days late, on 22 October 2008, in violation of CWC section 13267 and WDRs Standard Provisions B.2.b. The penalty that may be assessed for this violation has been addressed in Finding No. 24.

35. CWC section 13385(e) states:

In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account 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 its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

36. Pursuant to CWC section 13385(e), at minimum, administrative civil liability charged under this section must be equivalent to the economic benefit accrued by the Discharger for not implementing management and physical improvements necessary to prevent the discharge. The severity of the discharge could have been prevented through adequate training of the wastewater treatment plant staff, appropriate redundant safeguards at the lift station, and having an overflow emergency response plan in place. Central Valley Water Board staff is unable to precisely calculate the economic benefit, but it is estimated to be at least \$25,000.

37. Pursuant to CWC section 13385, the Discharger may be assessed administrative civil liability for each violation of an Order adopted under authority of CWC section 13376, and for each gallon discharged in excess of 1,000 gallons. Order R5-2003-0067 was adopted under the authority of CWC section 13376. The Discharger estimates that 77,000 to 111,000 gallons were discharged, so the maximum liability ranges from \$760,000 to \$1,100,000. Findings 29 through 33 describe 46 violations (42 of which are described in Finding 34) of Order R5-2003-0067. At a maximum of \$10,000 per violation, these violations add up to \$460,000. Adding this number to the conservative per-gallon assessment, the total amount of penalties that may be assessed pursuant to CWC section 13385 is **one million five hundred sixty thousand dollars (\$1,560,000)**.

### Total Maximum Penalty

38. Adding together the total maximum penalties that could be assessed under CWC sections 13268, 13350 and 13385 (described in Finding Nos. 20, 24, and 37), the maximum penalty for the discharge and reporting violations is **one million eight hundred twelve thousand dollars (\$1,812,000)**.

### THE TOWN OF DISCOVERY BAY IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board charges the Discharger with an administrative civil liability in the amount of **two hundred thirty one thousand dollars (\$231,000)**. The amount of the proposed liability is based upon a review of the factors cited in California Water Code section 13268, 13350, and 13385, as well as the State Water Resources Control Board's Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 February 2009**, unless the Discharger does either of the following by **5 January 2009**:
  - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **two hundred thirty one thousand dollars (\$231,000)**; or
  - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.
3. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

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JACK E. DEL CONTE, Assistant Executive Officer

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3 December 2008

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**WAIVER OF 90-DAY HEARING REQUIREMENT FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent the Town of Discovery Bay (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0627 (hereinafter the "Complaint");
2. 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;
3. I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4.  **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
  - a. I certify that the Discharger will remit payment for the proposed civil liability in the amount of **two hundred thirty one thousand dollars (\$231,000)** by check, which will contain a reference to "ACL Complaint R5 2008-0627" and will be made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **5 January 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **5/6 February 2009** Central Valley Water Board meeting.
  - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive 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. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
  - c. 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.

-or-

5.  **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)