



GAVIN NEWSOM
GOVERNOR



JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

February 4, 2019

Patterson Kahle LLC
Attn: Mr. Mark McCulloch
120 Tustin Ave. Ste C #1086
Newport Beach, CA 92663-4729

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ronald M. Ballard (Agent for Service of Process)
The Ballard Law Corporation
22996 El Toro Road
Lake Forest, CA 92630-4961
(ballard.ronald@ballardlaw.email)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

TRANSMITTAL OF ADMINISTRATIVE CIVIL LIABILITY (ACL) COMPLAINT NO. R8-2019-0012

Dear Mr. McCulloch:

Enclosed is Administrative Civil Liability Complaint No. R8-2019-0012 (Complaint), issued pursuant to California Water Code section 13323. The Complaint alleges that Patterson Kahle LLC. (Discharger) violated Water Code section 13268(a)(1) by failing to submit technical reports as required under Water Code section 13267. Pursuant to Water Code section 13268(b)(1), the Regional Board may impose administrative civil liability in the amount of \$1,000 for each day in which the violation occurs. The Complaint proposes that administrative civil liability in the amount of **one hundred thirty-four thousand four hundred forty-eight dollars (\$134,448)** be imposed pursuant to Water Code section 13268(b)(1). The Complaint and the attachments to the Complaint provide details of the violations and the penalty assessment calculation.

Pursuant to Water Code section 13323, the Discharger has the option to waive its right to a hearing on the allegations in the Complaint. The Discharger can resolve this matter without a hearing if it agrees to pay the liability sought in the Complaint. If the Discharger wishes to pursue this avenue for resolution or advise the Prosecution Team of any facts which would impact the proposed liability, please follow the waiver procedures described in the Complaint and attached Waiver. **A response must be submitted no later than March 4, 2019** if the matter is resolved without a hearing, the resolution will be formally memorialized as an enforceable obligation to the Regional Water Quality Control Board, Santa Ana Region (Regional Board). Any such resolution will be publicly noticed for comments and the action will become final only upon execution by the Regional Board, or its delegate, after the close of the 30-day comment period. If significant comments are received during the comment period, the Regional Board may hold a public hearing on this matter.

WILLIAM RUH, CHAIR | HOPE SMYTHE, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | www.waterboards.ca.gov/santaana

In response to the Complaint, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Santa Ana Water Board by signing the enclosed waiver (checking off the box next to Option #1) and submitting it to this office by **March 4, 2019**, along with payment for the full amount;
- Waive its right to a hearing within 90 days, and agree to enter into settlement discussions with the Santa Ana Water Board by signing the enclosed waiver (checking off the box next to Option #2) and submitting it to this office by **March 4, 2019**;
- Request additional time in order to extend the hearing date or hearing deadlines by signing the enclosed waiver (checking the box next to Option #3) and submitting it to this office by **March 4, 2019**.

If the Discharger would like to rebut the presumption in the Complaint regarding an ability to pay the proposed liability, it must submit detailed financial information to the Santa Ana Water Board by **March 4, 2019**.

If the Regional Board does not receive a signed waiver by **March 4, 2019**, then a hearing on this matter will be scheduled for the May 3, 2019 regular meeting of Regional Board to be held at a to be determined location. If a hearing on this matter is held, the Regional Board will consider whether to issue, reject, or modify an Administrative Civil Liability Order based on the enclosed Complaint, 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. Failure to respond to this Complaint, may result in the preclusion of evidence or a waiver of the rights afforded to you under California Code of Regulations, section 648 et seq.

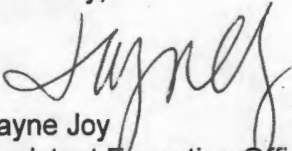
Specific notice about this hearing and its procedures will be provided under separate cover.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, no later than 5 p.m. on the dates indicated in accordance with the attached Hearing Procedures. This includes material submitted by the Discharger to be considered at a hearing and material submitted by interested parties, including members of the public, who wish to comment on the Complaint. Written materials received after 5 p.m. on the dates indicated in the attached Hearing Procedure will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.

Payment of this assessed civil liability amount **one thirty-four thousand four hundred forty-eight dollars (\$134,448)** does not absolve the Discharger from complying with the Investigative Order, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with current or subsequent orders issued by the Santa Ana Regional Board, including, the filing of liens against the Discharger's property or referral to the Attorney General's Office.

If you have any questions about the Complaint or the enclosed documents, please contact Chuck Griffin at (951) 782-4996 (chuck.griffin@waterboards.ca.gov). All legal questions should be directed to Catherine Hawe at (916) 322-3538 (catherine.hawe@waterboards.ca.gov), Staff Counsel, Office of Enforcement.

Sincerely,



Jayne Joy
Assistant Executive Officer
Regional Board Prosecution Team

Attachments: Administrative Civil Liability Complaint No. R8-2019-0012 and Attachments A, B,
and C
Waiver Form
Administrative Civil Liability Complaint Fact Sheet
Hearing Procedures

cc w/ attachments:

Teresita Sablan – SWRCB, Office of Chief Counsel
(Teresita.Sablan@waterboards.ca.gov)
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GAVIN NEWSOM
GOVERNOR



JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

State of California
California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:

Patterson Kahle, LLC
120 Tustin Ave. Ste C #1086
Newport Beach, CA 92663-4729
Attn: Mark McCulloch

Complaint No. R8-2019-0012
for
Administrative Civil Liability

Ronald M. Ballard
(Agent for Service of Process)
The Ballard Law Corporation
22996 El Toro Road
Lake Forest, CA 92630-4961
(ballard.ronald@ballardlaw.email)

PATTERSON KAHLE, LLC IS HEREBY GIVEN NOTICE THAT:

1. This Administrative Civil Liability Complaint (Complaint) is issued to Patterson Kahle, LLC (Discharger) for failing to furnish technical or monitoring program reports in violation of California Water Code (Water Code) section 13267 (b), for which the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) may impose administrative civil liability under Water Code section 13268(b)(1).
2. Water Code section 13323 authorizes the Executive Officer of the Regional Board (Executive Officer) to issue this Complaint, and the Executive Officer's letter to the Regional Board members, dated March 19, 2018, delegates these powers and duties to the Assistant Executive Officer.
3. Patterson Kahle, LLC owns the property at 2810 Villa Way, Newport Beach, California, County of Orange (Site). Until 1987, the Site was owned by Mr. Clarence McCulloch. When Mr. Clarence McCulloch passed away the Site was transferred to the McCulloch Trust where it was held until the Discharger acquired the Site in 2002. Patterson Kahle, LLC lists Mr. Mark McCulloch as its manager.
4. Historically, Newport Plating operated a plating shop at the Site between the early 1950s and 1988. Mr. Clarence McCulloch leased the Site to Newport Plating. Newport Plating's operations included brass, cadmium (Cd), copper (Cu), chromium (Cr) or "chrome," gold

WILLIAM RUH, CHAIR | HOPE SMYTHE, EXECUTIVE OFFICER

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(Au), nickel (Ni) and silver (Ag) plating; chrome and paint stripping; and steel passivity. After the plating operations ceased, the subsequent utilization of the building has been general office and business activities.

5. By letter dated May 1, 2018, the Regional Board's Executive Officer issued a Water Code section 13267 Investigative Order via Certified Mail to the Discharger. The Investigative Order was unclaimed or unable to be forwarded and returned to sender. Patterson Kahle's Agent for Service of Process, Mr. Ronald Ballard, was copied on the Investigative Order and responded via e-mail on July 6, 2018, indicating that Patterson Kahle, LLC has limited funds and has been suspended by the Franchise Tax Board (FTB) and would need to be revived. Mr. Ballard did not respond to the substance of the requirements contained in the Investigative Order.
6. By letter dated July 18, 2018, the Regional Board's Executive Officer re-issued a Water Code section 13267 Investigative Order (Investigative Order) via Certified Mail to Patterson Kahle, LLC. On July 18, 2018, Mr. Ballard notified the Regional Board, via email, that the letter had been sent to an incorrect mailing address; however, could not provide an alternate address upon request. The Certified Mail return receipt showed that the notification letter was received by the Discharger on July 20, 2018.
7. The Investigative Order required the Discharger to submit technical reports to the Regional Board in order to delineate contamination in soil and groundwater and to update the Remedial Action Plan (RAP) contingent upon the investigation results. The technical reports were due August 20, 2018, and no response was received.
8. Due to the long history of Regional Board involvement at the Site and the lack of responsiveness by the Discharger since 2009, the Prosecution Team determined that the issuance of this Complaint and the associated monetary penalty is appropriate, and necessary to compel the Discharger to comply with outstanding requirements to characterize the soil and prepare a workplan to address ongoing issues caused by previous activities at the Site.

Background

9. The groundwater flow from the Site is towards the Rhine Channel due to slight mounding of freshwater beneath the peninsula. Groundwater is typically encountered at 4 feet below ground surface (bgs) and fluctuates diurnally with the body of water in the adjacent Rhine Channel. The upper 2.5 feet of soil consists of man-made fill and from 4-5.5 feet bgs consists of highly permeable fine-grained to coarse sand. Due to the characteristics of the groundwater flow at the Site, there is an increased likelihood that groundwater has been and continues to be impacted by the ongoing discharge of contaminants from the Site and into the underlying groundwater.
10. Several phases of soil and groundwater investigation at the Site detected "Title 22 metals" (as defined in California Code of Regulations, Title 22), and cyanide. Historic groundwater concentrations of these constituents exceeded the maximum contaminant levels (MCLs) and action levels (ALs) for drinking water, as defined by the California Department of Public Health (now the State Water Resources Control Board [State Water Board] Division of Drinking Water [DDW]). Historic soil concentrations at the Site exceed the current

residential Environmental Screening Levels (ESLs), as set forth by the San Francisco Bay Regional Water Quality Control Board in 2016, for Cd, hexavalent Cr (Cr⁶⁺), Cu, Lead (Pb) and cyanide.

11. On March 17, 1987, staff from the Orange County Health Care Agency (OCHCA) observed wastewater from Newport Plating's metal finishing operation, ponded in and leaking from an outdoor area at the Site where secondary containment was inadequate. Samples of the contaminated wastewater and soil were collected. The wastewater was considered hazardous waste, and the contaminated soil met the definition of a discharge of hazardous waste, pursuant to Title 22. Regional Board staff later confirmed these findings during a separate inspection and identified that the floor drain in the stripping area discharged to the underlying soils.
12. On May 18, 1987, the Regional Board issued a Cleanup and Abatement Order (CAO) No. 87-83 to Junior Lee Edwards, the owner and operator of Newport Plating. CAO No. 87-111 was issued on July 11, 1987, amending CAO No. 87-83 to reflect a proposal for compliance that was submitted on behalf of Mr. Edwards.
13. On December 11, 1987, a chrome plating rinse tank at Newport Plating overflowed. Instead of containing and cleaning up the waste, the overflow from the tank was discharged to the street gutter in violation of CAO No. 87-111. This violation, resulted in the issuance of an Administrative Civil Liability Complaint (ACLCL) No. 87-153 on December 30, 1987, assessing a \$5,000 penalty for the violation. ACLCL No. 87-153 was approved on February 11, 1988 requesting that Mr. Edwards submit the \$5,000 assessment which had not been paid. On June 21, 1988, ACLCL No. 88-87 was issued with a proposed assessment of \$34,800, which was later reduced to \$16,000. On September 25, 1989 Regional Board sent a letter requesting payment in full by October 12, 1989. Failure to submit the payment resulted in Resolution No. 90-100, which referred ACLCLs No. 87-153 and No. 88-87 to the California Attorney General for collection on June 8, 1990.
14. In 1987, a preliminary environmental assessment was conducted at the Site by Petroleum Industry Consultants (PIC). Soil samples contained Cd, Cr⁶⁺, Cu, Ni, and Zinc (Zn); soil pH ranged from 5.4-9.0. Groundwater samples contained Cd, Cr, Cu, Ni, and Zn, and groundwater pH ranged from 7.3-8.6.
15. In 1988, Remedial Action Corporation (RAC) conducted an investigation and prepared a "*Subsurface Investigation Report*." The investigation consisted of drilling and sampling three shallow hand-auger soil borings, and drilling four deep soil borings. The Subsurface Investigation Report concluded that migration of heavy metals from the Site may have occurred; however, because the Rhine Channel already contained elevated levels of heavy metals and cyanide, impairment of groundwater may be attributable to tidal influences.
16. In 2006, Frey Environmental, Inc. (FREY) prepared a "*Subsurface Investigation Report*" for the 20 soil borings that were advanced at 0.5, 2.5, and 5.0 feet bgs in 2005, which was the most recent soil sampling event. Soil analytical results indicated that the U.S. EPA preliminary remediation goals (PRGs) (now the regional screening levels [RSLs]) for

residential soil were exceeded for Cd, Cr, Cr⁶⁺, Cu, and Pb. Based on current criteria, the following soil contaminants exceed the concentrations for residential ESLs in units of milligrams per kilogram (mg/kg):

Contaminant	Soil Concentration (mg/kg)	Residential ESL (mg/kg)
Cd	413	39
Cr ⁶⁺	251	0.3
Cu	4,320	3,100
Pb	4,920	5.3
Cyanide	279	80

Pb, Cd, Cu, and Cr were also detected in groundwater at concentrations above their respective MCLs and ALs for drinking water. Because the Site is adjacent to, and tidally influenced by the Rhine Channel, the groundwater beneath the Site is not considered a source of potable water.

17. On May 24, 2006, the Regional Board issued a no further action (NFA) letter for groundwater at the Site but requested a Work Plan to remediate soil at the Site.
18. In 2008, FREY performed off-Site soil sampling according to a Work Plan that was not reviewed or approved by Regional Board staff. Two hand-auger soil boring samples were collected at 0.5, 2.5, and 5.0 feet bgs. FREY concluded that Pb is elevated regionally, and is not a primary constituent of concern (COC) for Site remediation.
19. In 2009, FREY submitted a RAP that identified Cd as the primary COC at the Site. The report recommended excavation of 3 feet of material from areas exceeding residential PRGs for Cd, and 1 foot of material for all other areas outside of the building. Regional Board staff did not formally respond to the RAP; however, the RAP was considered insufficient.
20. On January 7, 2014, email correspondence between Regional Board staff and the City of Newport Beach staff indicated that there had been several attempts by the Regional Board to make contact with the attorney who represents the Discharger/property owner, but were not successful. Regional Board staff requested that the City of Newport Beach refrain from issuing any type of demolition, grading or construction permitting for the property until a NFA determination for soil is granted by the Regional Board.
21. On May 1, 2018 the Regional Board Executive Officer issued a Water Code section 13267 Order titled "Directive to Conduct Groundwater and Soil Investigation at Former Newport Plating, 2810 Villa way, Newport Beach, California 92683" (Investigative Order) to Patterson Kahle, LLC, the current property owner of the Site. The Investigative Order was received by Mr. Ballard, agent for service of process for Patterson Kahle, LLC, but could not be forwarded to Mr. Mark McCulloch, primary contact for Patterson Kahle, LLC.
22. On July 18, 2018 the Regional Board Executive Officer issued a second Water Code section 13267 Investigative Order to an alternate address linked to Mr. Mark McCulloch.

The Investigative Order required the Investigation Work Plan to be submitted by August 20, 2018. No response was received; however, Certified Mail receipts indicate the Investigative Order was delivered.

23. Currently, migration of the contaminants in groundwater beneath the Site continues to pose a threat to groundwater quality, and the discharge of contaminants at the Site is ongoing. The Prosecution Team hopes to resolve the alleged non-discharge violation contained in this Complaint so that necessary cleanup work can take place on the Site.

Alleged Violations Subject to Enforcement:

24. The Discharger has failed to submit technical reports and monitoring reports in accordance with the requirements in the Investigative Order.
25. The Discharger has been in violation of the Investigative Order since August 21, 2018. To date, the Regional Board has not received the required technical reports. As of February 4, 2019, the Discharger has been in violation for a total of 168 days. These 168 days are subject to a maximum administrative liability of \$1,000 per day pursuant to Water Code section 13268(b)(1).

Legal Authority

26. The Regional Board's authority to protect groundwater is prescribed in Water Code Division 7 Article 2 "General Provisions Relating to Powers and Duties of the Regional Boards."
27. Water Code section 13243 states that the Regional Board may specify certain conditions or areas where the discharge of pollutants, or certain types of wastes, will not be permitted. The Regional Board implements this section of the Water Code by adopting and implementing the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan). The Basin Plan establishes the beneficial uses and water quality objectives for ground and surface waters within the Santa Ana River Watershed. These water quality objectives must be met and maintained to protect those beneficial uses.
28. The Site overlies the Irvine Groundwater Management Zone. The designated beneficial uses of the Irvine Groundwater Management Zone are as follows: (1) Municipal and Domestic Supply (MUN); (2) Agricultural Supply (AGR); (3) Industrial Service Supply (IND); and (4) Industrial Process Supply (PROC).
29. In connection with any action relating to any plan or waste discharge or planned waste discharge, Water Code section 13267 provides the Regional Board with the authority to request the submittal of technical reports or monitoring reports.
30. Water Code section 13268 (a)(1) provides that any person failing or refusing to furnish technical or monitoring reports as required by Water Code section 13267 (b) may be civilly liable in accordance with Water Code section 13268 (b).
31. Pursuant to Water Code section 13268 (b)(1), the Regional Board may impose civil liability in an amount, which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

Administrative Civil Liability Calculation

32. Pursuant to Water Code section 13327, in determining the amount of any civil liability, the Regional Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, 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 violations, and other matters that justice may require.
33. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13385 subdivision (e) and 13327.

The entire Enforcement Policy can be found at:

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

34. The required facts, including the findings above, have been considered for the violations alleged herein using the discretionary penalty assessment methodology in the Enforcement Policy, as explained in detail in Attachments A and B (Penalty Calculation), which are incorporated herein and made a part of this Complaint.

Maximum Administrative Civil Liability

35. Pursuant to Water Code section 13268, the total maximum administrative civil liability that may be imposed for the violations alleged in this Complaint is \$168,000. This is based on assessment of the maximum per day violation amount of \$1,000 for 168 days.

Minimum Administrative Civil Liability the Regional Board Must Assess

36. The Enforcement Policy requires that the minimum liability imposed must be at least 10% higher than the economic benefit so that liabilities are not construed as the cost of doing business.
37. The economic benefit considered in this Complaint were the costs that were delayed and avoided as a result of not submitting the required technical and monitoring reports, and conducting the necessary investigations and remediation to protect the beneficial uses of groundwater, protect human health, and prevent further migration of groundwater contamination off-Site. The delayed costs include preparation of technical and monitoring reports, sampling and analysis, and remediation costs. The avoided costs include quarterly sampling and analysis that was missed. The economic benefit is estimated to be \$3,834 and the minimum liability is calculated to be \$4,217.

Proposed Administrative Civil Liability

38. After consideration of the factors in accordance with the Water Code section 13327, and the Enforcement Policy, the Regional Board Prosecution Team proposes that civil liability be imposed on the Discharger in the amount of **\$134,448**. The specific factors considered in this penalty are detailed in Attachments A and B, incorporated herein, and made part of this Complaint by reference.
39. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional penalties or an amount greater than the proposed amount set forth above.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

40. Issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Res. Code section 21000 et seq.), pursuant to title 13, California Code of Regulations, section 15321, subsection (a)(2).

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

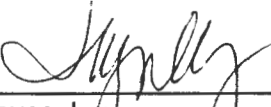
1. The Division Chief of the Regional Board proposes that the Discharger be assessed an administrative civil liability in the amount of **one hundred thirty-four thousand four hundred forty-eight dollars** (\$134,448). The amount of the proposed liability is based on a review of the factors for violations of Water Code section 13327 as well as the Enforcement Policy as set forth in Attachment A. The manner of calculation for penalties and information on economic benefit analysis are provided in Attachments B and C, respectively.
2. Water Code section 13323(b) provides that a hearing concerning this Complaint will be held before the Regional Board within ninety (90) days of the date of issuance of this Complaint. Such a hearing shall be held unless the Discharger chooses either of the following two options as further explained in the enclosed Waiver:
 - a. Waive the Right to a Hearing before the Regional Board and pay the proposed penalty of \$134,448 in full; or
 - b. Waive the right to a Hearing before the Regional Board within 90 days after service of this Complaint to engage the Regional Board Prosecution Team in settlement discussions. Waiver of the right to a Hearing before the Regional Board within 90 days does not preclude the Regional Board Prosecution Team from proceeding to a Hearing within 90 days.
 - c. Waive the right to a Hearing before the Regional Board within 90 days after service of this Complaint and request an extension of the hearing date and associated deadlines.
3. If the Discharger chooses the option in paragraph 2.a, above, an authorized representative must sign the enclosed Waiver Form and return it along with a check for the full amount of the proposed liability in accordance with the enclosed Waiver Form and Hearing Procedures. Payment will be deemed settlement of this Complaint, but the

settlement shall not become final until thirty (30) days from the date of Public Notice to allow the public and other interested persons to comment on this action.

4. If the Discharger chooses the option in paragraph 2.b, above, an authorized representative must sign the enclosed waiver and submit in accordance with the enclosed Waiver and Hearing Procedures. The Discharger must also submit a settlement proposal to the Regional Board within thirty (30) days of this Complaint. The waiver and settlement proposal must be mailed to the Regional Board at 3737 Main Street, Suite 500, Riverside, CA 92501-3348.
5. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement.
6. Payment of the assessed liability amount does not absolve the Discharger from complying with the 13267 Order issued to the Discharger on July 18, 2018, the terms of which remain in effect. Additionally, civil liability may be assessed in the future if the Discharger fails to comply with the 13267 Order, and/or future orders issued by the Regional Board.

If you have any questions about the Complaint or the enclosed documents, please contact Chuck Griffin at (951) 782-4996 (chuck.griffin@waterboards.ca.gov). All legal questions should be directed to Catherine Hawe at (916) 322-3538 (catherine.hawe@waterboards.ca.gov), Attorney, Office of Enforcement.

February 4, 2019
Date



Jayne Joy
Assistant Executive Officer
Regional Board Prosecution Team

Attachment A: Penalty Calculation Methodology
Attachment B: Spreadsheet of Penalty Calculation
Attachment C: Economic Benefit Analysis

Attachment A
Specific Factors Considered for Administrative Civil Liability
Patterson Kahle, LLC

The Santa Ana Regional Water Quality Control Board (Regional Board) Prosecution Team alleges that the Discharger failed to submit an adequate Investigation Work Plan and updated Remedial Action Plan (RAP). The above items were requested in an Investigative Order issued by the Executive Officer of the Regional Board pursuant to Water Code section 13267 (Investigative Order). The Investigative Order directed Patterson Kahle, LLC, the current property owner, to investigate and remediate contamination at 2810 Villa Way, Newport Beach (Site) caused by operations between the early 1950s and 1988 by Newport Plating, former tenant at the Site. For reference, Newport Plating's activities included brass, Cadmium (Cd), Copper (Cu), Chromium (Cr) or "chrome," Gold (Au), Nickel (Ni), and Silver (Ag) plating; chrome and paint stripping; and steel passivity.

Specifically, the Investigative Order directed the Discharger to submit an adequate Investigation Work Plan to investigate soil and groundwater and submit an updated RAP contingent upon the results of the Investigation Work Plan.

The Site has a long history of Regional Board involvement. Since the issuance of Cleanup and Abatement Order No. 87-83, later amended by Cleanup and Abatement Order No. 87-111, the Regional Board has struggled to incentivize compliance by the Discharger. The Discharger has failed to respond to communications from the Regional Board since 2010 and shows no progress towards coming into compliance with the Investigative Order or towards completing necessary cleanup work at the Site. Meanwhile, the soil contamination at the Site continues to pose a threat of discharge of contaminants to groundwater and the Rhine Channel. Years have passed since the Site was closed out for groundwater; however, the continued lack of progress at the Site in regard to soil raises the question of whether groundwater has been re-contaminated. Therefore, the Prosecution Team feels that the issuance of this Complaint, and the associated monetary penalty, is appropriate at this time.

For the purpose of applying the Enforcement Policy's¹ administrative civil liability methodology, the alleged violation is a non-discharge violation. Each factor of the enforcement Policy and its corresponding score for each violation are presented below:

Violation 1 - Failure to submit a required Investigation Work Plan and updated RAP pursuant to a Water Code section 13267 Investigative Order:

In accordance with the requirement set forth in the July 18, 2018 Investigative Order, the Discharger failed to submit an Investigation Work Plan and updated RAP by August

¹ The Enforcement Policy is available online:

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

ATTACHMENT A
Patterson Kahle LLC

20, 2018, to assess the extent of contaminants in soil and groundwater and remediate the Site.

A RAP was previously submitted on October 9, 2009 by the Discharger, which proposed excavation at the Site. However, it was insufficient and not approved by Regional Board staff. Since the submission of the 2009 RAP, the Discharger has been nonresponsive to Regional Board staff's request for modifications to the RAP and for the submission of an updated RAP.

Penalty Calculation

Step 1. 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

This factor is determined using the potential for harm of the violation and the extent of the Discharger's deviation from requirements. The potential for harm was determined to be **moderate**. A moderate potential for harm is appropriate when the violation has substantially impaired the Regional Board's ability to perform its statutory and regulatory functions and there is a substantial threat to beneficial uses.

The Site is located within the Irvine Groundwater Management Zone and has the potential to discharge to the Rhine Channel. The beneficial uses for the Irvine Groundwater Management Zone are municipal and domestic supply, agricultural supply, industrial service supply and industrial process supply. The beneficial uses of the Rhine Channel, which is a part of the Lower Newport Bay, include navigation waters, primary/secondary contact recreation, commercial and sport fishing, wildlife habitat, rare, threatened or endangered species, spawning, marine habitat, and shellfish harvesting. The concentrations of Title 22 metals and cyanide in soil exceed Environmental Screening Levels (ESLs) set forth by the San Francisco Bay Regional Water Quality Control Board (February 2016), and therefore may be impacting, or threatening to impact, the beneficial uses of groundwater and the body of water in the Rhine Channel. This highlights the need for additional investigation and groundwater monitoring. The Site continues to discharge contaminants to groundwater and the plume continues to migrate off-Site. Therefore, while the Violation alleged herein is a non-discharge violation, the threat the Site continues to pose is substantial.

Despite the risks to water quality, the Discharger has ignored the requirements of the Investigative Order by failing to submit an Investigation Work Plan to assess the soil and groundwater contamination. Until the Site is remediated, Title 22

ATTACHMENT A Patterson Kahle LLC

metals and cyanide will remain in soil at concentrations that exceed the residential and commercial ESLs. Since the failure to submit required reports thwarts the Regional Board's ability to identify potential degradation of water quality, the violation has the potential to exacerbate the presence and accumulation of, and the related risks associated with, contaminants of concern. This presents an ongoing and immediate threat to beneficial uses and, thus, the violation presents a moderate potential for harm.

The deviation from requirement was determined to be **major**, as the requirement to submit an Investigation Work Plan to assess the extent of contaminants in soil and groundwater and update the RAP contingent upon the sampling results has been rendered ineffective. The Discharger has been granted several opportunities to voluntarily comply by Regional Board staff in e-mail and phone correspondences throughout 2018. Therefore, based on the Discharger's failure to reply to the Investigative Order, the Prosecution Team assigned a major.

Table 3 in the Enforcement Policy establishes a range for the Per Day Factor when the potential for harm is moderate and the deviation from requirement is major of 0.3 to 0.7. The Prosecution Staff has determined that the appropriate Per Day Factor is **0.55**.

Multiple Days Violation

The Enforcement Policy provides that for violations lasting more than 30 days, the Prosecution Team 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. However, failure to submit a response to an order issued pursuant to Water Code section 13267 is not the sort of violation for which collapsing days is appropriate.

Initial Liability

Failure to comply with the requirements of the Investigative Order is subject to civil liability under Water Code section 13268(b)(1) and 13323 in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

The Discharger failed to submit the Investigation Work Plan by August 20, 2018, the deadline established in the Investigative Order. The Discharger has still not submitted an Investigation Work Plan and to date, is one hundred sixty-eight (168) days late (August 21, 2018 – February 4, 2018). Therefore, the Per Day Assessment is calculated as (0.55 factor from Table 3) X (168 days) X (\$1,000 per day). The Initial Liability Value is **\$92,400**.

Step 4. Adjustment Factors

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Patterson Kahle LLC

The Enforcement Policy also describes three factors related to the Discharger's conduct that should be considered for modification of the initial liability amount: The Discharger's culpability, the Discharger's history of violations, and the Discharger's efforts to clean up or cooperate with regulatory authorities after the violation. After each of these factors is considered for the violation alleged, the applicable factor should be multiplied by the proposed liability amount for the violation.

a) *Culpability: 1.3*

The Discharger was assessed a score of 1.3, which increases the liability amount. Newport Plating historically stored, used, and disposed of hazardous chemicals at the Discharger's property. As the property owner of the Site, which is contributing to the impairment of a groundwater and surface water resources, and poses a risk to human health, it is imperative that steps be taken toward remediation of the contaminants of concern. A reasonably prudent person in similar circumstances would not have delayed assessment and remediation activities.

Regional Board staff initially issued the Investigative Order to the Discharger on March 1, 2018. The Investigative Order was re-issued on July 18, 2018, to another address linked to Mr. Mark McCulloch, Manager of Patterson Kahle, LLC, after the initial Investigative Order was returned to sender. The July 18, 2018 Investigative Order was received by the property owner, as evidenced by signed Certified Mail receipts; however, there was no response from Patterson Kahle, LLC. Mr. Ballard, agent for service of process for Patterson Kahle, LLC, responded via email; however, his response did not address any of the requested items.

Despite these efforts, as of the date of the issuance of this Complaint, the Discharger have not yet submitted an Investigation Work Plan or updated RAP. The Discharger's failure to timely comply with the Investigative Order, given that it has known about the severity of impacts to soil, groundwater, the body of water in Rhine Channel and potential risks to human health indicates negligent behavior. A factor of 1.3 is appropriate where the Discharger's conduct amounted to negligent behavior, falling well below what a reasonable and prudent person would have done in similar circumstances.

b) *History of Violations: 1.0*

The Discharger was assessed the score of 1.0, which is neutral and does not influence the liability amount because the Discharger does not have a history of violations within the last five years with the Regional Board. Regional Board Staff has sought voluntary compliance from the Discharger for several years.

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c) *Cleanup and Cooperation: 1.1*

The Discharger was assessed a score of 1.1, which increases the penalty. Regional Board staff have invested a great amount of time and resources to communicate with and notify the Discharger of the requirement to conduct additional investigation and remediation activities. Despite these attempts, the Discharger has chosen to not take the necessary steps in a timely manner, given the serious threat to beneficial uses of water. After the issuance of the CAO 87-111, the Discharger initially complied with a some of the requirements and provisions of the CAO. Records indicate consistent compliance with submission of work plans up until October 9, 2009. Since the submission of the incomplete RAP in 2009 and to date, the Discharger has not demonstrated compliance with the requirements of the Investigative Order or the CAO, which require investigation work and submission of an adequate RAP. Therefore, due to the level of compliance that was seen up until 2009, a lower multiplier than a 1.5 is appropriate and a multiplier of 1.1 has been assessed.

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 determined in Step 3.

- a) *Total Base Liability Amount: \$92,400* [Initial Liability (\$92,400) x Adjustments (1.3)(1.0)(1.1) = **\$132,132**].

The following penalty methodology steps apply to all prior violations.

Step 6. Ability to Pay and Continue in Business

The Enforcement Policy requires the consideration of the Discharger's ability to pay and continue in business. The Regional Board has the initial burden of producing information in the public record demonstrating the Discharger's ability to pay and continue in business. The Hearing Procedure and Cover Letter to this Complaint provide instructions for rebutting the Prosecution Team's findings by submitting evidence of an inability to pay.

The Prosecution Team sets forward the following information in satisfaction of its initial burden:

The Discharger owns the Site, assessor's parcel number (APN) 047-051-06, where Newport Plating conducted its operations. The Site is approximately 0.2 acres of land designated for mixed use. According to the Orange County tax assessor's office, the total assessed value as of 2018 is \$142,264. Patterson Kahle LLC also owns adjacent parcels, APN 047-052-05 and 047-052-06, valued

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at \$45,180 and \$47,259 respectively. All three parcels are being rented to third parties currently.

Mr. Ballard, agent for service of process for Patterson Kahle, LLC, identified that the company has been suspended by the Franchise Tax Board (FTB) and has insufficient income, but has not provided the Regional Board with evidence of the Discharger's inability to pay.

The Prosecution Team has considered this information in calculating this civil liability, and has determined that the Total Base Liability should not be adjusted. This information in the public record is indicative of some of the Discharger's available assets to pay the total proposed penalty and continue in business.

a) Total Base Liability Amount: **\$132,132.**

Step 7. Economic Benefit

a) *Estimated Economic Benefit:* **\$3,834**

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN)² penalty and financial modeling program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN Version 5.8.0. For this case, BEN was determined to be the appropriate method. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes.

In this case, the Discharger failed to comply with the Water Code 13267 directive issued in July 2018. The directive required that a site assessment work plan be submitted to the Regional Board by August 20, 2018 that should include, in part, proposals for quarterly groundwater monitoring and soil contaminant delineation. The directive further required that an updated Remedial Action Plan (RAP) be submitted contingent on the results of groundwater and soil sampling efforts. Although no submission date is specified for the RAP, it is assumed that it would follow a maximum of four quarters of groundwater monitoring, or approximately one year following the work plan submission date. To date, Regional Board staff have not received any of the information demanded by the directive. Because the work plan is still an outstanding requirement, it is considered a delayed compliance expense, as it is still expected that the Discharger will incur the cost at some point in the future. Furthermore, soil delineation efforts should commence following the

² US EPA Economic Benefit Model, or BEN. At the time this document was prepared, BEN was available for download at <http://www2.epa.gov/enforcement/penalty-and-financial-models>; the Central Valley Water Board's application of the BEN Model to the circumstances here is summarized on the last page of Attachment E.

ATTACHMENT A Patterson Kahle LLC

submittal and implementation of the work plan and are therefore also considered delayed expenses. Similarly, because the work plan has not been implemented (soil and groundwater assessment has not commenced), the ability to submit the required RAP is delayed. The estimated cost of the work plan and RAP is approximately \$2,537 and \$5,984, respectively. The estimated cost of soil sampling and analysis to advance at least five soil borings is approximately \$7,023.

Unlike one-time soil sampling events, groundwater monitoring efforts are expected to continue indefinitely during the site assessment and remediation phases of the site cleanup process. Therefore, two quarterly groundwater monitoring events that would have likely occurred following the submittal of the work plan are considered avoided compliance expenses, as those monitoring periods have expired. Monitoring and analysis expenses for the four site monitoring wells are estimated to cost approximately \$2,847 per quarter.

Estimated compliance dates for the work plan and soil contaminant delineation are assumed to be April 30, 2019. The estimated compliance date for the RAP is assumed to be April 30, 2020. Further delaying the compliance date for these required actions will increase the economic benefit to the Discharger. For calculation purposes, the penalty payment date is assumed to be April 30, 2019. Changes to this date will affect the economic benefit calculation.

Based on information provided by the Discharger, in addition to standard accounting assumptions, the BEN model was used to determine the economic benefit of the avoided and delayed expenditures described above to be approximately \$3,834. Individual compliance actions, assumptions, and BEN output are described in Attachment C.

Step 8. Other Factors as Justice May Require

a) Costs of Investigation and Enforcement Adjustment: \$23,169

Regional Board Site Cleanup staff incurred \$23,169 in staff costs to investigate this case and prepare analysis and supporting information. In light of the total base liability and the nature of the violation, the Prosecution Team is only seeking \$2,316 in staff costs, 10% of the current staff time, exclusive of counsel. The violation at issue is not a discharge violation, however, the Regional Board has a strong interest in bringing the Discharger into compliance. In addition, due to the nature of the violation it is not eligible for compressed days as described in the Enforcement Policy. Without a reduction in staff costs, and with no basis to reduce the days of violation, the penalty would exceed the statutory maximum for liability. Therefore, the Prosecution Team has determined that even with reduced staff costs, this proposed penalty still provides adequate deterrence and incentive for compliance.

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Patterson Kahle LLC

Step 9. Maximum and Minimum Liability Amounts

a) *Minimum Liability Amount: \$4,217*

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not fall below the economic benefit plus ten percent. As discussed above, the Santa Ana Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the alleged violation plus ten percent is \$4,217.

b) *Maximum Liability Amount: \$168,000*

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code section 13268(b)(1): One thousand dollars (\$1,000) for each day in which the violation occurs. The violation alleged in this Complaint occurred for 168 days. The maximum liability amount is \$168,000.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed is **\$134,448**.

Attachment B

Penalty Calculation Methodology Worksheet - Version Date: 9/25/2017

Instructions

1. Select Degree of Toxicity of the Discharge
2. Select Actual or Potential Harm to Beneficial Uses
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Requirement
5. Click "Determine Harm & per Gallon/Day..."
6. Enter Values into the Yellow highlighted fields

Select Item	3 = Discharged material poses above moderate
Select Item	3 = Moderate
Select Item	< 50% of Discharge Susceptible to Cleanup or is
Select Item	Moderate

Discharger Name/ID:

		Violation 1		
Discharge Violations	Step 1	Actual or Potential Harm Factor (Generated from Button)	Failure to submit Work Plan and RAP	
	Step 2	Per Gallon Factor (Generated from Button)		
		Gallons		
		Statutory Maximum		
		High Volume		
		Total		\$
	Step 3	Per Day Factor (Generated from Button)		0
		Total Days		
		Multiple Day Violation Reduction		
		Statutory Max per Day		
Total		\$		
Non-Discharge Violations	Step 3	Per Day Factor	0.55	
	Total Days	168		
	Multiple Day Violation Reduction			
	Statutory Max per Day	\$ 1,000		
	Total	\$ 92,400.00		
Initial Amount of the ACL			\$ 92,400.00	
Add'l Factors	Step 4	Culpability	1.3	
		History of Violations	1	
		Cleanup and Cooperation	1.1	
		Total	\$ 132,132.00	
	Maximum for this Violation	\$ 168,000.00		
Amount for this Violation	\$ 132,132.00			
Step 5 Total Base Liability Amount			\$ 132,132.00	
Step 6	Ability to Pay & to Continue in Business	1	\$ 132,132.00	
Step 7	Economic Benefit	3,834		
Step 8	Other Factors as Justice May Require	1	\$ 132,132.00	
	Staff Costs	\$ 2,316	\$ 134,448.00	
Step 9	Minimum Liability Amount	\$ 4,217.40		
	Maximum Liability Amount	\$ 168,000.00		
Step 10	Final Liability Amount		\$ 134,448.00	

Penalty Day Range Generator

Start Date of Violation=

End Date of Violation=

Maximum Days Fined (Steps 2 & 3) = Days

Minimum Days Fined (Steps 2 & 3) = Days

Attachment C

Economic Benefit Analysis

Newport Plating

Compliance Action	One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?					
Investigative Costs/WP Preparation	\$ 2,537	ECI	4/30/2019	Y	8/21/2018	4/30/2019	4/30/2019	7.20%	52
Soil Samples	\$ 7,023	ECI	4/30/2019	Y	10/20/2018	4/30/2019	4/30/2019	7.20%	110
Quarterly GWM Event	\$ 2,847	ECI	4/30/2019	N	10/1/2018	4/30/2019	4/30/2019	7.20%	1,789
Quarterly GWM Event	\$ 2,847	ECI	4/30/2019	N	1/1/2019	4/30/2019	4/30/2019	7.20%	1,768
Remedial Action Plan (RAP)	\$ 5,984	ECI	4/30/2019	Y	8/21/2019	4/30/2020	4/30/2019	7.20%	117

Income Tax Schedule: For-Profit (Other than C-Corporation) **Total Benefit: \$ 3,834**
USEPA BEN Model Version: Version 5.8.0 (April 2018)
Analyst: Bryan Elder
Date/Time of Analysis: 1/29/19 12:24

Assumptions:

- 1 Workplan preparation based on 2018 Cost Guidelines Update for preliminary site assessment phase workplan.
https://www.waterboards.ca.gov/water_issues/programs/ustcf/docs/cost_guidelines/2018_cost_guidelines_update.pdf
- 2 Soil sample costs based on 2018 Cost Guidelines Update
 (https://www.waterboards.ca.gov/water_issues/programs/ustcf/docs/cost_guidelines/2018_cost_guidelines_update.pdf) for hand auger soil borings up to 10 feet deep. Assumes 3 samples collected from 5 borings. Laboratory costs based on OnSite Environmental fee schedule (http://www.onsite-env.com/pdf/Schedule-of-Fees.pdf). Analysis to include EPA Methods 335.4 and 6010B.
- 3 Quarterly Groundwater Monitoring (GWM) Event based on 2018 Cost Guidelines Update
 (https://www.waterboards.ca.gov/water_issues/programs/ustcf/docs/cost_guidelines/2018_cost_guidelines_update.pdf). Assumes 4 monitoring well samples and 1 duplicate for quality assurance. Laboratory costs based on OnSite Environmental fee schedule (http://www.onsite-env.com/pdf/Schedule-of-Fees.pdf). Analysis to include EPA Methods 335.4 and 6010B.
- 4 Remedial Action Plan (RAP) preparation based on 2018 Cost Guidelines Update
 (https://www.waterboards.ca.gov/water_issues/programs/ustcf/docs/cost_guidelines/2018_cost_guidelines_update.pdf) for a basic site with moderate groundwater and soil contamination.
- 5 All costs indexed using the Employment Cost Index (ECI) as they contain significant labor contributions.
- 6 Workplan, soil sampling, and RAP are still required of the discharger and therefore considered delayed compliance actions.
- 7 GWM events for past quarters are considered avoided compliance actions.
- 8 Workplan noncompliance date assumed to be August 21, 2018, one day following due date per 13267 Order.
- 9 Soil sampling assumed to be complete within 60 days of workplan submittal, or October 20, 2018 (noncompliance date).
- 10 Quarterly GWM event non-compliance dates reflect day following expected quarter of completion.
- 11 RAP non-compliance date assumed to be 1 year following workplan submittal, assuming 4 quarters of GWM has occurred.
- 12 Compliance date for workplan and soil sampling assumed to be April 30, 2019 for conservative purposes.
- 13 Compliance date for RAP assumes GWM commences in the second quarter 2019 and continues for 1 year.
- 14 Penalty payment date assumed to be April 30, 2019.
- 15 Discharger assumed to operate as a for-profit (non-corporate) entity.

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT No. R8-2019-0012**

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

I am duly authorized to represent Patteron Kahle, LLC (hereafter Discharger) in connection with Administrative Civil Liability Complaint R8-2019-0012 (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 Regional Board.
- b. I certify that the upon approval of this settlement Discharger will remit payment for the proposed civil liability in the full amount of **\$134,448.00** by check that references "ACL Complaint R8-2019-0012" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Regional Board by **5:00 p.m. on March 4, 2019** or this matter will be placed on the agenda for a hearing as initially proposed in the Complaint. Payment must be received within thirty (30) days of approval by the Regional Board at the following address: State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. A copy of the check must also be received by the Regional Board at 3737 Main Street, Suite 500, Riverside, CA 92501 within thirty (30) days of approval.
- 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 Regional Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement may be subject to approval by the Regional Board (or the Regional Board's delegee), and that the Regional Board may consider this proposed settlement in a public meeting or hearing. 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 Regional 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 Regional Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violations. By checking this box, the Discharger requests that the Regional Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional 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 Regional Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Regional 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 Regional Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

Administrative Civil Liability Complaint

Fact Sheet

The California State Water Resources Control Board (State Water Board) and the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) are authorized to issue complaints for civil liabilities under California Water Code (Water Code) section 13323 for violations of the Water Code. This document describes generally the process that follows the issuance of a complaint.

The issuance of a complaint is the first step in the possible imposition of an order requiring payment of penalties. The complaint details the alleged violations including the appropriate Water Code citations, and it summarizes the evidence that supports the allegations. **If you receive a complaint, you must respond timely as directed. If you fail to respond, a default order may be issued against you.** The complaint is accompanied by a transmittal letter, a waiver options form, and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Board Prosecution Team and the person(s) named in the complaint, referred to as the "Discharger(s)." The Prosecution Team is comprised of Regional Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit comments. If the matter proceeds to a hearing, the hearing will be held before the Regional Board (either the seven Governor appointed board members or the Executive Officer). Those who hear the evidence and rule on the matter act as judges. The Regional Board is assisted by an Advisory Team, who provide advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the Regional Board, or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Notice.

Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; or (5) hearing.

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

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

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

ACL Complaint Fact Sheet

ended, subject to public comment.

Settlement results when the Parties negotiate a resolution of the complaint. The settlement can be payment of an amount less than the proposed penalty or partial payment and suspension of the remainder pending implementation by the Discharger(s) of identified activities, such as making improvements that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project (CP). Qualifying criteria for CPs and SEPs are contained in the State Water Board's Enforcement Policy, which is available at the State Water Board's enforcement website at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/policy.shtml

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

Factors That Must Be Considered By the Board

Except for Mandatory Minimum Penalties under Water Code Section 13385 (i) and (h), the Regional Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Water Code sections 13327, 13385(e), and 13399). During the period provided to submit evidence (set forth in the Hearing Notice) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint.

If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

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

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

For a business:

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

For larger firms:

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

For a municipality, county, or district:

1. Type of entity:
 - a. City/Town/Village;
 - b. County;
 - c. Municipality with enterprise fund; or
 - d. Independent or publicly owned utility.
2. The following 1990 and 2000 United States Census data:
 - a. Population;
 - b. Number of persons age eighteen (18) years and above;
 - c. Number of persons age sixty-five (65) years and above;
 - d. Number of Individuals below one hundred and twenty-five percent (125%) of poverty level;

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

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

Petitions

If the Regional Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at http://www.waterboards.ca.gov/public_notices/petitions/water_quality/wgpetition_instr.shtml.

An order of the State Water Board, including its ruling on a petition from a Regional Board order, can be challenged by filing a petition for writ of mandate in Superior Court pursuant to Water Code section 13330.

Once an order for payment of penalties becomes final, the Regional Board or State Water Board may seek an order of the Superior Court under Water Code section 13328, if necessary, in order to collect payment of the penalty amount.



GAVIN NEWSOM
GOVERNOR



JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SANTA ANA REGION

PROPOSED HEARING PROCEDURE FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2019-0012 ISSUED TO PATTERSON KAHLE, LLC ORANGE COUNTY

SCHEDULED FOR MAY 3, 2019

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

Overview

The Assistant Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (Water Code) section 13323 to Patterson Kahle, LLC (Discharger) alleging it has failed to respond to a Water Code section 13267 Investigative Order issued by the Regional Board. The ACL Complaint proposes that administrative civil liability in the amount of **one hundred thirty four thousand four hundred forty eight dollars (\$134,448)** be imposed on the Discharger as authorized by Water Code section 13268. Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the Regional Board on **May 3, 2019 at a to be determined location.**

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Regional Board will consider whether to adopt, modify, or reject the proposed assessment. An agenda for the hearing will be issued at least ten (10) days before the hearing and will be posted on the Santa Ana Water Board's web page at: www.waterboards.ca.gov/santaana/

Hearing Procedure

The hearing will be an adjudicative proceeding conducted in accordance with these Hearing Procedures. This proposed hearing procedure has been prepared by the Prosecution Team and is subject to revision and approval by the Regional Board's Advisory Team. A copy of the procedures governing adjudicatory hearings before the Regional Board may be found at Title 23 of the California Code of Regulations, section 648 et seq., and is available at

WILLIAM RUH, CHAIR | HOPE SMYTHE, EXECUTIVE OFFICER

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<http://www.waterboards.ca.gov> or upon request. In accordance with section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Title 23 of the California Code of Regulations (CCR), section 648(b), Chapter 5 of the Administrative Procedures Act (commencing with section 11500 of the Government Code) does not apply to adjudicatory hearings before the Regional Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURE AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM AT ITS DISCRETION. **ANY OBJECTIONS TO THE PROPOSED PROCEDURE MUST BE RECEIVED BY TERESITA SABLAN, STAFF COUNSEL, NO LATER THAN FEBRUARY 14, 2019, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participants

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

The following participants are hereby designated parties in this proceeding:

1. Regional Board Prosecution Team
2. Patterson Kahle, LLC

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party, and are not already listed above, shall request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5:00 p.m. on **March 20, 2019**, to Teresita Sablan, Staff Counsel, at the address set forth below. 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 Regional 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 5:00 p.m. on **March 27, 2019**. The parties will be notified by 5:00 p.m. on **April 1, 2019**, as to whether the request has been granted or denied.

Primary Contacts

Advisory Team:¹

Teresita Sablan, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel c/o Santa Ana Regional
Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501
Teresita.Sablan@waterboards.ca.gov
(916) 341-5174

Prosecution Team:

Chad Nishida, Water Resources Control Engineer
California Regional Water Quality Control Board, Santa Ana Region
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Riverside, CA 92501
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(951) 782-3252

Catherine Hawe, Staff Counsel
State Water Resources Control Board, Office of Enforcement
801 K Street, Suite 2300
Sacramento, CA 95814
Catherine.Hawe@waterboards.ca.gov
(916) 322-3538

Discharger:

Mark McCulloch
Patterson Kahle, LLC
120 Tustin Avenue, Suite C
Newport Beach, CA 92263

Ronald M. Ballard, Attorney for Patterson Kahle, LLC
22996 El Toro Road
Lake Forest, CA 92630
ballard.ronald@ballardlaw.email

Separation of Prosecutorial and Advisory 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 Regional Board

¹ Additional staff may be designated as advisory staff with the Final Hearing Procedures.

(Prosecution Team) have been separated from those who will provide advice to the Santa Ana Water Board (Advisory Team). Members of the Advisory Team¹ include Teresita Sablan, Staff Counsel, and Hope Smythe, Executive Officer. Members of the Prosecution Team are: Julie Macedo, Senior Staff Counsel; Catherine Hawe, Staff Counsel; Jayne Joy, Assistant Executive Officer; Chad Nishida, Water Resources Control Engineer; and Nick Amini, Senior Water Resources Control Engineer.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Team or members of the Regional 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 Regional Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated and interested parties (if written) 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.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined thirty (30) minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have three (3) minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team no later than **April 19, 2019**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Board (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Regional Board to consider. Evidence and exhibits already in the public files of the Regional Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, California Code of Regulations, section 648.3.
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.

The Prosecution Team shall submit one (1) electronic copy of the information to Teresita Sablan, Staff Counsel, so that it is received no later than 5:00 p.m. on **March 18, 2019**.

The remaining designated parties shall submit one (1) electronic copy of the information to Teresita Sablan, Staff Counsel, so that they are received no later than 5:00 p.m. on **April 1, 2019**. If Patterson Kahle, LLC wishes to provide evidence of an inability to pay, it must do so no later than 5:00 p.m. **March 4, 2019**.

In addition to the foregoing, each designated party shall send one (1) copy of the above information to each of the other designated parties by 5:00 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Teresita Sablan, Staff Counsel, as early as possible, but they must be received by **April 5, 2019**. Interested persons do not need to submit written comments in order to speak at the hearing.

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

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, no later than 5:00 p.m. on **February 14, 2019**.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5:00 p.m. on **April 19, 2019**, to the Advisory Team with a copy to all other designated parties. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Board office at 3737 Main Street, Suite 500, Riverside, California 92501. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Board. Many of these documents are also posted

online at www.waterboards.ca.gov/santaana/. Although the web page is updated regularly, to ensure access to the latest information, you may contact Teresita Sablan, Staff Counsel.

Questions

Questions concerning this proceeding may be addressed to Teresita Sablan, Staff Counsel.

IMPORTANT DEADLINES

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

February 4, 2019	<ul style="list-style-type: none"> ▪ Prosecution Team issues Complaint and Hearing Procedure on Patterson Kahle, LLC and other parties.
February 14, 2019	<ul style="list-style-type: none"> ▪ Patterson Kahle, LLC's deadline to request a pre-hearing meeting. ▪ Objections due on Hearing Procedure.
March 4, 2019	<ul style="list-style-type: none"> ▪ Patterson Kahle, LLC's deadline to submit 90-Day Hearing Waiver Form and payment. ▪ Patterson Kahle, LLC's deadline to raise inability to pay claim and provide evidence of inability to pay. ▪ Advisory Team issues decision on Hearing Procedure objections. ▪ Advisory Team issues Final Hearing Procedures. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.</p>
March 18, 2019	<ul style="list-style-type: none"> ▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements", above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons.</p> <p><u>Electronic or Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney.</p>
March 20, 2019	<ul style="list-style-type: none"> ▪ Deadline to request "designated party" status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.</p>
March 27, 2019*	<ul style="list-style-type: none"> ▪ Deadline to submit opposition to requests for designated party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.</p>
April 1, 2019	<ul style="list-style-type: none"> ▪ Advisory Team issues decision on requests for designated party status.
April 5, 2019*	<ul style="list-style-type: none"> ▪ Discharger's and Remaining Designated Parties' deadline to submit all information required under "Submission of Evidence

	<p>and Policy Statements” above. This includes all written comments regarding the Order, and any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections.</p> <ul style="list-style-type: none"> Interested Persons’ comments are due. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.</p>
April 19, 2019*	<ul style="list-style-type: none"> Prosecution Team’s deadline to submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. Deadline to submit requests for additional time. If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of <i>this</i> deadline. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney.</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact.</p>
April 23, 2019* ¹	<ul style="list-style-type: none"> Prosecution Team submits Hearing binder on the parties and Board. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons.</p> <p><u>Electronic or Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney.</p>
May 3, 2019*	Hearing

** Patterson Kahle, LLC has the right to a hearing before the Board within 90 days of receiving the Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, Patterson Kahle, LLC is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing civil liability. However, if the Board accepts the waiver, all deadlines marked with an “*” will be revised if a settlement cannot be reached.*

¹ This deadline is set based on the date that the Board compiles the Board Members’ agenda packages. Any material received after this deadline will not be included in the Board Members’ agenda packages.

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