

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0531

IN THE MATTER OF

JAMES G. AND AMELIA M. SWEENEY  
SWEENEY DAIRY  
TULARE COUNTY

This Complaint is issued to James G. and Amelia M. Sweeney (Discharger) under the authority of California Water Code (Water Code) section 13323 to assess administrative civil liability pursuant to Water Code section 13268 for failure to submit a 2014 Annual Report.

The Assistant Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) alleges, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns and operates the Sweeney Dairy (Dairy), located at 30712 Road 170, Visalia, California, County of Tulare.
2. The Dairy is regulated by the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order), which was adopted by the Central Valley Water Board on 3 October 2013. (Exhibit A.) The Reissued General Order replaces the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (2007 General Order) and accompanying Monitoring and Reporting Program (MRP). The Reissued General Order and accompanying MRP contain reporting requirements for dairies regulated by the Reissued General Order.
3. The Reissued General Order and accompanying MRP require the submission of an Annual Report for the 2014 calendar year for regulated facilities by 1 July 2015 (2014 Annual Report), including an Annual Dairy Facility Assessment with facility modifications implemented to date.
4. The Discharger has consistently failed to meet the Annual Report requirement under the 2007 General Order and the 2013 Reissued General Order. The Central Valley Water Board has adopted Administrative Civil Liability Orders for the Discharger's failure to submit the 2009 Annual Report and Waste Management Plan, the 2010 Annual Report, the 2011 Annual Report, the 2012 Annual Report, and the 2013 Annual Report.

**STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED**

5. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.

6. Pursuant to Water Code section 13267, subdivision (b), a 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 shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
7. Pursuant to Water Code section 13268, subdivision (a), any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
8. Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

#### **ALLEGED VIOLATION**

9. On 24 August 2015, the Central Valley Water Board staff issued a Notice of Violation, notifying the Discharger that the 2014 Annual Report with appurtenant components had not been received. (Exhibit B.) The Notice of Violation also requested that the delinquent report be submitted as soon as possible to minimize potential liability.
10. On 7 March 2016, the Central Valley Water Board staff issued a courtesy pre-filing settlement letter notifying the Discharger that staff was in the process of assessing civil liability for failure to submit the 2014 Annual Report. (Exhibit C.) The letter included a calculation of the maximum penalty (\$250,000) and a recommended penalty amount (\$59,850) as of 7 March 2016 for the failure to submit the missing report. The Discharger was provided an opportunity to meet with the Central Valley Water Board staff to discuss the alleged violation and submit any information regarding the factors listed in Water Code section 13327 that would be deemed relevant to determining an appropriate monetary penalty. The letter requested that all responses be received by 25 March 2016. The letter also indicated that if staff did not receive a response from the Discharger by 25 March 2016, the Assistant Executive Officer would issue a Complaint to the Discharger. As of the date of this Complaint, the Discharger had not responded to the 7 March 2016 pre-filing letter.
11. Central Valley Water Board's compliance tracking system and case files indicate that to date the Board has not received the 2014 Annual Report or any of the appurtenant components thereof.

12. The Discharger is alleged to have violated the following sections of the Reissued General Order and of the MRP:
- A) Provision G.3 of the Reissued General Order, which states:  
  
"The Discharger shall comply with the attached Monitoring and Reporting Program R5-2013-0122 which is part of this Order, and future revisions thereto or with an individual monitoring and reporting program, as specified by the Central Valley Water Board or the Executive Officer."
  - B) Provision G.13 of the Reissued General Order, which states in part:  
  
"The Discharger must comply with all conditions of this Order, including timely submittal of technical and monitoring reports as directed by the Executive Officer."
  - C) The MRP, which states in part:  
  
"An annual monitoring report is due by 1 July of each year . . . . [T]he annual report shall cover information on crops harvested during the previous calendar year . . . ."
13. The Discharger violated both the Reissued General Order and the MRP by failing to submit the 2014 Annual Report with appurtenant components as directed by the MRP that accompanies the Reissued General Order, which contain reporting requirements for dairies regulated by the Reissued General Order.

#### **SUMMARY OF ALLEGED VIOLATIONS**

1. **Violation:** The Discharger failed to submit an annual report for 2014 with appurtenant components by 1 July 2015 as required by the Reissued General Order and the MRP. As of the date of this Complaint this report is now 278 days late. The total number of days the Discharger has been out of compliance is the basis for determining the recommended civil liability amount.

The Discharger has been out of compliance for a total of 278 days.

#### **FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY**

14. On 17 November 2009, the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability. This policy can be found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final\\_111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final_111709.pdf).

15. The administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy. In summary, this penalty assessment is based on a consideration of the failure to respond to requests made pursuant to Water Code section 13267, subdivision (b), for the alleged violation. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

The required factors have been considered using the methodology in the Enforcement Policy, as explained in detail in Attachment A and shown in the Penalty Calculation for Civil Liability (Attachment B).

16. The maximum penalty for the violation described above is \$278,000 based on a calculation of the total number of per-day violations times the statutory maximum penalty (278 total days of violation X \$1,000). However, based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **fifty-nine thousand eight hundred and fifty dollars (\$59,850)** for the violation cited above. The specific factors considered in this penalty are detailed in Attachment A. The Discharger's culpability, history of violations, and ability to pay and continue in business were considered. Other factors as justice may require were considered, but circumstances warranting an adjustment under this step were not identified by staff or provided by the Discharger.

#### PROPOSED ADMINISTRATIVE CIVIL LIABILITY

The Executive Officer proposes that the Discharger be assessed an administrative civil liability pursuant to Water Code sections 13323 and 13268 in the amount of **fifty-nine thousand eight hundred and fifty dollars (\$59,850)** for failure to submit the 2014 Annual Report with appurtenant components by the 1 July 2015 deadline as required by the Reissued General Order and the MRP.

If the Central Valley Water Board holds a hearing, it may choose to impose an administrative civil liability in the amount proposed or for a different amount, decline to seek civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing.

There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See City

of Oakland v. Public Employees' Retirement System (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.

Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Payment of the assessed liability amount does not absolve the Discharger from complying with the Reissued General Order or the MRP, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the Reissued General Order, the MRP, and/or future orders issued by the Central Valley Water Board.

April 4, 2016  
Date

Clay L. Rodgers  
Clay L. Rodgers  
Assistant Executive Officer  
Central Valley Water Board Prosecution Team

**EXHIBIT A**

Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies  
Order R5-2013-0122

can be viewed at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2013-0122.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0122.pdf)

**EXHIBIT B**  
Notice of Violation Issued 24 August 2015  
For Failure to Submit 2014 Annual Report



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Central Valley Regional Water Quality Control Board**

24 August 2015

**FILE**

**NOTICE OF VIOLATION**

**CERTIFIED MAIL**

7015 0920 0001 5203 4911

James G. & Amelia M. Sweeney (owner/operator)  
Sweeney Dairy  
30712 Road 170  
Visalia, CA 93292

**POTENTIAL ADMINISTRATIVE CIVIL LIABILITY FOR FAILURE TO SUBMIT THE  
2014 ANNUAL REPORT, SWEENEY DAIRY, W DID 5D545155N01, 30712 ROAD 170,  
VISALIA, TULARE COUNTY**

The dairy facility identified above is regulated by the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order), which was issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) on 3 October 2013. The Reissued General Order required that a 2014 Annual Report (Annual Report) be submitted for regulated facilities by 1 July 2015. To date, the required Annual Report has not been received.

The required report is requested pursuant to California Water Code (CWC) section 13267. CWC section 13268 provides that failure to submit the required report can subject you to administrative civil liability (monetary penalties) at a rate of up to \$1,000 for each day the report is late or substantially incomplete if imposed by the Central Valley Water Board, or at a rate up to \$5,000 for each day a report is late or substantially incomplete if imposed by the superior court. It is important that you promptly provide the Central Valley Water Board with the Annual Report required by the Reissued General Order that was due by 1 July 2015, to minimize your potential liability.

Please note that an annual report is required for the subject facility as long as it is regulated under the Reissued General Order, even if the facility was vacant during the 2014 calendar year. If the facility was vacant during 2014, no manure or wastewater was exported during 2014, and no manure or wastewater was land applied during 2014, you must submit a report that contains this information and that provides groundwater monitoring data for any domestic or agricultural wells on site.

If the dairy is currently in the closure process, but it operated as a dairy during part of the 2014 calendar year, you must submit a report which provides data on manure and crop production

James G. &  
Amelia M. Sweeney (owner/operator)

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24 August 2015

and land application or export of manure or wastewater, as well as groundwater data for any domestic or agricultural wells on site.

Please contact Lorin Sutton at (559) 445-6086 if you have any questions regarding this matter.

*Dale E. Essary*

DALE E. ESSARY, PE  
Senior Engineer  
Confined Animals Unit

**EXHIBIT C**

Letter Issued 7 March 2016

Forthcoming Assessment of Civil Liability for Failure to Submit 2014 Annual Report



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

FILE

7 March 2016

James G. and Amelia M. Sweeney (owner/operator)  
Sweeney Dairy  
30712 Road 170  
Visalia, CA 93292

CERTIFIED MAIL  
7015 1730 0000 9937 2769

**FORTHCOMING ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY FOR FAILURE TO  
SUBMIT THE 2014 ANNUAL REPORT, SWEENEY DAIRY, WDID 5D545155N01, 30712  
ROAD 170, VISALIA, TULARE COUNTY**

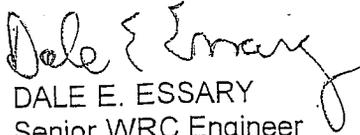
The Central Valley Regional Water Quality Control Board (Central Valley Water Board) has requested the State Water Resources Control Board, Office of Enforcement to assist it in bringing formal enforcement in administrative civil liability for failing to comply with the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order). The Central Valley Water Board Prosecution Team intends to proceed with formal enforcement by issuing an Administrative Civil Liability Complaint (Complaint) against you. Prior to prosecuting this case, however, we are offering you the opportunity to discuss the alleged violation, including the option of settlement.

The Reissued General Order and the accompanying Monitoring and Reporting Program (MRP) required regulated facilities to submit an annual monitoring report for the calendar year 2014 (2014 Annual Report) by 1 July 2015 pursuant to California Water Code section 13267. On 24 August 2015, Central Valley Water Board staff issued a Notice of Violation notifying you that the 2014 Annual Report had not been received for your dairy facility. The Notice of Violation also requested that the delinquent report be submitted as soon as possible to avoid incurring any additional liability. To date, the Central Valley Water Board has not received the 2014 Annual Report.

Failing to submit the 2014 Annual Report subjects you to administrative civil penalties pursuant to California Water Code section 13268 of up to one thousand dollars (\$1,000) for each day in which the violation occurs. **Further delay in submitting the 2014 Annual Report subjects you to ongoing penalties.** The maximum penalty as of 29 February 2016 for this violation is two hundred fifty thousand dollars (\$250,000), based on a calculation of the cumulative total number of per-day violations times the statutory maximum penalty (250 total days of violation X \$1,000). Consistent with the State Water Resources Control Board's Water Quality Enforcement Policy, the Prosecution Team for the Central Valley Water Board intends to issue you a Complaint for at least 250 days of violation, or fifty-nine thousand eight hundred and fifty dollars (\$59,850). This recommended penalty amount is further explained in Attachment A. Please note, as long as you remain out of compliance, the Assistant Executive Officer, lead for the Prosecution Team, reserves his authority to issue a complaint in an amount that exceeds the penalty calculated in Attachment A.

By way of this letter, you are being notified of the opportunity to meet with the Prosecution Team prior to the issuance of a complaint to discuss the alleged violation and proposed penalty amount. If the Prosecution Team does not receive a response by **25 March 2016**, the Assistant Executive Officer will issue a complaint and this matter will proceed to a formal enforcement hearing before the Central Valley Water Board.

If you have any questions regarding this notice, please contact Lorin Sutton by phone at (559) 445-6086 or by email at [Lorin.Sutton@waterboards.ca.gov](mailto:Lorin.Sutton@waterboards.ca.gov).

  
DALE E. ESSARY  
Senior WRC Engineer  
Member of the Prosecution Team

Enclosure: Attachment A

cc: Mr. Andrew Altevogt, Central Valley Water Board Prosecution Team, Rancho Cordova  
Mr. Clay Rodgers, Central Valley Water Board Prosecution Team, Fresno  
Ms. Susie Loscutoff, Office of Enforcement, SWRCB, Sacramento  
Ms. Naomi Kaplowitz, Office of Enforcement, SWRCB, Sacramento  
Mr. David Boyers, Officer of Enforcement, SWRCB, Sacramento  
Tulare County Resource Management Department, Visalia  
Tulare County Health & Human Services Agency, Visalia  
Mr. Raymond L. Carlson, Esq., Griswold LaSalle, Cobb, Dowd, & Gin LLP, Hanford

**Attachment A – Pre-Complaint Letter**  
**Specific Factors Considered – Administrative Civil Liability**  
**James G. & Amelia M. Sweeney**  
**Sweeney Dairy**

The Central Valley Water Board alleges that the Discharger failed to submit the 2014 Annual Report by 1 July 2015 as required by the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order), which replaced the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (2007 General Order) in October 2013. For the purpose of applying the Enforcement Policy's administrative civil liability methodology, the alleged violation is a non-discharge violation. Each factor of the Enforcement Policy and its corresponding score for the violation are presented below:

**Failure to submit 2014 Annual Report:** In accordance with the Reissued General Order and its accompanying Monitoring and Reporting Program (MRP), a 2014 Annual Report must be submitted for regulated facilities by 1 July 2015. To date, the Owner and/or Operator (hereinafter the Discharger) has not submitted this report for the Sweeney Dairy.

**Penalty Calculation for Failure to Submit 2014 Annual Report**

**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**

The initial liability factor must take into consideration the Potential for Harm and the extent of deviation from applicable requirements.

The per day factor is 0.35.

This factor is determined assessing 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 **minor** due to the following: The failure to submit the 2014 Annual Report did not increase the amount of pollution discharged or threatened to be discharged into waters of the State. The Annual Report is a key means through which the Central Valley Water Board evaluates a Discharger's compliance with the Reissued General Order, including the assessment of proper manure application to fields and waste management in a dairy's production area.

Attachment A – Pre-Complaint Letter  
Sweeney Dairy

By failing to provide the information in the Annual Report, the Discharger frustrates the Regional Board's efforts to assess the potential impacts and risks to water quality posed by the Dairy, and circumvents the Regional Board's ability to take necessary enforcement action to correct any problems. The regulatory program is compromised when staff resources are directed to bringing the Discharger into compliance and those resources are not available for other program activities. Since the violation thwarts the Regional Board's ability to identify water quality risks, the violation has the potential to exacerbate the presence and accumulation of, and the related risks associated with, pollutants of concern. This in turn, presents a threat to beneficial uses. Therefore, the violation presents at least a minor potential for harm.

The deviation from requirements was determined to be **major**, as the requirement to submit the Annual Report has been rendered ineffective. The failure to submit the required technical report undermines the Central Valley Water Board's efforts to prevent water quality degradation and implement the regulatory protection measures detailed in the Reissued General Order. Because the Discharger failed to submit the report, the Discharger was assessed a major deviation from the requirement.

**Initial Liability**

The failure to submit an annual report by the 1 July due date subjects the Discharger to administrative civil liability pursuant to Water Code section 13268(b)(1) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Discharger has not submitted a 2014 Annual Report and is therefore 250 days late as of the issuance of this pre-filing letter on 7 March 2016. Therefore, the Per Day Assessment is calculated as (0.35 factor from Table 3) X (250 days) X (\$1,000 per day). The Initial Liability Amount is \$87,500.

**Step 4. Adjustment Factors**

The Enforcement Policy allows for multi-day violations to be consolidated provided specific criteria are satisfied. 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 efforts to clean up and cooperate with regulatory authorities after the violation, and the Discharger's history of violations. 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.

Attachment A – Pre-Complaint Letter  
Sweeney Dairy

a) *Multiple Day Violations*

The Enforcement Policy provides that for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation.

The failure to submit the Annual Report does not result in an economic benefit that can be measured on a daily basis. The continuance of this violation does not result in an economic benefit that can be measured on a daily basis. The economic benefit is the one-time cost of submitting the Annual Report to the Central Valley Water Board, and not a per-day benefit during the entire period of violation.

The Prosecution Team recommends reducing the number of days of violation. The Enforcement Policy provides a floor in that the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30<sup>th</sup> day, plus an assessment for each thirty (30) days of violation (Minimum Approach). However, because this approach generates a Total Base Liability Amount that is not a sufficient deterrent given the Discharger's unwillingness to comply with the Reissued General Order, which undermines the Central Valley Water Board's ability to protect water quality through its regulatory program, the Prosecution Team has increased the number of days of violation above the Minimum Approach to a total number of 38 days of violation. The Initial Liability Amount under this approach is \$13,300 (0.35 per day factor X 38 adjusted days of violation X \$1,000 per day penalty).

b) *Culpability: 1.5*

*Discussion:* The Discharger was assessed a score of 1.5, which increases the fine. As an enrolled dairy, the Discharger is required to comply with the requirements of the Reissued General Order, including the requirement to submit annual reports. Despite the fact that the Discharger received multiple notices regarding the requirements set forth in the Reissued General Order, the Discharger failed to comply. The Discharger was well aware of the requirement to submit the 2014 Annual Report, as the Discharger had submitted an annual report for the calendar year 2008 under the 2007 General Order. The Discharger also failed to submit annual reports for calendar years 2009, 2010, 2011, 2012, and 2013 and was assessed administrative civil liability fines for each of these violations (see *History of Violations*, below). A factor of 1.5 is appropriate where the Discharger's conduct amounted to intentional or negligent behavior, falling well below what a reasonable and prudent person would have done in similar circumstances.

**Attachment A – Pre-Complaint Letter  
Sweeney Dairy**

c) *Cleanup and Cooperation: 1.5*

*Discussion:* The Discharger was assessed a score of 1.5, which increases the fine. The Discharger was issued a Notice of Violation (NOV) on 24 August 2015, which requested that the report be submitted as soon as possible to minimize liability. The Discharger was unresponsive to the NOV, and did not cooperate with the Central Valley Water Board to come back into compliance. Therefore, a factor of at least a 1.5 should be assessed. The violation of Water Code section 13268, subdivision (a), alleged herein, is a non-discharge violation, and thus cleanup is not applicable.

d) *History of Violations: 2*

*Discussion:* The Discharger was assessed the score of 2, which increases the fine. The Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2011-0068 on 13 October 2011 for the Discharger's failure to submit the 2009 Annual Report and the Waste Management Plan by the required deadlines, as required by the 2007 General Order and its accompanying MRP. In addition, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2012-0070 on 2 August 2012 for the Discharger's failure to submit the 2010 Annual Report by the required deadline, as required by the 2007 General Order and its accompanying MRP. In addition, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2013-0091 on 25 July 2013 for the Discharger's failure to submit the 2011 Annual Report by the required deadline, as required by the 2007 General Order and its accompanying MRP. In addition, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2014-0119 on 9 October 2014 for the Discharger's failure to submit the 2012 Annual Report by the required deadline, as required by the 2007 General Order and its accompanying MRP. In addition, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2015-0065 on 4 June 2015 for the Discharger's failure to submit the 2013 Annual Report by the required deadline, as required by the Reissued General Order and its accompanying MRP. The Enforcement Policy requires that a minimum multiplier of 1.1 be used when there is a history of repeat violations.

**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: \$59,850* [Initial Liability (\$13,300) x Adjustments (1.5)(1.5)(2)].

Attachment A – Pre-Complaint Letter  
Sweeney Dairy

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

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

a) *Adjusted Total Base Liability Amount: \$59,850*

*Discussion:* The Discharger has the ability to pay the Total Base Liability Amount based on 1) the Discharger owns the Dairy, a significant asset, and 2) the Discharger operates a dairy, an ongoing business that generates profits.

Without additional information provided by the Discharger, based on this initial assessment of information available in the public record, it appears the Discharger has the assets to pay the Total Base Liability. Based on the reasons discussed above, no reduction in liability is warranted.

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

a) *Adjusted Total Base Liability Amount: \$59,850 + \$0 (Staff Costs) = \$59,850.*

*Discussion:* No adjustment to the Total Base Liability Amount has been made based on "other factors as justice may require."

**Step 8. Economic Benefit**

a) *Estimated Economic Benefit: \$3,185*

*Discussion:* The Discharger has received an economic benefit from the costs saved by not collecting the required samples and analytical data for manure, process wastewater, irrigation water, groundwater, soil, and plant tissue and from not timely drafting and preparing the 2014 Annual Report. This benefit is based on the estimated cost of \$3,185 for sampling and producing an Annual Report.

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

a) *Minimum Liability Amount: \$3,504*

*Discussion:* The Enforcement Policy requires that the minimum liability amount imposed not fall below the economic benefit plus ten percent. As

Attachment A – Pre-Complaint Letter  
Sweeney Dairy

discussed above, the Central Valley Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the alleged violation is \$3,185. Therefore, the minimum liability amount is \$3,504 [Economic Benefit (\$3,185) x Adjustment (1.1)]. The Total Base Liability Amount of \$37,800 is more than at least 10% higher than the economic benefit (\$3,504) as required by the Enforcement Policy.

b) *Maximum Liability Amount: \$250,000*

*Discussion:* The maximum administrative liability amount is the maximum amount allowed by Water Code section 13367, subdivision (b)(1): one thousand dollars (\$1,000) for each day in which the violation occurs (250 total days X \$1,000 per day).

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

**Step 10. Final Liability Amount**

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit the 2014 Annual Report is **\$59,850**.

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 James G. and Amelia M. Sweeney (Discharger) in connection with Administrative Civil Liability Complaint R5-2016-0531 (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.  **(Check here if the Discharger will waive its right to a hearing and accept the proposed liability amount of fifty-nine thousand eight hundred and fifty dollars (\$59,850) subject to adjustment for timely submission of the required reports)** 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

I certify that the Discharger will be liable for **fifty-nine thousand eight hundred and fifty dollars (\$59,850) in full.**

In addition to the reports, the Discharger shall also remit payment of the adjusted liability amount, by check, which will contain a reference to "ACL Complaint R5-2016-0531" and will be made payable to the "State Water Resources Control Board Cleanup and Abatement Account". Payment must be received by the Central Valley Water Board by **25 April 2016** or this matter will be placed on the Central Valley Water Board's agenda for consideration of adoption at the **23/24 June 2016** Central Valley Water Board meeting. Payment must be received 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 Central Valley Water Board.

I understand that payment of the **\$59,850** in full 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-

4.  **(Check here if the Discharger will waive the 90-day hearing requirement, but wishes to engage in settlement negotiations. 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 hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. 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.
5.  **(Check here if the Discharger will waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. 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. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.
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.

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(Print Name and Title)

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(Signature)

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(Date)