



Santa Ana Regional Water Quality Control Board

May 3, 2022

Clinton Myers, Agent for Service of Process
Myers and Sons Construction, LLC
4600 Northgate Boulevard, Suite 100
Sacramento, California 95834

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

**NOTICE OF ADOPTION OF SETTLEMENT AGREEMENT AND ENTRY OF ORDER
R8-2022-0030 FOR MYERS AND SONS CONSTRUCTION, LLC WDID NO.
8 331029148**

Dear Mr. Picket:

Order R8-2022-0030 was signed by the Santa Ana Regional Water Quality Control Board (Regional Water Board), or its delegee, on May 3, 2022, adopting the proposed settlement signed by Myers and Sons Construction, LLC. The Order required Myers and Sons Construction, LLC to pay \$3,259 in mandatory minimum penalties to the Regional Water Board under Water Code section 13399.33. Payment was fulfilled on April 15, 2022.

Please review the Order carefully to ensure that you understand all aspects of its requirements.

To conserve paper and reduce mailing costs, a paper copy of Order R8-2022-0030 has been sent only to Myers and Sons Construction, LLC. Interested parties are advised that the full text of this order is available at the Water Board's web site at:

May 3, 2022

If you have any questions regarding the Order, please contact Keith Elliott via phone at (951) 782-4925 or via e-mail at keith.elliott@waterboards.ca.gov.

Sincerely,



Adam Fischer, Chief
Senior Environmental Scientist
Inland Storm Water Unit

Enclosure: Order R8-2022-0030

cc via email: Jayne Joy, Santa Ana Regional Water Quality Control Board
Katherine Buddingh, State Water Resources Control Board
Ann Sturdivant, Santa Ana Regional Water Quality Control Board
Catherine Hawe, State Water Resources Control Board
Mr. Aldo Licitra, RCFCD, alicitra@rivco.org
Mr. Jeff Potts, City of Corona, jeff.potts@coronaca.gov
Mr. Micaiah Revero, Myers & Sons, MRevero@myers-sons.com
Mr. Jim Pickett, Myers & Sons Construction, jpickett@myers-sons.com

Santa Ana Regional Water Quality Control Board

WAIVER FORM FOR MANDATORY MINIMUM PENALTY COMPLAINT NO. R8-2022-0030

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

I am duly authorized to represent Myers and Sons Construction, LLC (Discharger) in connection with Mandatory Minimum Penalty Complaint No. R8-2022-0030 (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 the liability in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Santa Ana Water Board.
- b. I certify that the Discharger will remit payment for the proposed administrative civil liability in the full amount of **three thousand two hundred and fifty-nine dollars (\$3,259)** by submitting a check made payable to the “*Waste Discharge Permit Fund*,” that references “Complaint No. R8-2022-0030.”
- 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 the 30-day public notice and comment period. Should the Santa Ana Water Board receive significant new information or comments from any source (excluding the Santa Ana Water Board’s Prosecution Team) during this comment period, the Santa Ana Water Board’s Executive Officer may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Santa Ana Water Board (or the Santa Ana Water Board’s delegee) and that the Santa Ana Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result 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.

Upon execution by the Discharger, the completed Acceptance and Waiver should be mailed to the following:

Keith Elliott, Inland Storm Water Unit
Expedited Payment Letter
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

The Discharger further understands that once this Acceptance and Waiver is executed by the Santa Ana Water Board Executive Officer, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. In accordance with California Water Code section 13399.37(a), funds collected for violations pursuant to section 13399.33 shall be deposited in the Waste Discharge Permit Fund. Accordingly, the **three thousand two hundred and fifty-nine dollars (\$3,259)** liability, including staff costs, shall be paid by a cashiers or certified check made out to the "State Water Resources Control Board" referencing this Order number for deposit into the Waste Discharge Permit Fund. The payment must be submitted to the State Water Resources Control Board no later than thirty (30) calendar days after the date the Acceptance and Waiver is executed by the Santa Ana Water Board Executive Officer.

Please mail check to:

State Water Resources Control Board
Re: Order No. R8-2021-0073
Division of Administrative Services, Accounting Branch
1001 I Street, 18th Floor, 95814
P.O. Box 1888
Sacramento, CA 95812-1888



Santa Ana Regional Water Quality Control Board

March 17, 2022

Myers and Sons Construction, LLC
Attn: Clinton Myers, Agent for Service of Process
Attn: Jim Pickett, Legally Responsible Person
4600 Northgate Boulevard, Suite 100
Sacramento, California 95834

Certified Mail
Return Receipt Requested

Myers and Sons Construction, LLC
Attn: Jim Pickett, Legally Responsible Person
4600 Northgate Boulevard, Suite 100
Sacramento, California 95834
jpickett@myers-sons.com

Via Email

TRANSMITTAL OF MANDATORY MINIMUM PENALTY COMPLIANT NO. R8-2022-0030, MYERS AND SONS CONSTRUCTION WIDID NO. 8 331029148

Dear Mr. Pickett:

Enclosed is Mandatory Minimum Penalty Compliant No. R8-2022-0030 (Compliant) issued to Myers and Sons Construction, LLC (Discharger). The Complaint alleges that the Discharger has violated California Water Code (Water Code) section 13399.31 by failing to submit its Annual Report for the 2020-21 reporting period as required by the State's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ as amended by Order No. 2015-0122-DWQ and Order No. 2018-0028-DWQ, NPDES No. CAS000001 (Industrial General Permit) for the Radio Road Concrete Batch Plant located at 250 Radio Road in the City of Corona (Facility).

The Complaint proposes that an administrative civil liability in the amount of **three thousand two hundred and fifty-nine dollars (\$3,259)** be imposed. This is the mandatory minimum penalty, including staff costs, as authorized by Water Code section 13399.33, subdivisions (c) and (d).

A public hearing on this matter is scheduled for the Santa Ana Water Board meeting on **June 3, 2022**. Pursuant to Water Code section 13323, the Discharger has the

KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

option to waive its right to a hearing. Should the Discharger waive its right to a hearing and pay the proposed liability, the Santa Ana Water Board may not hold a public hearing on this matter. If the Discharger chooses to waive its right to a hearing, please sign and submit the enclosed Waiver Form. Please make the check payable to the Waste Discharge Permit Fund for **three thousand two hundred and fifty-nine dollars (\$3,259)** and include the Compliant Number (No. R8-2022-0030) on the memo line. Please send the following information to the locations indicated below:

Mail Waiver Form to:
Santa Ana Water Board
Attn: Keith Elliott
3737 Main Street, Suite 500
Riverside, CA 92501

Mail Payment to:
SWRCB – Accounting Office
Attn: Sarah Fong
P.O. Box 1888
Sacramento, CA 95812-1888

The Discharger should submit the attached Waiver to the Advisory Team by contacting Katharine Buddingh, attorney for the Advisory Team, via phone at (916) 440-7769 or via e-mail at Katharine.Buddingh@waterboards.ca.gov. The Prosecution Team reserves the right to object to the Discharger's request to pursue Option 2.

If the Discharger does not wish to waive its rights to a hearing, a pre-hearing meeting with the Prosecution Team is recommended. Should you wish to schedule a pre-hearing meeting, please submit your request to Keith Elliott via phone at (951) 782-4925 or via email to keith.elliott@waterboards.ca.gov prior to **April 11, 2022**.

If this matter proceeds to hearing, the Advisory Team will issue a Hearing Procedure which will provide deadlines and establish a process for submitting evidence and argument in this matter.

Additionally, a Fact Sheet describing the Complaint process is enclosed. The Fact Sheet describes the complaint process, explains what the Discharger can expect, and its obligations as the process proceeds.

As described in more detail in the attached Fact Sheet, a separation of functions is in place between the Advisory Team and Prosecution Team. Procedural questions should be directed to the Advisory Team by contacting Katharine Buddingh at the information listed above.

If you have any questions regarding the Complaint or the enclosed documents, please contact Keith Elliott via email at keith.elliott@waterboards.ca.gov or by phone at (951) 782-4925.

All legal questions should be directed to Catherine Hawe, attorney for the Prosecution Team, Office of Enforcement, via phone at (916) 322-3538 or via email at Catherine.Hawe@waterboards.ca.gov.

Sincerely,

Original Signed by

Ann Sturdivant, PG, CEG, CHG
Assistant Executive Officer

Enclosures: MMP Complaint No. R8-2022-0030 Waiver Form
Fact Sheet

cc (w/encl): Ms. Jane Joy, (Santa Ana Water Board, Advisory Team)
Ms. Katharine Buddingh, Office of Chief Counsel (Advisory Team Attorney)
Ms. Ann Sturdivant, (Santa Ana Water Board Prosecution Team)
Ms. Catherine Hawe, Office of Enforcement (Prosecution Team Attorney)
Mr. Aldo Licitra, Riverside County Flood Control and Water Conservation District, alicitra@rivco.org
Mr. Jeff Potts, City of Corona NPDES Coordinator, jeff.potts@coronaca.gov

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CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
\$ _____

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$ _____
<input type="checkbox"/> Return Receipt (electronic)	\$ _____
<input type="checkbox"/> Certified Mail Restricted Delivery	\$ _____
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<input type="checkbox"/> Adult Signature Restricted Delivery	\$ _____

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Myers and Sons Construction, LLC
Att: Clinton Myers, Agent for Services of Process
Att: Jim Pickett, Legally Responsible Person
4600 Northgate Boulevard, Suite 100
Sacramento, California 95834

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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

IN THE MATTER OF:

Myers and Sons Construction, LLC)	Complaint No. R8-2022-0030
4600 Northgate Boulevard, Suite 100)	For Mandatory Minimum Penalty
Sacramento, California 95834)	

This Complaint is issued to Myers and Sons Construction, LLC (Discharger) pursuant to California Water Code (Water Code) section 13399.25 *et seq.*, which authorizes the imposition of administrative civil liability; and Water Code section 13323, which authorizes the issuance of this Complaint. This Complaint is based on allegations that the Discharger failed to submit its 2020-2021 Annual Report by July 15, 2021, as required by Section XVI of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities Order No. 2014-0057-DWQ as amended by Order No. 2015-0122-DWQ and Order No. 2018-0028-DWQ, NPDES Permit No. CAS000001 (Industrial General Permit), for which the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board), must impose administrative civil liability pursuant to Water Code section 13399.33.

The Assistant Executive Officer of the Santa Ana Water Board alleges the following:

BACKGROUND:

1. The Discharger operates the Radio Road Concrete Batch Plant located at 250 Radio Road in the City of Corona (Facility).
2. The Discharger has been enrolled in the Industrial General Permit since March 9, 2021 when it submitted a Notice of Intent (NOI). The Discharger is required to maintain coverage under the Industrial General Permit because it has a Standard Industrial Classification (SIC) code of 3273 – Ready Mixed Concrete, which is listed in 40 Code of Federal Regulations section 122.26(b)(14) and in Attachment A to the General Permit. Facilities enrolled with NOI coverage in the Industrial General Permit are required to comply with reporting requirements, including the requirement to submit an Annual Report by July 15 of each year.
3. On July 15, 2021, the Discharger’s Annual Report for the 2020-2021 reporting year was due per Industrial General Permit Section XVI.A.¹

¹ The General Permit instructs dischargers of storm water to submit permit registration documents to the State Water Resources Control Board in the Stormwater Multiple Application & Report Tracking System (SMARTS), not the Santa Ana Water Board.

4. On August 17, 2021, a Notice of Noncompliance (NNC) was issued to the Discharger indicating that its 2020-21 Annual Report had not been submitted in the Stormwater Multiple Application & Report Tracking System (SMARTS). Signed certified mail receipts were received by Santa Ana Water Board staff on August 19, 2021 indicating that the Discharger had received the NNC. The Discharger did not submit its missing Annual Report in response to the NNC.
5. On September 7, 2021, at 3:10 pm Santa Ana Water Board staff attempted to inspect the Facility to inform the Discharger of its missing Annual Report, however, the Facility was closed and locked and staff was unable to contact the Discharger.
6. On September 21, 2021, a second NNC was issued to the Discharger indicating that its 2020-21 Annual Report still had not been submitted in SMARTS as required by the Industrial General Permit. A signed certified mail receipt was received by Santa Ana Water Board staff on September 23, 2021 indicating that the Discharger had received the NNC. The Discharger did not submit its missing Annual Report in response to the NNC.
7. On November 16, 2021, Santa Ana Water Board staff issued an Expedited Payment Letter (EPL), Settlement Offer No. R8-2021-0073 (Settlement Offer) to the Discharger providing it the opportunity to resolve the alleged violation by paying a mandatory minimum penalty of \$1,868, including staff costs. In addition, the Discharger was advised that the Annual Report for the 2020-2021 reporting year still needed to be submitted in SMARTS. As demonstrated by the certified letter domestic return receipt, the Discharger received the Settlement Offer on November 19, 2021. The EPL requested that the Discharger respond to the Settlement Offer by December 16, 2021.
8. The Discharger did not respond to the Settlement Offer.
9. On December 20, 2021 at 3:00 pm, Santa Ana Water Board staff attempted to contact Mr. James Pickett, the Legally Responsible Person identified on the Discharger's NOI via phone at (916) 283-9950 and obtained cell number (209) 329-2300. Santa Ana Water Board staff called Mr. Pickett's cell phone and left a voicemail message noting the late Annual Report had not been submitted and requesting that Mr. Pickett contact staff to resolve the matter.
10. On January 5, 2022, Santa Ana Water Board staff sent Mr. Pickett an email at the e-mail address listed on the Discharger's NOI. The email reiterated that the Annual Report for the 2020-2021 reporting year had not been received and a response regarding the Settlement Offer had not been submitted.
11. Again, on January 18, 2022, Santa Ana Water Board staff attempted to contact Mr. Pickett via cell phone and left a message requesting a response to the Settlement Offer.

12. Finally, on March 8, 2022, Santa Ana Water Board staff attempted to contact Mr. Pickett via cell phone and main phone number. Santa Ana Water Board staff spoke with a receptionist who indicated that Mr. Pickett was in the office but was not sure where. The receptionist stated they would have Mr. Pickett return Santa Ana Water Board staff's call regarding Settlement Offer R8-2021-0073. Mr. Pickett did not return the call.

13. To date, the Discharger has not submitted the Annual Report for the 2020-2021 reporting year.

LEGAL AUTHORITY

1. Pursuant to Water Code section 13399.31 the regional boards shall conduct a review of annual reports and identify dischargers who have failed to submit required annual reports in applicable NPDES programs.
2. Water Code section 13399.31, subdivision (b), goes on to direct the regional boards to issue an NNC to dischargers who have not submitted the required annual report. The NNC provides written notice to the discharger that they are out of compliance with the reporting requirements in an applicable NPDES permit and that they may be subject to penalties for their noncompliance.
3. If a discharger does not come into compliance in response to the first NNC, Water Code section 13399.31, subdivision (c) directs the regional board to send a second NNC. Failure to submit the required report within 60 days of the first NNC, after a second NNC is sent, subjects the discharger to a mandatory minimum penalty.
4. Pursuant to Water Code section 13399.33, subdivisions(c) and (d), the Discharger is subject to a minimum penalty of not less than one thousand dollars (\$1,000) plus staff costs for its failure to submit the required Annual Report for the 2020-2021 reporting year as required by the Industrial General Permit within sixty (60) days after the first NNC was sent, when a second NNC was also sent.
5. Pursuant to Water Code section 13385, the Discharger may also be subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs. These minimum and discretionary administrative civil liabilities may be assessed by the Santa Ana Water Board beginning with the date that the violations first occurred. The formal enforcement action that the Santa Ana Water Board uses to assess such liability is an administrative civil liability complaint, although the Santa Ana Water Board may instead refer such matters to the Office of the Attorney General for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to twenty-five thousand dollars (\$25,000) per violation.

PROPOSED MANDATORY MINIMUM PENALTY AND ASSESSMENT OF COSTS

1. Pursuant to Water Code section 13399.33, subdivision (c), the Santa Ana Water Board shall administratively impose a penalty in an amount that is not less \$1,000 for the failure to submit the required annual report.
2. Water Code section 13399.33, subdivision (d), further requires the recovery of costs incurred by the Santa Ana Water Board for enforcement actions against dischargers who fail to submit a required annual report in accordance with Water Code section 13399.31. Staff spent eighteen and one-quarter (18.25) hours for this enforcement action resulting in total staff costs of two thousand two hundred and fifty-nine dollars (\$2,259).
3. Therefore, the mandatory minimum liability for the violation alleged herein, including staff costs, is **three thousand two hundred and fifty-nine dollars (\$3,259)**.

REGULATORY CONSIDERATIONS

4. Notwithstanding issuance of this Complaint, the Santa Ana Water Board retains the authority to assess additional penalties for any violations that have not yet been assessed or for violations that may subsequently occur.
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. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code section 21000 *et seq.*) pursuant to title 14, California Code of Regulations sections 15308 and 15321, subdivision (a), paragraph (2).

MYERS AND SONS CONSTRUCTION, LLC IS HEREBY GIVEN NOTICE THAT:

7. The Assistant Executive Officer of the Santa Ana Water Board proposes an administrative civil liability in the amount of **three thousand two hundred and fifty-nine dollars (\$3,259)**. The amount of the proposed liability is based on the mandatory minimum penalties authorized to be imposed under Water Code section 13399.33.

8. A hearing on this matter will be conducted at the Santa Ana Water Board meeting scheduled on **June 3, 2022**, unless the Discharger submits the attached Waiver Form with signature selecting one of the following options:
 - a. The Discharger waives the hearing by completing the Waiver Form (checking off the box next to Option 1), attached herein, and returns it to the Santa Ana Water Board, along with payment for the proposed liability of **three thousand two hundred and fifty-nine dollars (\$3,259)**
 - b. The Discharger waives the 90-day hearing requirement to extend the hearing date (checking off the box next to Option 2) and returns it to the Santa Ana Water Board, along with their rationale for the extension.

Original signed by:

Ann Sturdivant, PG, CEG, CHG
Assistant Executive Officer
Santa Ana Water Board Prosecution Team

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 (Santa Ana Water 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 administrative civil liabilities. The complaint details the alleged violation(s) including the appropriate Water Code citations and 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, and a waiver options form. 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 Santa Ana Water Board Prosecution Team and the person(s) named in the complaint, referred to as the “Discharger(s).” The Prosecution Team is comprised of Santa Ana Water 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 Santa Ana Water 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 Santa Ana Water 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 Santa Ana Water 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 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 Procedure. Executive Order N-63-20 has suspended section 11440.30 of the Government Code, which prohibits a presiding officer to conduct hearings by electronic means if a party objects, provided the following conditions are met:

1. Each participant in the hearing has an opportunity to participate and to hear the entire proceeding while it is taking place and to observe exhibits;
2. A member of the public who is otherwise entitled to observe the hearing may observe the hearing using electronic means.
3. The presiding officer satisfies all requirements of the American with Disabilities Act (ADA) and the Unruh Civil Rights Act.

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 other's 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 Santa Ana Water Board will deliberate to decide the outcome. The Santa Ana Water 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 (h) and (i), the Santa Ana Water Board considers several factors specified in the Water Code and the State Water Board's Water Quality Enforcement Policy, 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 (a)(2)). 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.
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 costs and year(s) 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;
 - 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.