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## Santa Ana Regional Water Quality Control Board

November 7, 2022

Kevin Rice  
Nuveen Real Estate  
4675 North MacArthur Court, Suite 1100  
Newport Beach, California 92660

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

### **NOTICE OF ADOPTION OF SETTLEMENT AGREEMENT AND ENTRY OF ORDER R8-2022-0046 FOR NUVEEN REAL ESTATE, 11099 ALMOND AVENUE, FONTANA CA (WDID NO 8 36C90120)**

Dear Mr. Rice:

Order No. R8-2022-0046 (Order) was signed by the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board), or its delegee, on November 7, 2022, adopting the proposed settlement signed by Nuveen Real Estate. The Order requires Nuveen Real Estate to pay \$4,665 in mandatory minimum penalties to the Santa Ana Water Board under Water Code section 13399.33. The payment must be sent in full by December 7, 2022, to:

**By US Mail:**

State Water Resources Control Board  
Re: Order No. R8-2022-0044  
Division of Administrative Services, Accounting Branch  
P.O. Box 1888  
Sacramento, CA 95812-1888

**By Other Services:**

State Water Resources Control Board  
Re: Order No. R8-2022-0044  
Division of Administrative Services, Accounting Branch  
1001 I Street, 18<sup>th</sup> Floor, 95814  
Sacramento, CA 95814

It is our understanding that Nuveen Real Estate sent the payment via parcel post in September 2022. The USPS tracking number you provided shows that it was delivered and picked up by an individual at a postal facility in Sacramento on September 10, 2022. Due to the volume of payments processed, we will need a copy of the deposited check to confirm receipt of the payment. A copy should be available from your financial institution. If you are unable to provide a copy of the deposited check, you must submit the payment. Please provide the copy of the check or submit the payment by December 7, 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 the Order has been sent only to Nuveen Real Estate. Interested parties are advised that the full text of this order is available at the Santa Ana Water Board's web site at:

[https://www.waterboards.ca.gov/santaana/board\\_decisions/adopted\\_orders/orders/2022\\_order.html](https://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2022_order.html)

If you have any questions regarding the Order, please contact Michael Jones at [Michael.Jones@waterboards.ca.gov](mailto:Michael.Jones@waterboards.ca.gov) or 951-321-4578.

Sincerely,



Adam Fischer, Supervisor  
Inland Storm Water Unit

Enclosure: Order R8-2022-0046

cc via email: Jayne Joy, Santa Ana Regional Water Quality Control Board  
Katherine **Bramble**, State Water Resources Control Board  
Ann Sturdivant, Santa Ana Regional Water Quality Control Board  
Catherine Hawe, State Water Resources Control Board  
Daryl Kessler, Nuveen Real Estate – [dkessler@mfkessler.com](mailto:dkessler@mfkessler.com)  
Abigail Gomez, City of Fontana – [agomez@fontana.org](mailto:agomez@fontana.org)

9179 1612 0000 0142 2202

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<b>Total Pi</b>	\$ _____

Postmark  
Here

**Sent To** Nuveen Real Estate

**Street &** 4675 North MacArthur Court, Ste. 1100

**City, St.** Newport Beach, CA 92660

**PS Form** 3849 **8 36C90120** **Instructions**



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## Santa Ana Regional Water Quality Control Board

July 27, 2022

Kevin Rice  
Nuveen Real Estate  
4675 North MacArthur Court, Suite  
1100 Newport Beach, California 92660

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**TRANSMITTAL OF MANDATORY MINIMUM PENALTY COMPLAINT R8-2022-0046, NUVEEN REAL ESTATE, 11099 ALMOND AVENUE, FONTANA CA (WDID NO. 8 36C390120)**

Dear Mr. Rice:

Enclosed is Mandatory Minimum Penalty Complaint R8-2022-0046 (Complaint), issued to Nuveen Real Estate (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 Stormwater Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, as Amended by Order No. 2010-0014-DWQ, as Amended by Order No. 2012-0006-DWQ (Construction General Permit).

The alleged violation is for the construction site/project located at 11099 Almond Avenue in the City of Fontana. The Annual Report was due to the Santa Ana Water Board by September 1, 2021, as required by Section II.I.4.b. of the Construction General Permit. Notices of Non-Compliance (NNCs) were issued on November 23, 2021 and January 13, 2022, requesting that the construction site's late Annual Report be submitted by January 24, 2022. After the Discharger failed to respond to the NNCs, Settlement Offer No. R8-2022-0023 was issued on March 3, 2022. Settlement Offer No. R8-2022-0023 provided you the opportunity to waive a Board Hearing and pay a mandatory minimum penalty of \$1,880 if you had responded by the due date of March 24, 2022.

The 2020-2021 Annual Report has still not been submitted and the Discharger has not responded to the NNCs or the Settlement Offer. The Discharger will have the opportunity to address the alleged violations as discussed below.

This Complaint proposes that an administrative civil liability in the amount of four

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KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

3737 Main Street, Suite 500, Riverside, CA 92501-3348 | [www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

thousand six hundred and fifty-five dollars (**\$4,655**) be imposed. This is the sum of a \$1,000 mandatory minimum penalty and \$3,655 in 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 **October 21, 2022**. Pursuant to Water Code section 13323, the Discharger has the 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 State Water Resources Control Board (SWRCB) Waste Discharge Permit Fund for four thousand six hundred and fifty-five dollars (\$4,655) and include the Complaint Number (R8-2022-0046) on the memo line. Please send the signed Waiver form and payment to the respective addresses indicated below:

Mail Waiver Form to:  
Santa Ana Water Board Attn:  
Michael Jones  
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 also submit a copy of the signed Waiver Form (attached) 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](mailto:Katharine.Buddingh@waterboards.ca.gov).

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 Michael Jones, at [Michael.jones@waterboards.ca.gov](mailto:Michael.jones@waterboards.ca.gov) or by phone at 951-321-4578, prior to August 25, 2022.

If this matter proceeds to hearing, the Advisory Team will issue a Hearing Procedure. The Hearing Procedure 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. Additionally, the Fact Sheet 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 Michael Jones, at [Michael.jones@waterboards.ca.gov](mailto:Michael.jones@waterboards.ca.gov) or by phone at 951-321-4578.

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](mailto:Catherine.Hawe@waterboards.ca.gov).

Sincerely,

**Ann E. Sturdivant**  
Digitally signed by  
Ann E. Sturdivant  
Date: 2022.07.27  
09:04:34 -07'00'  
Ann E. Sturdivant, PG, CEG, CHG  
Assistant Executive Officer

Enclosures: MMP Complaint R8-2022-0046 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) Ms. Arlene Chun, SBCFCD, [arlene.chun@dpw.sbcounty.gov](mailto:arlene.chun@dpw.sbcounty.gov)  
Mr. Jerry Perez, City of Fontana NPDES Coordinator  
[jeperez@fontana.org](mailto:jeperez@fontana.org)

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

IN THE MATTER OF:

	)	Complaint R8-2022-0046
Nuveen Real Estate	)	For Mandatory Minimum Penalty
4675 North MacArthur Court, Suite 1100	)	
Newport Beach, California 92660	)	

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This Complaint is issued to Nuveen Real Estate (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 September 1, 2021, as required by Section II.I.4.b. of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ as Amended by Order No. 2010-0014-DWQ as Amended by Order No. 2012-0006-DWQ (Construction 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 has been enrolled in the Construction General Permit since April 8, 2020, when it submitted a Notice of Intent (NOI) for construction activities at 11099 Almond Avenue, Fontana, CA 90049.
2. On September 1, 2021, the Discharger's Annual Report for the 2020-2021 reporting year was due per Construction General Permit Section II.I.4.b.
3. On November 17, 2021, Mr. Rice emailed staff indicating the project was already completed. Staff responded on November 17, 2022 indicating that Mr. Rice is the Legal Responsible Person (LRP) for the project and Mr. Rice was responsible to comply with the permit until such time that a Notice of Termination (NOT) was been submitted and approved.
4. On November 23, 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 November 29, 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 January 13, 2022, a second 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). A signed certified mail receipt was received by Santa Ana Water Board staff on January 15, 2022 indicating that the Discharger had received the NNC. The Discharger did not submit its missing Annual Report in response to the NNC.
6. On March 3, 2022, Santa Ana Water Board staff issued an Expedited Payment Letter (EPL), Settlement Offer No. R8-2022-0023 (Settlement Offer) to the Discharger providing it the opportunity to resolve the alleged violation by paying a mandatory minimum penalty of \$1,880, 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 March 8, 2022. The EPL requested that the Discharger respond to the Settlement Offer by April 4, 2022.
7. On April 19, 2022, Santa Ana Water Board staff emailed the Discharger to determine his intentions regarding the Settlement Offer. The Discharger responded with an email on April 20, 2022, indicating he was confused and asked, "If the project is complete what is the violation and why is there a water board issue?" Santa Ana Water Board staff responded with an email on April 20, 2022, restating that he needed to comply with the requirements of the CGP until a NOT is submitted and it is approved. Further, staff informed him that additional staff costs would be incurred if additional enforcement actions are required.
8. Santa Ana Water Board staff called the Discharger at the phone number in SMARTS, 858-952-4341, and left voicemail messages on April 7, 13, 19, 20 and May 12, 2022. On May 16<sup>th</sup> someone answered the phone and indicated that this phone number was the wrong number. Staff determined that the correct phone number is 858-952-4134. Staff called that number on May 16<sup>th</sup> and left a voicemail requesting a return call to discuss unpaid invoices (SW0214355 in the amount of \$773 and SW0240163 in the amount of \$912) and the Settlement Offer provided to him on March 3, 2022.
9. 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 than \$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 twenty-seven and one quarter (27.25) hours for this enforcement action resulting in total staff costs of three thousand six hundred and fifty-five dollars (\$3,655).
3. Therefore, the mandatory minimum liability for the violation alleged herein, including staff costs, is **four thousand six hundred and fifty-five dollars (\$4,655)**.

#### **REGULATORY CONSIDERATIONS**

4. Notwithstanding issuance of this Compliant, 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).

**NUVEEN REAL ESTATE 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 **four thousand six hundred and fifty-five dollars (\$4,655)**. The amount of the proposed liability is based on the mandatory minimum penalties that are 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 **October 21, 2022**, unless the Discharger submits the attached Waiver Form with a signature and selects one of the options shown on the Form:
  - 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 **four thousand six hundred and fifty-five dollars (\$4,655)**.
  - 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.

**Ann E. Sturdivant**  
Digitally signed by Ann E. Sturdivant  
Date: 2022.07.27 09:04:54 -07'00'  
Ann E. Sturdivant, PG, CEG, CHG  
Assistant Executive Officer  
Santa Ana Water Board Prosecution Team

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## Santa Ana Regional Water Quality Control Board

### **ACCEPTANCE OF CONDITIONAL RESOLUTION AND WAIVER OF RIGHT TO HEARING: (Proposed) ORDER**

Nuveen Real Estate  
11099 Almond Street, Fontana, CA  
Settlement Offer No. R8-2022-0046  
WDID No. 8 36C390120

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board), Nuveen Real Estate(Discharger) hereby accepts the “Offer to Participate in Expedited Payment Program” and waives the right to a hearing before the Santa Ana Water Board to dispute the violations described in the Notices of Non-Compliance (NNCs) which are attached and incorporated herein by reference.

The Discharger agrees that the Expedited Payment Program Offer shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Santa Ana Water Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The Discharger agrees to pay the administrative civil liability authorized by California Water Code sections 13399.31 and 13399.33, in the sum of \$4,655 (Expedited Payment Amount) which shall be deemed payment in full of any civil liability pursuant to California Water Code section 13399.33 that otherwise might be assessed for the violations described in the NNCs.

The Discharger understands that this Acceptance and Waiver waives its right to contest the allegations in the NNCs and the amount of civil liability for such violations. The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the NNCs.

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

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

The Discharger understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Santa Ana Water Board to publish notice of and provide at least (30) days for public comment on any proposed resolution of an enforcement action addressing NPDES permit violations. Accordingly, this Acceptance and Waiver, prior to execution by the Santa Ana Water Board Executive Officer, will be published as required by law for public comment.



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## Santa Ana Regional Water Quality Control Board

### ***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. That will be provided to you within 10 days of the Hearing.

#### **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:

[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

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 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 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;
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 or 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.

### **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

[https://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/wqpetition\\_instr.shtml](https://www.waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_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.

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