

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

In the Matter Of:

Lamoure's Incorporated

Complaint R5-2014-0502

For

Administrative Civil Liability

**Violations of Cleanup and
Abatement Order R5-2011-0706**

10 January 2014

LAMOURE'S INCORPORATED IS HEREBY GIVEN NOTICE THAT:

1. Lamoure's Incorporated (Lamoure's or Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) may impose civil liability pursuant to Water Code section 13350 and/or Water Code section 13268.
2. Unless waived, a hearing on this matter will be held before the Central Valley Water Board within 90 days following issuance of this Complaint. Lamoure's, or its representative(s), will have an opportunity to address and contest the allegations in this Complaint and the proposed imposition of administrative civil liability.
3. At the hearing, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.

BACKGROUND

4. Between 1980 and June 2010, Lamoure's owned and operated a dry cleaning facility at 1304 G Street, Fresno, Fresno County (Site). Tetrachloroethene was used in the dry cleaning process at the Site. Dry cleaning operations ceased in 2010, although Lamoure's continues to own the Site.
5. A third party conducting assessment for a site greater than 500 feet to the southeast has collected soil vapor samples on the east side of G Street within five feet of the Lamoure's building. The maximum tetrachloroethene concentration in soil vapor next to the Lamoure's building (sample point SG-4) was 120,000 micrograms per cubic meter at 30 feet below ground surface (bgs). The highest tetrachloroethene concentration in soil vapor samples collected at locations between Lamoure's and the third party site was 1,700 micrograms per cubic meter.

6. The State of California, Office of Environmental Health Hazard Assessment has set a California Human Health Screening Level of 600 micrograms per cubic meter for tetrachloroethene in soil vapor at commercial sites. Lamoure's is the only known user of tetrachloroethene immediately adjacent to sampling point SG-4. The above data indicates that use of tetrachloroethene at the subject Site has impacted soil, soil vapor, and/or groundwater at the Site.
7. On 1 March 2010, Central Valley Water Board staff sent a letter to Lamoure's summarizing assessment data collected adjacent to the site and requesting submittal of a work plan proposing assessment at the site. The work plan was due prior to 23 April 2010. No response was received. An Order issued pursuant to Water Code section 13267 (13267 Order) was issued by the Executive Officer to Lamoure's on 6 May 2010. A signed certified U.S. mail receipt was received indicating that Lamoure's had received the Order. No response was received by the due date of 7 June 2010. Central Valley Water Board staff sent Lamoure's a Notice of Violation dated 21 July 2010 for non-response to the section 13267 order. A work plan dated 9 August 2010 was received from RCC Group LLC on behalf of Lamoure's. The work plan was incomplete and did not contain information or propose tasks for completing investigations specifically required by the 13267 Order.
8. Lamoure's, Inc., was issued Cleanup and Abatement Order R5-2011-0706 (CAO) on 7 October 2011. The CAO requires assessment and cleanup of soil and/or groundwater impacted by tetrachloroethene and other volatile organic constituents from releases at the site.
9. The CAO required the submittal of a work plan by 19 December 2011 proposing tasks for assessment of the extent of impact to soil and/or groundwater by volatile organic constituents. Lamoure's consultant submitted a letter dated 15 November 2011 requesting comments on the work plan submitted prior to the CAO, rescission of the CAO, and consideration of Lamoure's as a closed business. Board staff responded in a 30 December 2011 letter explaining: 1) why the pre-CAO work plan was inadequate and incomplete, and 2) that the CAO was appropriate and would not be rescinded. The letter added that the CAO-required work plan was overdue and must be submitted as soon as possible.
10. A NOV letter was sent to Lamoure's on 16 February 2012 that notified Lamoure's that the CAO-required work plan has not been submitted and that the delinquent work plan needs to be submitted by 9 March 2012 (administrative date that does not affect the due date in the CAO). On 14 March 2012, an email from RCC Group, Lamoure's consultant, was received stating that Lamoure's had authorized them to prepare a work plan with a scope of work reduced to what Lamoure's could afford. No date for submittal of the work plan was given. The work plan has not been received to date.

ALLEGATIONS

Part 1: Failure to submit a work plan to investigate releases of volatile organic compounds. Paragraph 2 of Page 7 (Order Requirement #2) of Cleanup and Abatement Order No. R5-2011-0706 requires that Lamoure's,

"By 19 December 2011, submit a technical report that contains a written work plan prepared by a qualified professional, proposing a systematic and logical sequence of tasks with a proposed schedule to investigate releases of volatile organic compounds to soil and/or groundwater from the subject property and nearby sewer lines, and/or septic systems. The work plan shall include a history of volatile organic compound usage, storage, handling, and disposal practices, a map of the facility showing the former location of dry cleaning equipment, and the locations of sewer lines and any existing or former septic system. The work plan shall propose tasks including collection of active soil gas samples to delineate the lateral and vertical extent of soil impacted by volatile organic compounds and other wastes discharged. Tasks shall also be proposed to delineate whether groundwater has been impacted by releases that have occurred at the site and the lateral and vertical extent of impacts to groundwater. The work plan shall contain the information in Attachment B, which is made part of this Order."

11. The required work plan was not submitted by the due date.
12. A Notice of Violation dated 16 February 2012 was sent to Lamoure's notifying it that the required work plan was overdue. (**EXHIBIT A**)
13. Lamoure's has failed to provide the required work plan to date and therefore has been in violation of Order Requirement #2 for 754 days.
14. The work plan required pursuant to Order Requirement #2 was required pursuant to Water Code section 13267. In accordance with Water Code section 13268, the Central Valley Water Board may impose \$1,000 in liability for each day of violation.
15. Water Code section 13327 specifies factors that the Central Valley Water Board shall consider in establishing the amount of civil liability.
16. **Attachment A** indicates the proposed administrative civil liability for the violations described in Part 1 above, in consideration of the factors in Water Code section 13327, derived from the use of the penalty methodology in the Enforcement Policy.
17. As described in Attachment A, the proposed liability for the violations described in Part 1 above, is \$42,180.50.

MAXIMUM LIABILITY

18. The maximum liability for the violation described in Part 1 is \$754,000.

Part	Requirement	Days of Violation	Maximum Potential Liability
Part 1	Failure to submit a work plan to investigate releases of volatile organic compounds	754	\$754,000

MINIMUM LIABILITY

19. The enforcement policy directs the Central Valley Water Board to recover, at a minimum, ten percent more than the economic benefit. In this case, that would be \$4,225.10.

PROPOSED LIABILITY

20. As described in Attachment A, it is recommended that the Central Valley Water Board impose civil liability against Lamoure's in the amount of \$42,180.50 for the violations described in this complaint. If Lamoure's elects to contest this matter, the recommended liability may increase to recover additional necessary staff costs.

Dated this 10th day of January 2014.



CLAY L. RODGERS

Assistant Executive Officer

ATTACHMENT A

Calculation of Liability for Violations Described in Part 1: Failure to Submit a Work Plan to Investigate Releases of Volatile Organic Compounds

1. Step 1 - Potential for Harm for Discharge Violations

The failure to submit a complete and adequate report as required by Order Requirement #2 is a "non-discharge violation." Therefore, this step does not apply.

2. Step 2 – Assessments for Discharge Violations

The failure to submit a complete and adequate report as required by Order Requirement #2 is a "non-discharge violation." Therefore, this step does not apply.

3. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is major because the failure to submit a complete and adequate report as required by Order Requirement #2 prevented an accurate assessment of impacts to soil and/or groundwater at the site.

The Extent of Deviation from applicable requirements is major because the intended effectiveness of the requirement has been partially compromised. Specifically, the intent of the requirement was that sufficient data and conclusions be developed for evaluation of remedial options for impacted soil and/or groundwater at the site. No assessment was conducted at the site.

Using "TABLE 3 – Per Day Factor" and applying a Potential for Harm of major and an Extent of Deviation of major results in a factor of **0.85**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.85) \times (754 \text{ days of violation}) \times (\$1,000) = \$640,900$$

4. Step 4 – Adjustment Factors

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 a complete and adequate report as required by Order Requirement #2 lasted 754 days.

The prosecution team recommends that the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30, 60, and every 30 days thereafter. This results in 31 days of violation.

This results in a Revised Initial Base Liability as follows:

Revised Initial Base Liability = $(0.85) \times (31 \text{ days of violation}) \times (\$1,000) = \$26,350$

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

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.3 has been selected because the Discharger was provided a detailed outline of the content to be included in the report and the required report was not submitted. In addition, the Central Valley Water Board notified Lamoure's in a NOV that the required report was delinquent.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

The Discharger has not performed cleanup on this site and thus a discounted penalty is not merited and a value of 1 was assigned.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1.1 is proposed because a report required by a 13267 Order issued prior to the issuance of the CAO was submitted over two months late and was also deemed to be an inadequate report.

5. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

(Revised Initial Liability) x (Culpability Multiplier) x (Cleanup and Cooperation Multiplier) x (History of Violations) = (Total Base Liability Amount)

$$(\$26,350) \times (1.3) = \$34,255 \times (1) = \$34,255 \times (1.1) = \$37,680.50$$

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

The Enforcement Policy provides that if the Central Valley Water Board has sufficient financial information necessary 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.

The Central Valley Water Board Prosecution Team does not have sufficient information to determine whether Lamoure's has the ability to pay the proposed liability. Lamoure's closed all of its operating dry cleaner sites in 2010 because it made a business decision to close its operating sites rather than upgrade its dry cleaning equipment to meet new, more stringent requirements. That said, Lamoure's, Inc., continues to exist as a corporation and the California High Speed Rail Authority currently plans to purchase this site.

7. Step 7 – Other Factors As Justice May Require

The Enforcement Policy provides that if the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express findings are made. In addition, the costs of investigation should be added to the liability amount according to the Enforcement Policy.

The Central Valley Water Board has incurred approximately \$4,500 in investigative costs to date associated with the violations described in the Complaint. Lamoure's is in the Central Valley Water Board's Cost Recovery

Program; however, to date Lamoure's has not paid any of the invoices it has received from the Cost Recovery Program. Therefore, these costs should be added to the liability amount.

8. Step 8 – Economic Benefit

The Enforcement Policy directs the Central Valley Water Board to determine any economic benefit of the violations based on the best available information and suggests that the amount of the administrative civil liability should exceed this amount, by a minimum of ten percent.

Lamoure's has avoided the cost of submitting a work plan, required pursuant to the CAO, which was due on 19 December 2011. This is an avoided cost, instead of a delayed cost, because this requirement cannot be complied with in the future (the due date has passed). The State Water Resources Control Board used the BEN Model, which was produced by the United States Environmental Protection Agency, to calculate the economic benefit gained by the Discharger is \$3,841. This assumes an estimated minimum value of \$5,500 for the cost of completing a work plan and the fact that the work plan is 754 days late.

9. Step 9 – Maximum and Minimum Liability Amounts

The Enforcement Policy directs the Central Valley Water Board to consider the maximum or minimum liability amounts set forth in the applicable statutes.

As described in Paragraph 18 of the Complaint, the maximum potential liability for the alleged violations is \$754,000.

There is no statutory minimum liability for a violation of Water Code section 13267. However, the enforcement policy directs the Central Valley Water Board to recover, at a minimum, ten percent more than the economic benefit. In this case that would be \$4225.10.

10. Step 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. The final liability amount calculation for the various violations was performed as follows.

(Total Base Liability Amount) + (Staff Costs) + (Adjustment for Other Factors as Justice May Require) = (Final Liability Amount)

$$37,680.50 + 4,500 + 0 =$$

Final Liability Amount = \$42,180.50

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent Lamoure's Incorporated (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2014-0502 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board
- b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **\$42,180.50** by check that references "ACL Complaint R5-2014-0502" made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **10 February 2014**.
- c. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. 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.

(Print Name and Title)

(Signature)

(Date)