



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Agency Secretary

320-W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

December 17, 2010

Mr. Anthony Gioiello
Port of Los Angeles
425 S. Palos Verdes Street
San Pedro, CA 90733

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7010 1670 0002 4237 8697

COMPLAINT NO. R4-2010-0169-M FOR MANDATORY MINIMUM PENALTY AGAINST THE PORT OF LOS ANGELES, NEW DOCK STREET PUMP STATION, 151 HENRY FORD AVENUE, TERMINAL ISLAND, CA (ORDER NOS. 97-138 AND R4-2006-0086, NPDES PERMIT NO. CA0064157, CI-7856)

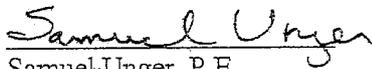
Dear Mr. Gioiello:

Enclosed is Complaint No. R4-2010-0169-M for Mandatory Minimum Penalty in the amount of \$63,000 against the Port of Los Angeles (hereinafter Permittee) for violating waste discharge requirements and monitoring and reporting requirements contained in Regional Board Order Nos. 97-138 and R4-2006-0086. Also enclosed is a copy of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) Notice of Public Hearing to Consider an Administrative Civil Liability Complaint.

Unless waived, a hearing before the Regional Board or a Regional Board Hearing Panel (Hearing Panel) will be held on this Complaint pursuant to California Water Code §§ 13228.14 and 13323. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. R4-2010-0169-M and return it to the Regional Board by 5:00 pm on **January 18, 2011**. If we do not receive the waiver and full payment of the mandatory minimum penalty by **January 18, 2011**, this matter will be heard before the Regional Board or a Hearing Panel. An agenda containing the date, time, location, and specific procedures of the hearing will be mailed to you prior to the hearing date.

If you have any questions regarding this matter, please contact Mr. Hugh Marley at (213) 620-6375 or Mr. Andrew Choi at (213) 576-6751.

Sincerely,

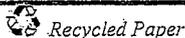


Samuel Unger, P.E.
Executive Officer

Enclosures: Complaint No. R4-2010-0169-M
Exhibit "A"
Notice of Public Hearing

cc: [via Certified Mail Return Receipt Requested Claim No. 7010 1670 0002 4237 8802]
Attn: Kenneth F. Mattfeld, Deputy City Attorney, Office of the Los Angeles City Attorney,
P.O. Box 151, San Pedro, CA 90733-0151
[via Electronic Mail Only]

California Environmental Protection Agency



Mr. Anthony Gioiello
Port of Los Angeles

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December 17, 2010

Ann Carroll, Office of Enforcement, State Water Resources Control Board
Jennifer Fordyce, Office of Chief Counsel, State Water Resources Control Board

California Environmental Protection Agency



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Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

In the matter of:) Complaint No. R4-2010-0169-M
) Mandatory Minimum Penalty for
) Violation of California Water Code § 13376
Port of Los Angeles) And
New Dock Street Pump Station) Order Nos. 97-138 and R4-2006-0086
Terminal Island, CA 90731) (NPDES No. CA0064157)

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) § 13385, subdivisions (h) & (i) is issued to the Port of Los Angeles (hereinafter Permittee) based on a finding of violations of waste discharge requirements prescribed in Order Nos. 97-138 and R4-2006-0086 (NPDES No. CA0064157, CI No. 7856).

The Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) finds the following:

1. The Permittee operates the New Dock Street Pump Station (hereinafter facility) located at 151 Henry Ford Avenue, Terminal Island, CA. The Permittee discharges up to 725,000 gallons per day (GPD) of treated wastewater that consists of storm water runoff and infiltrating groundwater, which is pumped to the Los Cerritos Channel, a navigable water of the United States. The treated wastewater is susceptible to containing 1,1-dichloroethane, turbidity, biochemical oxygen demand (BOD), selenium, total suspended solids (TSS), methylene blue active substances (MBAS), cadmium, copper and other pollutants, which can degrade water quality and impact beneficial uses of water, and which are defined as wastes under the Porter-Cologne Water Quality Control Act (CWC § 13000 et seq.).
2. On December 8, 1997, the Regional Water Quality Control Board, Los Angeles Region (Regional Board) adopted Order No. 97-138, NPDES Permit and Waste Discharge Requirements for the facility. Order No. 97-138 became effective on the same date it was adopted.
3. On November 9, 2006, the Regional Board adopted Order No. R4-2006-0086 NPDES Permit and Waste Discharge Requirements for the facility. Order No. R4-2006-0086 became effective, and superseded Order No. 97-139 except for enforcement purposes, on September 2, 2006.
4. Order No. 97-138, (Discharge Limitations A.2.a) contains the following effluent limitations for 1,1-dichloroethane, turbidity, BOD, selenium, TSS, MBAS, cadmium, and copper:

December 17, 2010

Constituent	Unit of Measure	Discharge Limitations	
		Daily Maximum	Monthly Average
1,1-dichloroethane	µg/L	5.0	---
Turbidity	NTU	150	50
BOD	mg/L	30	20
Selenium	µg /L	10	---
TSS	mg/L	150	50
MBAS	mg/L	0.5	---
Cadmium	µg /L	5	---
Copper	µg /L	1000	---

mg/L = milligrams/liter, µg/L = micrograms/liter, NTU = Nephelometric Turbidity Units

5. Order No. R4-2006-0086, (Effluent Limitations and Discharge Specifications IV.A.1) contains the following final effluent limitations for 1,1-dichloroethane, turbidity, BOD, TSS, MBAS and copper:

Constituent	Unit of Measure	Discharge Limitations	
		Daily Maximum	Monthly Average
1,1-dichloroethane	µg /L	5	---
Turbidity	NTU	75	50
BOD	mg/L	30	20
Selenium	µg /L	10	---
TSS	mg/L	75	50
MBAS	mg/L	0.5	---
Copper	µg /L	5.78	3.06

6. Order No. R4-2006-0086 (Effluent Limitations and Discharge Specifications IV.A.2) contains an interim effluent limitation for copper, which was effective from November 9, 2006 through November 12, 2009:

Constituent	Unit of Measure	Discharge Limitations	
		Daily Maximum	Monthly Average
Copper	$\mu\text{g/L}$	17.94	13.91

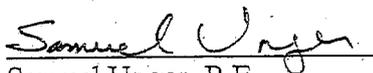
7. Reporting Requirement I.A. of the Monitoring and Reporting Program included in Order No. 97-138 requires the Permittee to prepare and submit quarterly NPDES self-monitoring reports to the Regional Board, pursuant to the authority of CWC § 13383.
8. On September 15, 2010, the Executive Officer of the Regional Board issued the Permittee Settlement Offer No. R4-2010-0169-M to participate in the Expedited Payment Program (Settlement Offer). The Settlement Offer included a Notice of Violation notifying the Permittee of eighteen (18) effluent limit violations and sixty-two (62) reporting violations. Seventy-two (72) of those violations were cited in Exhibit A of the Settlement Offer as subject to mandatory minimum penalties (MMP) in the total amount of \$216,000.
9. Since issuance of the Settlement Offer No. R4-2010-0169-M, Regional Board staff identified five (5) additional effluent violations of Order No. 97-138 from the Permittee's self-monitoring reports, of which four (4) are subject to mandatory minimum penalties: March 23, 2001 1,1-Dichloroethane effluent limit violation; March 27, 2002 Cadmium effluent limit violation; December 16, 2003 MBAS effluent limit violation; and June 3, 2005 BOD effluent limit violation. Regional Board staff also determined that the Permittee had submitted its second quarter 2005 self-monitoring report. Thus, only seven (7) rather than sixty-two (62) reporting violations are subject to mandatory minimum penalties. These violations are cited in Exhibit "A" attached hereto and incorporated herein by reference.
10. On December 14, 2010, the Executive Officer of the Regional Board issued a revised response to the Permittee's request for review of violations alleged in the Settlement Offer (Response). The Response included a Notice of Violation notifying the Permittee of twenty-three (23) effluent limit violations and seven (7) reporting violations. Twenty-one (21) of those violations were cited in Exhibit A of the Response as subject to mandatory minimum penalties in the total amount of \$63,000.
11. Thirty (30) violations of Order Nos. 97-138 and R4-2006-0086 were noted in the Permittee's self-monitoring reports, as cited in Exhibit "A". Of those violations, there are fourteen (14) effluent limit violations for the exceedance of the limits for 1,1-dichloroethane, turbidity, BOD, TSS, MBAS, cadmium, and copper and seven (7) late reporting violations for the failure to timely submit a monitoring report for the second quarter of 2005 that are subject to mandatory minimum penalties.
12. Any discharge containing pollutants violating the effluent limitations set in the waste discharge requirements is prohibited by CWC § 13376.

13. The maximum amount of administrative civil liability assessable pursuant to CWC § 13385(c) is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
14. CWC § 13385(h) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC § 13385(h)(2) "a serious violation is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants."
15. CWC § 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation whenever the permittee violates a waste discharge requirement effluent limitation in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations within that time period.
16. CWC § 13385.1(a)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for a "serious violation" defined by that section as "a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance limitations contained in waste discharge requirements that contain effluent limitations. This section applies to violations occurring on or after January 1, 2004.

YOU ARE HEREBY GIVEN NOTICE THAT:

17. The Executive Officer proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$63,000 for the violations cited in Exhibit "A". This Complaint addresses administrative civil liability for violations that are specifically identified in Exhibit "A" as subject to a mandatory minimum penalty. Refer to Exhibit "A" for the calculation of the amount of mandatory minimum penalty.
18. The Permittee may waive the right to a hearing and pay the recommended civil liability. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return it to the Regional Board by 5:00 pm on **January 18, 2011**. If the hearing is waived, a check in the amount of \$63,000 (payable to the State Water Pollution Cleanup and Abatement Account) must be received by the Regional Board by 5:00 pm on **January 18, 2011**.
19. If the Regional Board does not receive a waiver and full payment of the recommended penalty by **January 18, 2011**, the Complaint will be heard before the Regional Board or a Regional Board Hearing Panel pursuant to California Water Code §§ 13228.14 and 13323. The Notice of Public Hearing contains that date, time, location, and specific procedures of the scheduled hearing of this matter.

20. If a hearing on this matter is held, the Regional Board will consider whether to affirm, reject, or modify (i.e. increase the proposed civil liability above the mandatory minimum) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.
21. 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 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.)
22. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the Permittee's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
23. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code § 21000 et seq., in accordance with California Code of Regulations, title 14, § 15321.
24. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.



Samuel Unger, P.E.

Executive Officer

Los Angeles Regional Water Quality Control Board

December 17, 2010

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2010-0169-M

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

I am duly authorized to represent the Port of Los Angeles (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. R4-2010-0169-M (hereinafter the "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 [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

Check here if the Permittee waives the hearing requirement and will pay the recommended liability.

- a. I hereby waive any right the Permittee may have to a hearing before the Regional Water Board.
- b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of \$63,000 by check that references "ACL Complaint No. R4-2010-0169-M" made payable to the "Cleanup and Abatement Account". Payment must be received by the Regional Water Board by **January 18, 2011** or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
- 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 expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional 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 Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Permittee 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 Permittee to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
03/28/00	1st Quarter 2000	Daily Max	1,1-Dichloroethane	5.5	5	ug/L	2	10%	Chronic	(f)1	\$0
12/21/00	4th Quarter 2000	Daily Max	BOD	70	30	mg/L	1	133%	Serious	(h)1	\$3,000
12/21/00	4th Quarter 2000	Daily Max	Turbidity	218	150	mg/L	OEV	45%	Chronic	(f)1	\$0
12/31/00	4th Quarter 2000	Monthly Average	Turbidity	218	50	mg/L	OEV	336%	Chronic	(f)1	\$0
12/31/00	4th Quarter 2000	Monthly Average	BOD	70	20	mg/L	1	250%	Serious	(h)1	\$3,000
03/23/01	1st Quarter 2001	Daily Max	1,1-Dichloroethane	13	5	ug/L	2	160%	Serious	(h)1	\$3,000
03/27/02	1st Quarter 2002	Daily Max	Cadmium	7.2	5	ug/L	2	44%	Serious	(h)1	\$3,000
12/31/02	4th Quarter 2002	Monthly Average	BOD	22	20	mg/L	1	10%	Chronic	(f)1	\$0
03/21/03	1st Quarter 2003	Daily Max	1,1-Dichloroethane	5.4	5	ug/L	2	8%	Chronic	(f)1	\$0
12/16/03	4th Quarter 2003	Daily Max	MBAS	1.4	0.5	mg/L	1	180%	Serious	(h)1	\$3,000
03/18/05	1st Quarter 2005	Daily Max	Selenium	52.3	10	ug/L	2	423%	Serious	(h)1	\$3,000
06/03/05	2nd Quarter 2005	Monthly Average	BOD	23	20	mg/L	1	15%	Chronic	(f)1	\$0
06/03/05	2nd Quarter 2005	Daily Max	Selenium	50.4	10	ug/L	2	404%	Serious	(h)1	\$3,000
09/15/05	3rd Quarter 2005	Daily Max	Selenium	107	10	ug/L	2	970%	Serious	(h)1	\$3,000
12/31/06	4th Quarter 2006	Monthly Average	TSS	51	50	mg/L	1	2%	Chronic	(f)1	\$0
09/07/07	3rd Quarter 2007	Daily Max	MBAS	3.35	0.5	mg/L	1	570%	Serious	(h)1	\$3,000
02/14/08	1st Quarter 2008	Daily Max	Copper	20	17.94	ug/L	2	11%	Chronic	(f)1	\$0
02/28/08	1st Quarter 2008	Monthly Average	Copper	20	13.91	ug/L	2	44%	Serious	(h)1	\$3,000
02/10/10	1st Quarter 2010	Daily Max	Copper	7.4	5.78	ug/L	2	28%	Serious	(h)1	\$3,000
02/28/10	1st Quarter 2010	Monthly Average	Copper	7.4	3.06	ug/L	2	142%	Serious	(h)1	\$3,000
02/28/10	1st Quarter 2010	Monthly Average	Copper	0.0205	0.019	lbs/day	2	8%	Chronic	(f)1	\$0
03/19/10	1st Quarter 2010	Daily Max	Copper	7.3	5.78	ug/L	2	26%	Serious	(h)1	\$3,000
03/31/10	1st Quarter 2010	Monthly Average	Copper	4.675	3.06	ug/L	2	53%	Serious	(h)1	\$3,000
										Total	\$424000

EXHIBIT "A"
Violation Summary

Reporting Period	Violation Type	Due Date	Received Date	Days Late	# of Complete 30-Day Periods	Serious/ Chronic	Water Code Section 13385	Amount Per 30-Day Period	Penalty
2Q 2005	Late Report	07/15/2005	02/17/2006	217	7	Serious	(b)(1)	\$3,000	\$21,000
							Total		\$21,000
							Settlement Total		\$63,000

**HEARING PANEL OF THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 576-6600

ACLCLC No. R4-2010-0169-M

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES

**TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND
PROPOSE RECOMMENDATIONS**

DISCHARGER

Port of Los Angeles

DISCHARGE LOCATION

New Dock Street Pump Station
151 Henry Ford Avenue
Terminal Island, CA

RECEIVING WATER

Los Cerritos Channel

Administrative Civil Liability Complaint ("ACLCLC") No. R4-2010-0169-M alleges that the Port of Los Angeles violated Order Nos. 97-138 and R4-2006-0086 by failing to comply with the reporting requirements and effluent limits. As stated in the ACLCLC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$63,000 be assessed against the Port of Los Angeles for these violations.

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three or more members of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the Regional Board about resolution of the ACLCLC.

This notice sets forth procedures and outlines the process to be used at this hearing.

I. HEARING DATE AND LOCATION

Date: March 17, 2011

Time: 9:00 A.M.

Place: TBD

II. AVAILABILITY OF DOCUMENTS

The ACLC and other documents concerning the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or obtaining copies of the documents may be made by contacting the Case Manager of the Prosecution Team (identified in section V below). Comments received, the Prosecution Team's proposed Hearing Panel Report and Order, and other subsequent relevant documents will be available as they are received or generated.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the Hearing Panel binder. However, the entire file might not be present at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing Panel binder, they must submit a written or electronic request to the Case Manager of the Prosecution Team (identified in section V below) so that it is received by **5:00 pm on February 25, 2011**. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing Panel binder will be present at the hearing.)

III. NATURE OF HEARING

This will be a formal adjudicative hearing pursuant to section 648 *et seq.* of Title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

IV. PARTIES TO THE HEARING

The following are the parties to this proceeding:

1. Port of Los Angeles
2. Regional Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Panel identified in section VIII below so that it is received by **5:00 pm on January 31, 2011**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall also include a

statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), and a statement explaining why the parties designated above do not adequately represent the person's interest. The requesting party will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

V. COMMUNICATIONS WITH THE PROSECUTION TEAM

The California Administrative Procedure Act requires the Regional Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of Regional Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Andrew Choi, Water Resource Control Engineer. Ann Carroll, Staff Counsel from the State Water Resources Control Board's Office of Enforcement will advise the Prosecution Team prior to and at the panel hearing. Neither Ms. Carroll nor the members of the Prosecution Team will be advising the Regional Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the hearing panel (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Andrew Choi
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 576-6751
achoi@waterboards.ca.gov

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

A. Submittals By Parties.

Not later than **January 26, 2011**, the Prosecution Team will send the parties a preliminary Hearing Panel binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

The Port of Los Angeles is required to submit:

- 1) Any additional documents or evidence the Party wants the Hearing Panel to consider,
- 2) A summary of any legal and technical arguments and testimony the Party intends to present,
- 3) The name of each witness, if any, whom the Party intends to call at the hearing, and
- 4) A statement regarding how much time the Party needs to present the case

to the attention of the Case Manager of the Prosecution Team (as identified above) and other designated parties so that it is received by **5:00 pm on February 16, 2011**. All documentation listed above must be received by the deadline, or it may be excluded from consideration by the Hearing Panel. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Panel and the parties a final Hearing Panel binder no later than **March 7, 2011**.

B. Submittals By Interested Persons.

Persons who are not designated as parties, above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Panel to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by the Prosecution Team, included in the final Hearing Panel binder, and fully considered by the Hearing Panel in advance of the hearing, any such written materials must be received by **5:00 pm on January 18, 2011**. If possible, please submit written comments in Word format electronically to achoi@waterboards.ca.gov. Interested persons should be aware the Regional Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Panel will also receive oral comments from any person during the hearing (see below).

VII. HEARING PROCEDURES

Adjudicative proceedings before the Hearing Panel generally will be conducted in the following order:

- Opening statement by Hearing Panel Chair
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Discharger presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Panel
- Deliberations (in open or closed session)
- Announcement of recommendation to the Regional Board

While this is a formal administrative proceeding, the Hearing Panel does not generally require the cross examination of witnesses, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Panel after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the

extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager by **5:00 pm on February 16, 2011** to state how much time they believe is necessary for their presentations (see Section VI.A above). It is the Regional Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Chair, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. All written materials must be received by the deadlines identified in Section IV.A. and IV.B., above, or it may be excluded from consideration by the Hearing Panel. The Hearing Panel will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

VIII. COMMUNICATIONS WITH THE HEARING PANEL

A. Ex Parte Communications Prohibited.

As an adjudicative proceeding, Regional Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the Regional Board, Hearing Panel, or Hearing Panel Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

B. Hearing Panel Advisors.

The Hearing Panel will be advised before and during the hearing by Deb Smith, and a Legal Advisor, Jennifer Fordyce, Staff Counsel for the Regional Board. Neither Ms. Smith nor Ms. Fordyce have exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

C. Objections to manner of hearing and resolution of any other issues.

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Panel as stipulations.
2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing and received by the Legal Advisor to the Hearing Panel (identified below) by **5:00 pm on February 16, 2011.**

Jennifer Fordyce
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 324-6682
jfordyce@waterboards.ca.gov

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

3. Any issues outside the scope of those described in section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Panel, as set forth in section C.2, by **5:00 pm on February 16, 2011** if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

IX. QUESTIONS

If you have any questions about this notice, please contact as appropriate, the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Panel as described above.

Date: December 17, 2010