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11 CITY OF REDONDO BEACH

12 STATE OF CALIFORNIA

13 STATE WATER RESOURCES CONTROL BOARD

14
15 In the Matter of the Petition of) **PETITION FOR REVIEW OF ORDER ON**
16 CITY OF REDONDO BEACH FOR) **COMPLAINT NO. R4-2008-0058M**
17 REVIEW OF CALIFORNIA REGIONAL) [Water Code § 13320(a)]
18 WATER QUALITY BOARD, LOS)
19 ANGELES REGION, COMPLAINT NO.)
20 R4-2008-0058M)

21 **INTRODUCTION**

21 Petitioner, City of Redondo Beach (the “City” or “Petitioner”) hereby petitions the State
22 Water Resources Control Board (the “State Board”) to review the attached Order, dated
23 September 16, 2010, and received (only after being requested by the City) September 22, 2010
24 (the “Order”), adopted by the Regional Water Quality Control Board, Los Angeles Region
25 (“Regional Board”) on September 2, 2010. This Petition presents two questions: 1) can the
26 doctrine of laches be used to bar the imposition of “mandatory minimum penalties” sought by an
27 administrative agency, and if so, 2) is the doctrine of laches applicable regarding the penalties
28 sought via the Order? As this Petition shows, the answer to both of those questions is “yes.”

1 **I. NAME, ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS OF THE**
2 **PETITIONER**

3 City of Redondo Beach
4 Attn. Bill Workman, City Manager
5 415 Diamond Street
6 Redondo Beach, CA 90277
7 (310) 372-1171
8 bill.Workman@redondo.org

9 **II. THE ACTION OF THE REGIONAL WATER BOARD BEING PETITIONED**

10 Petitioner requests review of the Final Order issued Pursuant to Water Code section 13376
11 Regarding Order No. 99-057 and R4-2005-0016 issued by Regional Board to the City.¹

12 **III. THE DATE THE REGIONAL WATER BOARD ACTED**

13 The Final Order was adopted September 2, 2010 and is dated September 16, 2010.
14 Petitioner did not receive a written copy of the Final Order (dated September 16, 2010) until
15 September 22, 2010, the day after Counsel for the City sent an email to Frances McChesney
16 (Attorney for the State Board) asking why the City had not received a copy of the Final Order as
17 of September 21, 2010.² It appears the Final Order was mailed to the City on September 20, 2010,
18 and delivered on a day the City is not open for business (September 24, 2010, a “flex Friday”).³
19 Thus, if the thirty-day petition period stated in Water Code section 13320 commenced on the date
20 of the Final Order’s adoption, and had City’s counsel not contacted the State Board, the City’s last
21 day to file a petition on the Final Order would have been just *seven days* after actual notice
22 thereof.

23 **IV. THE REASONS THE ACTION WAS INAPPROPRIATE AND IMPROPER**

24 Though more fully addressed in the Statement of Points and Authorities below, the action

25 ¹ A copy of the Order and the cover letter is attached hereto as Exhibit 1. This Petition
26 incorporates by reference the arguments raised in the City’s Petition regarding “Settlement Offer No. R4-
27 2008-0058[,]” which was submitted to the State Board on October 15, 2009, and rejected (i.e., “not
28 accepted”) via a letter from the State Board dated November 25, 2009.

² Email from Frances McChesney to Scott Franklin dated September 22, 2010, attached as
Exhibit 2.

³ A copy of the face of the envelope within which the Final Order was mailed to the City is
attached as Exhibit 3. Use of the United States Postal Service “Track & Confirm” service indicates the
envelope was delivered in Redondo Beach on September 24, 2010.

1 was improper because it is intended to obtain an award based on an enforcement action that is
2 barred by the doctrine of laches. The City does not contest the four alleged violations that
3 occurred less than three years before the issuance of the Complaint (February 16, 2010).

4 **V. HOW THE PETITIONER IS AGGRIEVED**

5 Petitioner is aggrieved because the Final Order is based on severely tardy (and thus
6 prejudicial) Complaint, and because compliance will result in an excessive and unnecessary
7 financial burden on Petitioner. Petitioner has already expended substantial resources to comply
8 with the requirements of the NPDES Permit.

9 **VI. THE ACTION THE PETITIONER REQUESTS THE STATE BOARD TO TAKE**

10 Petitioner requests the State Board direct the Final Order be rescinded as to all violations
11 allegedly occurring before February 16, 2007. Further, Petitioner request the alleged violations
12 should be expunged from the California Integrated Water Quality System (“CIWQS”) database.

13 **VII. STATEMENT OF POINTS AND AUTHORITIES**

14 The following is a statement of points and authorities to support the legal issues raised in
15 this Petition. The City reserves the right to supplement this statement of points and authorities in
16 the event the Executive Officer or Regional Board take further action (or inaction) which
17 necessitate the City changing its position with regard to the Final Order. Petitioner expressly
18 incorporates all arguments raised in prior briefing submitted to the Regional Board in this matter
19 and submitted herewith.

20 **A. RELEVANT FACTS AND PROCEDURAL HISTORY**

21 **1. City’s Operation of Seaside Lagoon**

22 Seaside Lagoon is a salt water recreational facility located just behind King Harbor in
23 Redondo Beach, California. Seaside Lagoon provides a safe and enclosed salt water recreation
24 for approximately 150,000 people annually, approximately 80% of whom are not residents of the
25 City. The Lagoon is located on property owned by the State of California, administered in trust by
26 the City of Redondo Beach. Water for Seaside Lagoon comes from the ocean, taken from a depth
27 of about fifty feet. The water first travels to the nearby AES Redondo Power Plant (“AES”) where
28 AES uses the water to cool the steam-generation turbines. The water then travels underground in

1 large pipes to Seaside Lagoon.⁴

2 Upon reaching Seaside Lagoon, the water is chlorinated. Prior to the water leaving
3 Seaside Lagoon, it is dechlorinated. This is the only “processing” the City does of the water used
4 by Seaside Lagoon. Seaside Lagoon normally contains approximately 1.5 million gallons of water
5 and has a flow through rate of approximately 3,200 gallons per minute. The flow through occurs
6 approximately 100 days out of the year, for twelve hours or less in any day.⁵

7 **2. Regulatory Matters Regarding Seaside Lagoon:**
8 **1999 through 2002**

9 The City has an National Pollution Discharge Elimination System (“NPDES”) Permit (No.
10 CA0064297) addressing water discharge quality and operations at the Seaside Lagoon.
11 Specifically, Seaside Lagoon discharges water into King Harbor, another historic part of the City’s
12 waterfront amenities. The City applied for and received its NPDES Permit in 1999,⁶ which was
13 subsequently renewed in 2005.⁷ The City’s NPDES Permit expired February 10, 2010, but a
14 request for renewal was made to the Regional Board in August of 2009.⁸ Because it seems the
15

16 ⁴ A map indicating Seaside Lagoon’s inflow and outflow is attached as Exhibit 4.

17 ⁵ For reasons unknown to the City, the Power Point presentation that the Regional Board created
18 for the “Panel Hearing” of May 17, 2010, indicates without clear explanation that the “Potential Maximum
19 Civil Liability” the City could face regarding Seaside Lagoon is \$21.2 Billion, supposedly based in part on
20 discharge of 4.6 Million Gallons a Day (“MGD”). (Letter of March 26, 2010, and PowerPoint presentation
21 enclosed therewith, attached hereto as Exhibit 5, at slide 9). Seaside Lagoon’s output is, on a day there is
22 outflow at all, approximately 2.304 MGD. At the Regional Board Panel hearing for this matter, the
23 Regional Board’s representative Russ Colby stated that the “total potential maximum civil liability [wa]s
24 over 7 billion dollars.” (Exhibit 6 Panel hearing at p. 41, lns. 1-2). When Mr. Colby was asked to explain
25 this multi-billion dollar discrepancy, and after admitting that Seaside Lagoon “discharges up to 2.3.” MGD,
26 he stated “at the time, with the information we had, [4.6 MGD] was a correct assumption.” (*Id.* at p.36, lns.
27 9-10; p. 43, lns. 5-25; p. 44, lns. 1-13). He never explained what “information” the Region Board relied on
28 to create the 4.6 MGD figure, which appears to be the result of a simple failure to recall that Seaside
Lagoon discharges twelve hours (at most) each day it is discharging, not twenty-four. After hearing Mr.
Colby’s testimony, the Chair of the Hearing Panel stated “I don’t understand how the maximum penalties in
the billions came out” (*Id.* at p. 107, lns. 6-7). This discrepancy (which apparently has a corollary
monetary discrepancy of approximately \$11.29 billion) is just one of the reasons why the City believes the
potential liability estimate is grossly incorrect.

⁶ NPDES Order No. 99-057, attached as Exhibit 7.

⁷ NPDES Order No. R4-2005-0016, attached as Exhibit 8.

⁸ Request dated August 13, 2009, Attached as Exhibit 9.

1 City has not been able to comply with the effluent limitations set by the Regional Board, even
2 after ongoing and costly attempts to comply, the City had no choice but to consider permanently
3 closing Seaside Lagoon rather than continually risk substantial and uncertain enforcement actions
4 by the Regional Board. The future of Seaside Lagoon is still quite uncertain.⁹

5 Pursuant to the monitoring and reporting program that is an integral part of the City's
6 NPDES Permit, the City performs regular monitoring of the water discharged from Seaside
7 Lagoon into King Harbor. Under the NPDES Permit as revised in 2005,¹⁰ reports regarding the
8 results of the monthly monitoring are provided to the Regional Board thirty or forty-five days after
9 the sampling occurs, depending on whether the sampling was done during the "season" (basically
10 summer) or not. Monthly reports created by the City prior to the 2005 revision were provided to
11 the Regional Board in basically the same manner.¹¹

12 Since the City's NPDES Permit was issued in 1999, the Regional Board has alleged City
13 violated the water quality requirements of its NPDES Permit on multiple occasions. On May 4,
14 2001, the Regional Board issued a Notice of Violation ("NOV") to the City for seventeen
15 violations that allegedly occurred during the years 2000 and 2001.¹² All of the alleged violations
16 concerned exceedances of the effluent limitation for residual chlorine.¹³ On March 29, 2002, the
17 Regional Board filed an Administrative Civil Liability ("ACL") complaint (the "2002 ACL

18
19 ⁹ A hearing before the Regional Board is scheduled for October 7, 2010, regarding the reissuance
20 of Waste Discharge Requirements (i.e., the NPDES Permit) for Seaside Lagoon.

21 ¹⁰ See Attachment "T," Monitoring and Reporting Program No. 8034, attached to Exhibit "8."

Reporting Period	Report Due
Start of Operation – June 30	August 1
July 1 – July 31	September 1
August 1 – End of Operation	October 1

22
23
24 Annual Summary Report October 1 of each year[.]
25 Monitoring reports for off-season discharges shall be submitted 45 days after sampling.

26 ¹¹ See Exhibit 7 at p. T-1.

27 ¹² Notice of Violation dated May 4, 2001, attached as Exhibit 10.

28 ¹³ *Id.* Based on the allegations in ACL Complaint No. R4-2004-0159 (attached as Exhibit 11)
however, it appears the water originating at AES does contain chlorine prior to reaching Seaside Lagoon.

1 Complaint”) pursuant to California Water Code section 13385(h), seeking \$51,000 in ACL.¹⁴ City
2 waived a hearing and paid the Regional Board \$45,000 in ACL and \$6,000 for a Supplemental
3 Environmental Project (“SEP”).

4 **3. Regulatory Matters Regarding Seaside Lagoon:
5 2003 through January 31, 2008**

6 After settling the ACL Complaint of March 29, 2002, the City continued to provide
7 monitoring reports to the Regional Board pursuant to the City’s NPDES permit. Some of those
8 reports included monitoring results that arguably indicated the presence of certain regulated
9 constituents¹⁵ above the effluent limitations set by the Regional Board, which concerned the City.
10 Though the Regional Board did not issue any ACL Complaint regarding the alleged violations in
11 the seven years after the ACL Complaint of March 29, 2002, the City recognized that there was a
12 problem that needed to be addressed.

13 Accordingly, in 2007 the City requested a Time Scheduling Order (“TSO”) with interim
14 effluent levels that the City could meet, based on data collected in 2006. The purpose of the TSO
15 with the elevated effluent limitations was to allow the City enough time to study the cause of the
16 apparent exceedances, and enough time to attempt to resolve any problem found, without
17 penalizing the City for what would have been classified as exceedances under the effluent levels
18 in the City’s then-current NPDES Permit. The Regional Board issued TSO No. R4-2007-0024¹⁶
19 in response to the City’s request. That TSO provided that, from May 1, 2007, through January 31,
20 2008, the City’s TSS and BOD limitations would be raised as follows: the City’s TSS maximum
21 was raised from 75/50 (daily/monthly) mg/L to 250/200 mg/L, and City’s BOD maximum was
22 raised from 30/20 mg/L to 100/100 mg/L. During this period, the City complied with the effluent
23 limitations for TSS and BOD.

24
25 ¹⁴ Complaint No. R4-2002-0014, attached as Exhibit 12.

26 ¹⁵ Biochemical Oxygen Demand (“BOD”), Total Suspended Solids (“TSS”), Chlorine, pH,
27 Coliform, Enterococcus, and (once) oil & gas are the constituents which have allegedly been found in levels
exceeding the effluent limitations found in City’s permit.

28 ¹⁶ TSO No. R4-2007-0024, attached as Exhibit 13.

1 City engaged in serious study of the apparent exceedances during 2007, and prepared a
2 detailed report for the Regional Board.¹⁷ In contrast to the elevated BOD levels detected in 2006,
3 the City's sampling in 2007 failed to indicate problematic BOD concentrations.¹⁸ So the sampling
4 in 2007 did not shed any light on the cause of the elevated BOD data gathered in 2006.

5 TSS, however, was present in sampling conducted in 2007, and the City's report noted the
6 levels of TSS found at Seaside Lagoon during 2007 were generally the same as were present in
7 King Harbor.¹⁹ Based on this fact, the report concluded the "most likely" source of the TSS
8 problems at Seaside Lagoon was influent water (i.e., ocean water) commingling with the water in
9 Seaside Lagoon.²⁰ That is, the location at which Seaside Lagoon's TSS sampling was (and is)
10 being performed did not include just Seaside Lagoon's effluence (i.e., its discharge, what is
11 regulated under the NPDES Permit), but also influent ocean waters (which had elevated
12 concentrations of TSS). Based on the report's findings regarding TSS, the City requested a second
13 TSO regarding TSS. The Regional Board granted a second TSO on January 31, 2008, which set
14 the TSS effluent limitation (for February 1, 2008, through February 28, 2010) at 120/60 mg/L.²¹
15 The City has not had an exceedance of the TSS effluent limitation since the 120/60 mg/L standard
16 was put in place.

17 **4. Regulatory Matters Regarding Seaside Lagoon:**
18 **September 18, 2008, through April 27, 2010**

19 The City has contemplated simply shutting down Seaside Lagoon many times because of
20 issues related to effluent limitation compliance. Because the Regional Board had in the recent
21 past worked with City by granting TSOs as opposed to issuing ACL complaints, the City believed
22 the Regional Board was going to work with the City to allow Seaside Lagoon to stay open while
23

24 ¹⁷ Source Identification Report, dated October 1, 2007, attached as Exhibit 14.

25 ¹⁸ See *id.* at 8, ¶ 1.2.1.

26 ¹⁹ See TSO No. R4-2008-0002, attached as Exhibit 15, at p. 3.

27 ²⁰ See Exhibit 14 at 5-6, 17-18.

28 ²¹ Exhibit 15.

1 the City made the necessary adjustments (e.g., transitioning to a non-discharging operation). In
2 fact, the City relied on the Regional Board's failure to address stale effluent limitations concerns;
3 had the Regional Board indicated any interest in pursuing apparent violations that were so many
4 years old, the City would have most likely simply shut Seaside Lagoon down permanently. This is
5 particularly true because Seaside Lagoon is an operation that costs the City money, and operates
6 primarily for the benefit of people who live outside of Redondo Beach.

7 So it was with some surprise that the City received the Regional Board's Offer on
8 September 17, 2008.²² The Offer alleges violations of Water Code Section 13385(h)-(i), which
9 allegedly make the City liable for \$147,000 in mandatory penalties.²³ Previously, the Regional
10 Board waited slightly less than two years to raise alleged violations in an NOV (the May 4, 2001,
11 NOV addressed alleged violations occurring between July 1999 and August 2000). The 2002
12 ACL Complaint that was issued regarding the majority of those violations (it omitted any alleged
13 violation occurring in 1999) was issued on March 29, 2002, again less than two years after the first
14 alleged violation at issue therein.

15 As stated in the Offer, many of the alleged violations are over five years old. Those same
16 violations were over six years old on February 16, 2010, when the Regional Board issued
17 Administrative Civil Liability Complaint No. R4-2008-0058M (the "Complaint"). In addition to
18 the forty-nine violations alleged in the Offer, the Complaint includes one additional violation (of
19 the Total Residual Chlorine limit) that allegedly occurred July 28, 2008, raising the total amount
20 of penalties sought to \$150,000.²⁴

21 On April 19, 2010, the City served the Regional Board a copy of the City's Hearing
22 Binder, which included, among other things, the City's Brief in Opposition to Administrative Civil
23
24

25 ²² Offer of September 15, 2008, attached hereto as Exhibit 16.

26 ²³ Any reference herein to subsection (h) or (i) refers to Water Code section 13385 unless
27 otherwise noted.

28 ²⁴ Exhibit 17 at Exhibit A.

1 Liability Complaint (the “Opposition”).²⁵ The City also served Objections Related to Public
2 Hearing to the Regional Board on April 17, 2010 (the “Objections”), alleging several violations of
3 Due Process related to the “Panel Hearing” procedures provided with the Complaint.²⁶ The
4 Regional Board’s “Prosecution Team” provided responses to the abovementioned Opposition and
5 Objections on April 27, 2010.²⁷

6 Also on April 27, 2010, the Regional Board provided an additional response to the
7 Opposition specifically modifying the number of violations for which penalties were being sought
8 (from 50 to 22), reducing the total amount of penalties sought from \$150,000 to \$66,000.²⁸ The
9 modification was based on the argument, as stated in the Opposition at Section III.C. therein, that
10 some of the alleged violations were based on sampling done at or near the time of high tide, which
11 has can have a drastic effect on the representative quality of a sample. (During the Panel Hearing
12 of May 17, 2010 [discussed below], the same argument was accepted by the Regional Board as to
13 six violations not previously removed, reducing the total amount sought to \$51,000).²⁹

14 **5. Regulatory Matters Regarding Seaside Lagoon:**
15 **April 28, 2010, through September 27, 2010**

16 On or about April 28, 2010, the Prosecution Team “requested a pre-hearing conference to
17 narrow the issues for the hearing in the Seaside Lagoon ACL matter” and the Regional Board’s
18 “Legal Advisor” (Frances McChesney) sent an email that she had confirmed a pre-hearing
19 conference date of May 3, 2010, with Madelyn Glickfeld, chair of the Hearing Panel on this
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21

22 ²⁵ Exhibit 18. The exhibits originally served with Exhibit 18 can be provided upon request.

23 ²⁶ City’s Objections Related to Public Hearing dated April 19, 2010, attached as Exhibit 19.

24 ²⁷ Regional Board’s April 27, 2010, Response to City’s Opposition, attached as Exhibit 20;
25 Regional Board’s April 27, 2010, Response to City’s Objections Related to Public Hearing), attached as
26 Exhibit 21.

27 ²⁸ Regional Board’s April 27, 2010, Response Regarding Reduction of Penalties Sought, attached
as Exhibit 22.

28 ²⁹ See Exhibit 6 at p. 66, lns. 17-25; p. 67, lns. 1-25; and p. 68 lns. 1-17

1 case.³⁰ The City responded by email on April 29, 2010, stating that it would participate in a pre-
2 hearing conference, but that the City could not arrange schedules in less than one week, suggesting
3 instead that a pre-hearing conference be held May 10, 2010.³¹ Ultimately, the pre-hearing was
4 held on May 11, 2010.

5 The Legal Advisor also sent an email on April 29, 2010, stating “[t]he Chair of the Hearing
6 Panel has made rulings on the objections and responses in this matter[,]” referring to the Due
7 Process violations stated in the Objections, which were denied.³² Prior to the pre-hearing, Ms.
8 Glickfeld issued a signed tentative order stating that “[t]he laches defense may not apply to the
9 case of mandatory minimum penalties[,]” and “[e]ven if the laches defense could apply it does not
10 apply in this matter.”³³ On May 13, 2010, Ms. Glickfeld issued the “Order on Laches and Other
11 Matters” (the “Pre-hearing Order”) purporting to deny th applicability of the doctrine of laches and
12 the City’s due process objections, and setting the amount of time each party would have at the
13 Panel Hearing of May, 17, 2010.³⁴ That Order expressly states “[t]he parties will have five
14 minutes each at the hearing to state their objections or responses to this Order. I will provide no
15

16 ³⁰ Email From Frances McChesney dated April 28, 2010, attached as Exhibit 23.

17 ³¹ Email from Scott M. Franklin dated April 29, 2010, attached as Exhibit 24. The Regional
18 Board was required to give reasonable written notice of the pre-hearing conference. *See* Water Code §
13228.15; Gov’t Code § 11511.5(a).

19 ³² Email from Frances McCeshney dated April 29, 2010, attached as Exhibit 25.

20 ³³ Tentative Order dated May 11, 2010, attached as Exhibit 26 (May 11 Order). Exhibit 26 is a
21 revised version of the a draft order on laches issued to the City on April 30, 2010, attached as Exhibit 27.
22 Exhibit 27 expressly states additional briefing may be filed in response thereto. Accordingly, the City filed
the “Supplemental Brief” on May 6, 2010, attached as Exhibit 28.

23 ³⁴ Pre-hearing Order of May 13, 2010, attached as Exhibit “29.” The City contests Ms.
24 Glickfeld’s ability to issue an order that goes to the merits of the matter at a section 13228.15 pre-hearing
25 conference. Specifically, assuming section 1322.15 allows Ms. Glickfeld to hold a pre-hearing conference,
26 that conference was limited to issues stated in Government Code section 11511.5. Section 11511.5(b) lists
27 twelve topics that can be addressed at a pre-hearing conference, none of which indicate the hearing officer
28 can make a definitive ruling on an issue so fundamental as the applicability of an affirmative defenses.
Though section 11511.5(b) does have a catchall topic (“Any matters as shall promote the order and prompt
conduct of the hearing.”), that obviously does not include merit issues, or else pre-hearing conferences of
that nature lead to actual hearings that are nothing more than a duplicative farce. Such analysis is proven by
what actually occurred at the Panel Hearing of May 17, 2010. Accordingly, the City objects to the Pre-
hearing Order to the extent it dealt with topics outside of those stated in Government Code section
11511.5(b), and further objects to the Regional Board’s adoption of that Order.

1 additional time at the hearing to have additional testimony or evidence on the laches issue.”

2 On May 17, 2010, the City and the Prosecution Team came before the Hearing Panel (Ms.
3 Glickfeld, joined by Board Members Steve Blois, Francine Diamond, and Jeanette Lombardo).

4 Within a few minutes of the City’s presentation intended to show why the Pre-hearing Order was
5 incorrect regarding the applicability of the doctrine of laches, the following exchanges occurred.

6 [CITY ATTORNEY MICHAEL WEBB] I'd like to ask for 15 minutes to argue our
7 objections, understanding that the Chair is not going to allow further evidence, and
8 then just have that deducted from our total hour. So that would leave 45 minutes
for the remaining -- for the remainder of our presenting evidence and
cross-examination.

9 [MS. GLICKFELD] This is a dilemma because we did -- we already took a great
10 deal of written evidence from you on that matter. We certainly are here today to
hear the evidence on the water quality issues and the water quality violations so
11 that we can best decide on the -- on how the minimum penalty --

12 [MS. MC CHESNEY] I would think it's okay if they would like -- they would still
get the total of 60 minutes.

13 [MS. GLICKFELD] Fine.^[35]

14 Soon thereafter the Legal Advisor interrupted the City’s presentation, echoing Ms.
Glickfeld statements.

15 [MS. MC CHESNEY] Mr. Webb, could I just interrupt for a second?

16 [MR. WEBB] Sure.

17 [MS. MC CHESNEY] Are you -- you seem to be repeating your arguments in the
18 written materials. Are you planning on making an objection --

19 [MR. WEBB] I will make an objection.

20 [MS. MC CHESNEY] -- soon?

21 [MR. WEBB] I will go on. But, again, if this isn't -- if the Panel is going to make
22 the decision, I was trying to give the background^[36]

23 After that exchange, Mr. Webb got about two more minutes before Ms. Glickfeld again
24 attempted to unreasonably limit the City’s argument regarding the laches issue.

25 [MS. GLICKFELD] When we set the hearing today, we gave you five minutes to
26 put your objections forward to the order that I gave. We gave this order because we

27 ³⁵ Exhibit “6” at p. 12, lns. 20-25; p. 13, lns. 1-25.

28 ³⁶ *Id.* at p. 21, lns. 13-25; p. 22, lns. 1-14.

1 did not want to proceed on a case on the violations without some consensus on the
2 law that it was based on. I want you to talk not about your arguments that you've
3 already posed both in writing and before me in a pre-hearing, but I want you to
4 speak to what your objections are to the ruling that I made. You have yet to do that
and you have already spent most of your time, your last -- you have got four more
minutes. I'd like you to put your objections on the record.

5 [MR. BLOIS] Madam Chair, I object to your objections. I think that he should be
6 able to use his time however he did, and I would say that he's got more than four
7 minutes. He's been interrupted five times so far.

8 [MS. LOMBARDO] I agree.

9 [MS. GLICKFELD] I'd like to adjourn this meeting to a -- to a Board discussion,
10 please, if we could. I'm going to put you on hold and I'm going to take a -- the
11 Panel and I are going to have some discussion on this procedure. Thank you.

12 When the Hearing Panel returned from the "discussion," Mr. Webb instructed to proceed,
13 and was allowed to utilize the remainder of the fifteen minute period without interruption, and the
14 remainder of the hearing occurred without further incident.

15 The Hearing Panel issued its Report and Proposed Order on July 27, 2010.³⁷ The
16 conclusion of law stated in the Report sums up the report: "Consistent with direction from the
17 State Water Resources Control Board in order WQ 2007-0010 (Escondido Creek Conservancy),
18 the equitable doctrine of laches does not apply to mandatory minimum penalties."³⁸ The Proposed
19 Order, along with the two "pre-hearing orders" were adopted by the entire Regional Board at its
20 meeting of September 2, 2010 (the "Final Order").³⁹ As mentioned above, the City did not receive
21 a copy of the Final Order until September 22, 2010.

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26 ³⁷ Panel Hearing Report, including Amended Exhibit A, and the Panel's Proposed Order, are all
attached as Exhibit 30.

27 ³⁸ Exhibit 30, Panel Hearing Report at p.2, Conclusion of Law 3.

28 ³⁹ Exhibit 1 at p.2.

1 Based on these facts the City presents its factual, legal, and equitable arguments.⁴⁰ Based
2 on those arguments, the Order should be vacated, and the alleged violations should be expunged
3 from the CIWQS database.

4 **B. THE DOCTRINE OF LACHES PRECLUDES LIABILITY FOR ALLEGED**
5 **VIOLATIONS OCCURRING MORE THAN THREE YEARS BEFORE**
6 **FORMAL ACTION IS TAKEN**

7 The Regional Board repeatedly cites *City of Oakland v. Pub. Employees Ret. Sys.* 95 Cal.
8 App. 4th 29, 48 (2002) for the proposition “that there are no statutes of limitations that apply to
9 administrative proceedings to assess mandatory minimum penalties.”⁴¹ While *City of Oakland*
10 may stand for the that limited proposition regarding statutes of limitations, it definitely holds that
11 in “some cases of delay, equity may bar an administrative proceeding, and ‘the courts will apply
12 notions of laches^[42] borrowed from the civil law.’” *Id.* at 51 (citing *Brown v. State Pers. Bd.*, 166
13 Cal. App. 3d 1151, 1158-59 (1995)). In fact, the Regional Board admitted that “[u]nder
14 appropriate circumstances, the defense of laches may operate as bar to a claim by a public
15 administrative agency, if the requirements of unreasonable delay and resulting prejudice are
16 met.”⁴³ Further, an “administrative agency must diligently pursue the disciplinary action as if it
17 were seeking equitable relief . . .” (*Brown*, 166 Cal. App. 3d at 1159).

18 The Regional Board has failed to diligently pursue this disciplinary action. The Regional
19 Board is barred from seeking ACL or other penalties regarding alleged effluent limitation

20
21 ⁴⁰ The City incorporates herein the arguments made in its October 15, 2008, Petition Requesting
22 Review of Settlement Offer, attached hereto (save exhibits, which will be provided upon request) as Exhibit
23 31. For the purpose of brevity, the City does not expressly address herein every argument raised in Exhibit
24 12, it being understood that failure to explicitly raise such arguments herein does not operate as a waiver
25 regarding those arguments. The documents originally served with the October 15 Petition are not provided
26 herewith, but can be produced upon request.

27 ⁴¹ See, e.g., Exhibit 1 at 4, ¶ 21; Exhibit 17 at 1 n.1; Exhibit 30, Panel Hearing Report at 2.

28 ⁴² “The defense of laches has nothing to do with the merits of the cause against which it is
asserted.” *Johnson v. City of Loma Linda*, 24 Cal. 4th 61, 77 (2000). “laches constitutes an affirmative
defense which does not reach to the merits of the cause . . .” *Id.* (citation omitted, italics in *Johnson*).

⁴³ Response to Request for Alleged Violation Review [“Response”], dated September 29, 2009, at
1, attached as Exhibit 32, and citing *Fountain Valley Reg’l Hosp. & Med. Ctr. v. Bonta*, 75 Cal. App. 4th
316, 323 (1999)).

1 violations for which formal enforcement action is not taken within a reasonable time. As shown
2 below, a reasonable time is no more than three years.

3 **1. When Applying the Doctrine of Laches, a “Borrowed” Statute of**
4 **Limitations Can Establish What Constitutes an Unreasonable Delay as**
5 **a Matter of Law**

6 “[T]he defense of laches may operate as a bar to a claim by a public administrative agency,
7 . . . if the requirements of unreasonable delay and resulting prejudice are met.” *Robert F. Kennedy*
8 *Medical Center v. Belshe*, 13 Cal. 4th 748, 760 (1996); *accord Fountain Valley*, 75 Cal. App. 4th
9 at 323.

10 [T]he elements of unreasonable delay and resulting prejudice . . . may be ‘presumed’
11 if there exists a statute of limitations which is sufficiently analogous to the facts of
12 the case, and the period of such statute of limitations has been exceeded by the
13 public administrative agency in making its claim. In [this] situation, the limitations
14 period is ‘borrowed’ from the analogous statute, and the burden of proof shifts to
15 the administrative agency.

16 *Fountain Valley*, 75 Cal. App. 4th at 323-24. “Whether or not such a borrowing should occur
17 depends upon the strength of the analogy.” *Brown*, 166 Cal. App. 3d at 1160. When the period of
18 delay is longer than the “borrowed” statute of limitations, “unreasonable delay [can] be found as a
19 matter of law.” *Brown*, 166 Cal. App. 3d at 1159.

20 **a. “Borrowing” Code of Civil Procedure Section 338(i) Is**
21 **Appropriate**

22 In this case there is not only a statute of limitations that is analogous to the facts, there is a
23 statute of limitations that applies to civil actions brought under the *same statute* that the Regional
24 Board’s authority to seek ACL is found: Water Code section 13385. The Regional Board admits
25 that “[i]n this situation . . . there exists a statute of limitations governing an analogous action at
26 law *which may be borrowed as the outer limit of reasonable delay for the purpose of laches.*”⁴⁴
27

28 ⁴⁴ *Id.*

1 Code of Civil Procedure section 338(i)⁴⁵ states there is a three year limitation on bringing:
2 [a]n action commenced under the Porter-Cologne Water Quality Control Act
3 (Division 7 (commencing with Section 13000) of the Water Code). the cause of
4 action in that case shall not be deemed to have accrued until the discovery by the
5 State Water Resources Control Board or a regional water quality control board of
6 the facts constituting grounds for commencing actions under their jurisdiction.

7 As the Regional Board plainly states in the Offer, “[t]he formal enforcement action that the
8 Regional Board uses to assess such liability is an [ACL] complaint, although the Regional Board
9 may instead refer such matters to the Attorney General’s Office.” The authority for the forgoing
10 proposition is located in Water Code section 13385(b)-(c) (part of the Porter-Cologne Water
11 Quality Control Act), a section within the scope of Code of Civil Procedure section 338(i)’s three-
12 year limitations period.

13 The text of subsections (b) (which authorizes the Attorney General to “petition the superior
14 court to impose liability”⁴⁶) and (c) (which applies to the imposition of ACL by the state or
15 regional boards) of Water Code section 13385 is basically the same, except as to the amount of
16 liability and the party seeking it.⁴⁷ The analogy between the two subsections could not be more

17 ⁴⁵ Code of Civil Procedure section 338(a) provides a three-year limitation period for any “action
18 upon liability by statute, other than a penalty or forfeiture[,]” and is thus a more general subsection than
19 338(i). However, since Water Code section 13385(b) is a statutory basis under which civil actions seeking
20 liability may be brought, subsection (a), in addition to subsection(b), provides a analogous three-year
21 limitation period that may be “borrowed” regarding the imposition of ACL.

22 ⁴⁶ A petition is a form of “action” to which Code of Civil Procedure section 338 applies. *See*
23 *Howard Jarvis Taxpayers Ass’n v. City of La Habra*, 25 Cal. 4th 809, 821 (2001) (a “petition to enforce a
24 statutory liability must be brought within the same three-year period after accrual of the cause of action
25 [citation] as an action for damages or injunction on the same liability”); *Pacheco v. Clark*, 44 Cal. App. 2d
26 147, 151 (1941) (indicating section 338 applies to a petition). Thus, when a party “may petition the
27 superior court[,]” it means the party can file an action in the superior court, in the form of a petition. *See In*
28 *re S.A.*, 6 Cal. App. 3d 241, 244 n.2 (1970) (citing Welfare and Institution Code section 781, which states
that when a person petitions the superior court to permit inspection of records, the document used to make
that request is a petition).

⁴⁷ Water Code section 13385(b)-(c) states:

(b) Civil liability may be imposed by the superior court in an amount not to exceed the
sum of both of the following:

(1) Twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not
cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an
additional liability not to exceed twenty-five dollars (\$25) multiplied by the number of
gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

1 clear. In fact, it is obvious that the two subsections are alternatives for redressing the *same*
2 violations.⁴⁸ There could be no stronger analogy. The three-year limitation period set
3 in Code of Civil Procedure section 338(i) should be and is properly “borrowed.” Thus, a delay
4 can be unreasonable as a matter of law, and prejudice can be presumed, regarding any alleged
5 violations occurring more than three years before the Regional Board issued a formal ACL
6 Complaint. The burden falls on the Regional Board to show why its delay was reasonable.

7 **b. The Regional Board Cannot Meet Its Burden**
8 **to Show Its Delay Was Excusable or**
9 **that the Delay Was Not Prejudicial**

10 Because the Regional Board failed to take formal action regarding certain alleged
11 violations within three years, pursuant to the “borrowing” rule, the Regional Board has the burden
12 of proof to show its delay was excusable *and* without prejudice to the City. “To defeat a finding of
13 laches [an] agency... must ... (1) show that the delay involved in the case ... was excusable, and (2)
14 rebut the presumption that such delay resulted in prejudice to the opposing party.” *Fountain*
15 *Valley*, 75 Cal. App. 4th at 324. Because the Regional Board’s delay was not excusable and did
16 result in prejudice to the City (e.g., tainted business judgments and increased potential liability for
17 NPDES Permit violations), the Regional Board will not be able avoid the application of the
18 doctrine of laches.

19 the Attorney General, upon request of a regional board or the state board, shall petition
20 the superior court to impose the liability.

21 (c) Civil liability may be imposed administratively by the state board or a regional board
22 pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not
23 to exceed the sum of both of the following:

24 (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

25 (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is
26 not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an
27 additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by
28 which the volume discharged but not cleaned up exceeds 1,000 gallons.

⁴⁸ I.e., the subsections at issue provide substantially parallel enforcement mechanisms for violations that fall under Water Code section 13385(a). Water Code section 13385(a)(2) authorizes civil liability for any violation of a “waste discharge requirement[.]” Implicitly, because Water Code section 13385(h)-(i) applies to violations of effluent limitations (which are put forth in the applicable waste discharge requirements), any violation which triggers the applicability of subsections (h) or (i) of Water Code section 13385 must also be a violation that makes subsection (a)(2) applicable.

1 reports used the term “combined chlorine” where the data represented “total residual chlorine”), it
2 appears no investigation was done in preparation for issuing the ACL Complaint. Furthermore,
3 the ACL Complaint is only six pages long, much of which appears to be “boilerplate” when
4 compared to other ACL complaints recently issued by the Regional Board. Thus, it appears the
5 preparation and issuance of an ACL complaint requires minimal investigation, little (if any)
6 analysis, and only a small amount of document drafting.

7 In fact, the simplicity of NPDES violation enforcement is by design. The NPDES self-
8 monitoring system is intended “to keep enforcement actions simple and speedy: [¶] ‘[o]ne purpose
9 of the [monitoring] requirements is to avoid the necessity of lengthy fact finding, investigations,
10 and negotiations at the time of enforcement. Enforcement of violations ... should be based on
11 relatively narrow fact situations requiring a minimum of discretionary decision making or delay.’”
12 *See City of Brentwood v. Cent. Valley Reg’l Water Control Bd.*, 123 Cal. App. 4th 714, 723 (2004)
13 (citations omitted) (all alterations in original, omission added). The “reasonable” time in which to
14 act on apparent effluent limitation as indicated by a self-monitoring report is intentionally a brief
15 one.

16 Taking more than three years is beyond reason. Simply put, short of catastrophic
17 circumstances not present here, it should not take longer than three years to take formal action on
18 alleged effluent limitation violations. In another equitable context, it has been held the being
19 “busy” and the “[p]ressure of the of the legal business” were not sufficient bases upon which a
20 court would excuse a party’s failure to comply with statutory deadlines. *See Lyons v. Swope*, 154
21 Cal. App. 2d 598, 600 (1957) (holding relief from a judgement, pursuant to Code of Civil
22 Procedure section 473, was not proper because “[i]t only appeare[d] appellant was busy with other
23 legal work”). Therefore, because taking formal action regarding effluent limitation violations is
24 not a particularly time consuming task, *even considering* “limited enforcement resources,” the
25 Regional Board’s delay of over three years in this instance is unreasonable as a matter of fact.
26
27
28

1 (b) **There Is No Evidence the Delay in Taking Formal**
2 **Action Was the Result of Limited Resources or**
3 **Competing Priorities**

4 Although the Regional Board's enforcement resources may be limited, and the alleged
5 violations at Seaside Lagoon may not be an enforcement priority for the Regional Board, neither
6 factor justifies enforcement delays extending beyond three years. City contests the suggestion in
7 the Offer, Complaint, and the Final Order that a delay of three years or more in issuing an ACL
8 complaint is justified based on these two factors.

9 A recent ACL complaint issued to the City of Malibu shows that, even with the restrictions
10 the Regional Board works under, the Regional Board was able to address a much more
11 complicated matter within eight months of the alleged violation.⁴⁹ The ACL complaint issued to
12 City of Malibu ("Malibu ACL Complaint") concerned alleged illegal discharges into the waters of
13 the United States that occurred between January 25 and March 10, 2008.⁵⁰ The Malibu ACL
14 Complaint states the City of Malibu was responsible for improperly putting "spoil piles" (soil and
15 other material that resulted from the excavation portion of a construction project) into a stream
16 bed.⁵¹ The Regional Board staff inspected the location where the spoil piles were on at least three
17 occasions by March 21, 2008, and it appears the cause of the alleged violations had been
18 completely addressed by March 10, 2008 (by removing the spoil piles from the stream bed).⁵² The
19 Malibu ACL Complaint also states that the alleged violations regarding the placement of the spoil
20 piles could result in ACL of up to \$1,125,000.⁵³ After a thorough explanation of how equitable
21 factors applied regarding the City of Malibu's alleged violations, the Malibu ACL Complaint

22 ⁴⁹ ACL Complaint No. R4-2008-0041-R, attached as Exhibit 15). The attached complaint is a
23 revised version of the original (rescinded by R4-2008-0041-R), which was issued on August 25, 2008, as
24 noted on first page of the complaint. It is worth noting that the Complaint (i.e., Exhibit 17) and the Malibu
ACL Complaint are both signed by Executive Officer Samuel Unger, and that Hugh Marley is the contact
for all three matters.

25 ⁵⁰ Exhibit 15 at 12-3, ¶¶ 11-17.

26 ⁵¹ *Id.*

27 ⁵² *Id.*

28 ⁵³ *Id.* at 4, 6.

1 states the total recommended penalty is \$30,015.⁵⁴

2 The Malibu ACL Complaint shows three things. First, it shows the Regional Board can
3 act quickly regarding alleged violations with a relatively low minimum penalties.⁵⁵ Second, it
4 shows the Regional Board can do multiple site investigations, review applicable law, and
5 apportion liability (based on a complex multiple-factor analysis), in less than eight months. Third,
6 it shows that the Regional Board does not appear to prioritize enforcement actions based on the
7 likelihood of repeat offenses (as the City of Malibu's issue appears to be a singular situation).

8 This comparison indicates the Regional Board was able to formally address a violation,
9 which required factual investigation and analysis (as to both the application of the law and the
10 equitable factors to the facts), in less than eight months. Here, the alleged conduct at issue is
11 basically laid out in reports the Regional Board probably had within forty-five days of any alleged
12 violation occurring. When the progression of the two matters (City of Malibu and Seaside
13 Lagoon) are compared, and taking into account the relative complexity and potential for future
14 violations regarding each matter, there is no basis that would justify the Regional Board only now
15 taking action regarding alleged violations that took place (and the Regional Board became aware
16 of) more than three years ago.

17 **(2) The Regional Board's Delay Was Prejudicial**

18 As mentioned herein, City has debated the pros and cons of closing Seaside Lagoon
19 because of the problems related to NPDES Permit compliance. Because the Regional Board
20 continued to work with the City regarding TSOs for a long period of time, and because the
21 Regional Board did not take any formal action within a reasonable amount of time (i.e., three
22 years) regarding the earliest alleged violations in 2003, the City was induced to make further
23 expenditures regarding studies done and reports prepared concerning the water discharge issues

24
25 ⁵⁴ *Id.* at 8.

26 ⁵⁵ Compare the Malibu ACL Complaint (with a \$1,125,000 *maximum* ACL) to the September 5,
27 2008, ACL complaint issued regarding over 300 alleged violations (with a total *mandatory minimum* of
28 \$945,000) at Six Flags Magic Mountain (an amusement park), *available at*
<http://ciwqs.waterboards.ca.gov/ciwqs/detACLDocs.do?tRegMeasId=353575>, last visited October 2, 2010.

1 *Black's Law Dictionary* 974 (7th ed. 1999) (defining “manifest injustice” as “an error in the trial
2 court that is direct, obvious, and observable”). Nevertheless, the City will explain why the
3 Regional Board cannot meet the standard put forth in *Wells Fargo*.

4 **(a) Imposing ACL Regarding Violations Allegedly**
5 **Occurring Beyond the Borrowed Statute of**
6 **Limitations Would Be Manifestly Unjust**

7 Civil actions under Water Code section 13385 must be brought within three years of the
8 discovery “of facts constituting grounds for commencing action” Civ. Proc. Code § 338(i).
9 Allowing the Regional Board to bring an ACL complaint that is *nearly identical* to a section
10 13385 action *at any time* (and not within three years of the alleged violation) plainly results in a
11 manifest injustice. For example, the Regional Board has alleged that, regarding alleged violations
12 occurring as far back as 2003, the City faces liability of *\$21.2 billion*.⁵⁷ If allowing an
13 administrative agency to hold billions of dollars of potential liability over a regulated public entity
14 without temporal limitation does not result in manifest injustice, what does?

14 **(b) Application of Laches Would Not Nullify a Policy**
15 **Adopted for the Public Protection**

16 The Regional Board states that “the Legislature intended the mandatory penalty scheme in
17 Water Code section 13385 to {1}} ensure ‘swift and timely enforcement of waste discharge
18 requirements{, 2}} [to] assist in brining the state’s waters into compliance and [] {3}} ensure that
19 violators do not realize economic benefits from noncompliance.⁵⁸ Not one of these objectives
20 would be hindered by the application of laches here, and certainly such application would not, and
21 could not, nullify section 13385’s mandatory penalty scheme.

22 First, it is disingenuous for the Regional Board to claim that swift and timely enforcement
23 could (let alone would) be affected by the application of the doctrine of laches. The Regional
24 Board failed to take formal action penalties for nearly seven years as to some of the alleged
25

26 ⁵⁷ This amount was reduced to “over 7 billion” at the Panel Hearing, but, as explained in Footnote
27 5 above, the Regional Board did not give a sufficient explanation for the change.

28 ⁵⁸ Exhibit 32 at 2 (alterations in exhibit save numerals in braces) (citations omitted).

1 violations at issue. Indeed, had the Regional Board been more timely in its enforcement efforts, it
2 is likely the City would have closed Seaside Lagoon or renovated it so that it no longer had the
3 potential to impact the waters of the state. Simply put, swift and timely enforcement is no longer
4 possible, a fact that will not change if the doctrine of laches is applied in this matter.

5 Second, whether the doctrine of laches is applied will have little or no effect on bringing
6 the waters of the state into compliance. As the City has raised previously, Seaside Lagoon
7 discharges water into King Harbor, where levels of constituents are often *higher* than what is
8 found coming from Seaside Lagoon.

9 Third, Seaside Lagoon is a public recreation facility that consistently loses money and
10 operates in the red. To suggest the City has any intent or ability to “realize economic benefits from
11 noncompliance” is unreasonable. In truth, application of the doctrine of laches may actually result
12 in further costs to the City. That is, if laches is not applied and the City is faced with \$150,000 or
13 more in penalties, it is very possible that fact will directly lead to the permanent closure of the
14 facility. If closure occurs, the City will no longer be subsidizing this facility, and will enjoy a
15 substantial savings. Regardless, because there is no “economic benefit” that results from the
16 application of the doctrine of laches, this objective does not cut against the City.

17 The application of laches just does not nullify or significantly impair section 13385’s
18 mandatory penalty scheme. It cannot be reasonably argued that the public policy behind that
19 section was aimed at allowing the delayed enforcement the Regional Board now seeks. The
20 failures related to the legislative objectives outlined by the Regional Board occurred long before
21 the Regional Board even issued the Compliant; they did not arise because the City raised a
22 particular affirmative defense. Furthermore, it is manifestly unjust to allow the Regional Board to
23 bring enforcement actions for potentially billions of dollars without a reasonable temporal
24 limitation. Accordingly, the Regional Board cannot prevent the application of the doctrine of
25 laches based on the “manifest injustice” standard raised in *Wells Fargo*.

26 ///

27 ///

28 ///

1 [i]t doesn't matter if it's the State Board. If it's for a proposition not considered . .
2 . you can't cherry-pick phrases from a decision that isn't on point. And . . . if it's not
3 involved in that case, you can't rely on that [T]he legal principle is . . . a case
or decision is only as good as the facts that it addressed. It can't be read beyond
that⁶²

4 See *Nolan v. City of Anaheim*, 33 Cal.4th 335, 343 (2004) (citation omitted). At the Panel Hearing,
5 the Prosecution Team conceded that "Escondido Creek does not discuss the issue of laches"⁶³

6 Thus, the foundation of the Regional Board's laches argument is flawed.

7 **b. The *Fountain Valley* Case Is Controlling**

8 The following is the Pre-hearing Order's *entire* discussion regarding *Fountain Valley*.

9 The City also asserts that the case of *Fountain Valley Hosp. & Med. Ctr. V. Bonta* ,
10 75 Cal.App.4th 316 (1999), is on point, recent and not questioned by the
Prosecution Team. That case applied the doctrine of laches to an administrative
11 agency for delay in dismissing a professor for misconduct.

12 [¶¶]

13 [T]he *Fountain Valley* case does not concern a situation of penalties mandated by
law, and is not controlling.⁶⁴

14 Because neither the Final Order nor the Hearing Panel Report address *Fountain Valley*,
15 and because the Prosecution Team's oral and written arguments submitted herein have either
16 ignored *Fountain Valley* or simply echoed the Pre-hearing Order's one sentence "analysis," the
17 excerpt above effectively encapsulates the Regional Board's entire consideration of the *Fountain*
18 *Valley* case.

19 First, the Pre-hearing Order is indisputably incorrect in stating that *Fountain Valley* dealt
20 with "dismissing a professor for misconduct;" *Fountain Valley* concerns the collection of Medi-
21 Cal reimbursement overpayments. *Fountain Valley*, 7 Cal. App. 4th at 318 (the first page of the
22 opinion). The fact that the Pre-hearing Order fails to correctly indicate something so simple as the
23 context in which *Fountain Valley* arose is not indicative of a good faith evaluation of the
24 authority, or of its applicability to this case.

25 _____
26 ⁶² Exhibit "6," at p. 26, lns. 8-10.

27 ⁶³ *Id.* at p. 33, lns. 23-24.

28 ⁶⁴ Exhibit "29" at p. 3, 4.

1 Second, though the payments sought in *Fountain Valley* are not expressly stated to be
2 “penalties mandated by law,” the fact that they are instead *reimbursements* mandated by law is
3 simply an insufficient distinction upon which to deny *Fountain Valley*’s applicability. The fact
4 that a case is “factually distinguishable in some respects” does not prevent that case from being
5 “close on point” and “controlling.” *See People v. Johnson*, 6 Cal. 4th 1, 40-41 (1993).

6 In *Fountain Valley*, the Department of Health Services (“DOHS”) was attempting to
7 collect “overpayments” it had made to a hospital regarding services the hospital provided to Medi-
8 Cal patients. *See Fountain Valley*, 75 Cal. App. 4th at 319-20. The payments sought were
9 “mandated by law.” Cal. Code Regs. Tit. 22, § 51548 (“overpayments *shall be collected . . .*”) (italics added). Because the penalties sought herein and the payments sought in *Fountain Valley*
10 are both “mandated by law,” *Fountain Valley* is analogous to this matter and is controlling legal
11 authority.
12

13 The City has reviewed other matters before the Regional and State Board, and has
14 determined that there is a pattern, intentional or otherwise, of *Fountain Valley* being summarily
15 disregarded (if mentioned at all) in matters where the doctrine of laches is potentially applicable.
16 The State Board should recognize *Fountain Valley* is controlling in this case, and that the alleged
17 penalties arising prior to February 16, 2007, are barred under the doctrine of laches. No doubt a
18 court of law would consider the consistent disregard of *Fountain Valley* unacceptable.

19 **C. THE DAILY EFFLUENT LIMITATION FOR TSS WAS MISTAKENLY,**
20 **IMPROPERLY AND ARBITRARILY SET IN 2005 AND CANNOT BE**
21 **EQUITABLY ENFORCED**

22 As noted in the “Fact Sheet”⁶⁵ created regarding City’s application to renew Seaside
23 Lagoon’s NPDES Permit in 2005, the applicable daily effluent limitation for TSS was 150 mg/L
24 under Seaside Lagoon’s original permit. The Fact Sheet, which includes RWQCB’s tentative
25 determinations, shows RWQCB intended to set the daily TSS effluent limitation in Seaside
26 Lagoon’s renewed NPDES Permit based solely on the existing permit limitation.⁶⁶ In fact, the

27 ⁶⁵ Fact Sheet, attached as Exhibit “35,” at p. f-4.

28 ⁶⁶ *Id.* at pgs. F-13 to f-14.

1 explicit Rationale given by the RWQCB for the TSS Daily Maximum was that it was the "Existing
2 permit limitation." The City relied on this representation. It turns out, however, that the 2005
3 NPDES Permit daily TSS effluent limitation of 75 mg/L was set at one-half the level it should
4 have been pursuant to the original permit limit of 150mg/L.

5 The Compliant lists eight instances in 2006 and one in 2005 when the 75 mg/L daily
6 limitation for TSS appears to have been exceeded, none of which would have been an exceedance
7 had the proper 150 mg/L limitation been in place. That is, there were a total of nine TSS samples
8 that indicated a TSS level of more than 75 mg/L but less than 150 mg/L (in fact two of the alleged
9 violations were for a reported value of 76). Even though the number of TSS violations allegedly
10 occurring in 2005 and 2006 was eventually reduced to three (and MMPs being sought for two
11 thereof), it is still unfair for RWQCB to seek mandatory penalties pursuant to a limitation if the
12 one basis for that particular limitation's adoption is patently not true (i.e., the level adopted was
13 simply not the same as was stated in the prior permit).

14 The Regional Board staff response to this issue has generally been that it was the City's
15 burden to file a timely petition with the State Water Resources Control Board (State Board) when
16 the Order was issued. This type of response has unfortunately and unfairly been consistent
17 throughout this process. The Regional Board's position appears to be regardless of whether a
18 problem is 1) created by the City 2) outside of the City's control [TSS exceedances caused by the
19 lagoon influent] or 3) a mistake by the Regional Board (mistake in setting TSS Daily maximum) it
20 is the City's responsibility to find and correct the problem. The Regional Board's statement that
21 the City should have noticed and appealed the mistaken TSS limit in the 2005 Order is particularly
22 galling because **the Prosecution Team made the same error regarding the applicable TSS**
23 **Levels under Order No. R4-2005-0016 in its PowerPoint Presentation for the Panel**
24 **Hearing.**⁶⁷ That PowerPoint presentation states the daily maximum for TSS is 150 mg/L under
25 Order No. R4-2005-0016.

26 ///

27 _____
28 ⁶⁷ Exhibit 5 at slide 6 (p.3).

1 If an effluent limitation is set in an arbitrary manner, it is subject to being invalidated. *See*
2 *Indus. Liasion Comm. of Niagra Falls Chamber of Commerce v. Flacke*, 125 Misc. 2d 641, 648
3 (N.Y. 1984). This absolutely the situation in the present case, as the Regional Board provided no
4 basis for its selection of the 75 mg/L limitation, and because the regional Board stated in 2005 that
5 it intended to base the TSS effluent limitation in the renewed permit on the previously adopted
6 limitation (i.e., 150 mg/L). There is just no evidence supporting the Regional Board's decision to
7 impose the 75mg/L daily effluent limitation for TSS. It is City's position that the Regional Board
8 may only enforce the 150 mg/L effluent limitation as to daily TSS monitoring done pursuant to the
9 renewed NPDES Permit (and not subject to a higher level as stated in a TSO) Therefore, as to the
10 penalties sought for the two alleged TSS effluent limitation violations occurring in 2006, the State
11 Board should find those alleged violations are not supported.

12 **D. CONCLUSION**

13 For the foregoing reasons, Petitioner submits that the Final Order was improper,
14 inappropriate, unlawful, and not supported by substantial evidence. Accordingly, Petitioner
15 respectfully requests the State Board grant this Petition and review the Regional Board's actions
16 leading up to and including the issuance of the Final Order.

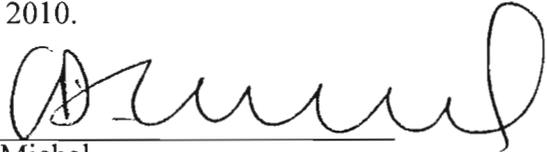
17 **VIII. STATEMENT THAT THE PETITION HAS BEEN SENT TO THE REGIONAL
18 BOARD EXECUTIVE OFFICER.**

19 A copy of this Petition was mailed and emailed to the Regional Board Executive Officer,
20 Samuel Unger, on October 4, 2010.

21 **IX. STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE
22 PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD
23 ACTED.**

24 The substantive issues and objections raised in this Petition were presented to the Regional
25 Board before the Regional Board acted on September 2, 2010.

26 Dated: October 4, 2010

27 
28 C.D. Michel
MICHEL & ASSOCIATES, P.C.
Attorney for the City of Redondo Beach

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

4 I, Christina Sanchez, am employed in the City of Long Beach, Los Angeles County,
5 California. I am over the age eighteen (18) years and am not a party to the within action. My
6 business address is 180 East Ocean Blvd., Suite 200, Long Beach, CA 90802.

6 On October 4, 2010, I caused the foregoing document(s) described as

7 **PETITION FOR REVIEW OF ORDER ON COMPLAINT**
8 **NO. R4-2008-0058M**

8 on the interested parties in this action by placing

9 the original

10 a true and correct copy

10 thereof enclosed in sealed envelope(s) addressed as follows:

11 Sam Unger
12 Executive Officer
13 RWQCB, Los Angeles Region
14 320 W. 4th St., Suite 200
Los Angeles, CA 90013
sunger@waterboards.ca.gov

Jeanette L. Bashaw
Legal Secretary
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812
jbashaw@waterboards.ca.gov

15 X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
16 processing correspondence for mailing. Under the practice it would be deposited with the
17 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,
18 California, in the ordinary course of business. I am aware that on motion of the party
served, service is presumed invalid if postal cancellation date is more than one day after
date of deposit for mailing an affidavit.
Executed on October 4, 2010, at Long Beach, California.

19 X (VIA E-MAIL TRANSMISSION)
20 Executed on October 4, 2010, at Long Beach, California.

21 (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of
22 collection and processing correspondence for overnight delivery by UPS/FED-EX. Under
23 the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for
24 receipt on the same day in the ordinary course of business. Such envelope was sealed and
placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for
in accordance with ordinary business practices.
Executed on October 4, 2010, at Long Beach, California.

25 X (STATE) I declare under penalty of perjury under the laws of the State of California that
26 the foregoing is true and correct.

27 
28 CHRISTINA SANCHEZ

EXHIBIT “1”



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.swrcb.ca.gov/rwqcb4>

Arnold Schwarzenegger
Governor

September 15, 2010

Mr. Michael Webb
City of Redondo Beach
415 Diamond Street
Redondo Beach, CA 90277

Certified Mail
Return Receipt Requested
No. 7005 1820 0001 2684 2369

DIRECTIVE FOR ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R4-2008-0058-M AGAINST CITY OF REDONDO BEACH, SEASIDE LAGOON, 200 PORTOFINO WAY, REDONDO BEACH, CALIFORNIA (ORDER NOS. 99-057 & R4-2005-0016, NPDES PERMIT NO. 0064297, CI-8034)

Dear Mr. Webb:

On February 16, 2010, the Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) issued Administrative Civil Liability Complaint No. R4-2008-0058-M (ACLC) against City of Redondo Beach, Seaside Lagoon, in the amount of \$150,000 for fifty (50) effluent violations contained in Regional Board Order Nos. 99-057 & R4-2005-0016.

On April 27, 2010, the Executive Officer sent a letter to the City of Redondo Beach modifying Exhibit "A" to twenty four (24) effluent limit violations, twenty two (22) of which are subjected to mandatory minimum penalties in the amount of \$66,000.

On May 17, 2010, the ACLC was heard by a Hearing Panel of Board Members pursuant to California Water Code (CWC) § 13376. The Panel subsequently submitted to the Regional Board its report of the hearing consisting of the findings of fact, conclusions of law, and recommended an administrative civil liability of \$51,000.

On September 2, 2010, the Regional Board upheld the imposition of the Panel's proposed administrative civil liability on the Permittee and issued Order on Complaint No. R4-2008-0058-M (ACLO), a copy of which is attached hereto and incorporated herein by reference, which directed payment of a total assessment of \$51,000.

As noted in Finding 10 of the ACLO, the assessment is due and payable thirty (30) days after the date of adoption of the Order. A check in the amount of \$51,000 (payable to the State Water Resources Control Board Cleanup and Abatement Account) must be received by the Regional Board on or before October 4, 2010.

In the event that the Permittee fails to comply with the requirements of this Directive, the Executive Officer will refer this matter to the Office of Attorney General for enforcement.

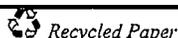
If you have any questions please contact Mr. Russ Colby at (213) 620-6373 regarding this matter.

Sincerely,

Samuel Unger, P.E.
Executive Officer

Enclosures
cc: See Attached Mailing List

California Environmental Protection Agency



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

Mr. Michael Webb
City of Redondo Beach

- 2 -

September 15, 2010

Mailing List

Mr. Jeff Ogata, Office of Chief Counsel, State Water Resources Control Board
Ms. Jennifer Fordyce, Office of Chief Counsel, State Water Resources Control Board
Ms. Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board
Ms. Frances McChesney, Office of Chief Counsel, State Water Resources Control Board

California Environmental Protection Agency



Recycled Paper

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

6. The Presiding Officer of the Regional Board Hearing Panel issued two pre-hearing orders ruling on procedural objections raised by the City (April 29, 2010) and on the equitable defense of laches and due process issues raised by the City (May 13, 2010). The Regional Board adopted the Presiding Officer's April 29 and May 13, 2010 Pre-hearing Orders as final decisions for purposes of this Administrative Civil Liability Order on Complaint No. R4-2008-0058-M and for purposes of any petition filed pursuant to Water Code section 13320. The Regional Board concluded that consistent with direction from the State Water Resources Control Board in Order WQ 2007-0010 (Escondido Creek Conservancy), the equitable doctrine of laches does not apply to mandatory minimum penalties.
7. On May 17, 2010, this matter was heard in Los Angeles, California before a Hearing Panel consisting of Regional Board Members Ms. Madelyn Glickfeld (Presiding Officer), Ms. Francine Diamond, Ms. Jeanette Lombardo, and Mr. Steve Blois. Mr. Michael W. Webb, City Attorney appeared on behalf of the City of Redondo Beach. Mr. Samuel Unger, Mr. Russ Colby, and Ms. Mayumi Okamoto appeared for the Prosecution Team. The Hearing Panel subsequently submitted to the Regional Board its report of the hearing consisting of the findings of fact, conclusions of law, and recommended administrative civil liability, a copy of which is attached hereto and incorporated herein by reference.
8. Based on evidence presented in the hearing, the Hearing Panel determined that there were eighteen (18) effluent limit violations, seventeen (17) of which are subject to mandatory minimum penalties in the amount of \$51,000. Exhibit "A" has been further modified to reflect the Hearing Panel's determination (see Amended Exhibit "A" attached).
9. Upon considering the Hearing Panel report and making an independent review of the record, the Regional Board during its meeting on September 2, 2010 upheld the imposition of the Hearing Panel's proposed administrative civil liability on the Permittee. The Regional Board directed payment of a total assessment of \$51,000 on Complaint No. R4-2008-0058-M.
10. The assessment is due and payable and must be received by the Regional Board no later than thirty days after the date of adoption of this Order on Complaint by the Regional Board.
11. In the event that the Permittee fails to comply with the requirements of this Order, the Executive Officer or designee is authorized to refer this matter to the Office of Attorney General for enforcement.
12. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

IT IS HEREBY ORDERED that, pursuant to § 13323 of the CWC, the Permittee shall make a cash payment of \$51,000 (payable to the State Water Pollution Cleanup and Abatement Account) no later than thirty days after the date of issuance of this Order.

In the event that the Permittee fails to comply with the requirements of this Order on Complaint No. R4-2008-0058-M, the Executive Officer is authorized to refer this matter to the Office of Attorney General for enforcement.

I, Samuel Unger, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board on September 2, 2010.

Samuel Unger
Samuel Unger
Interim Executive Officer

Sept. 16, 2010
Date

AMENDED EXHIBIT "A"
 City of Redondo Beach
 Seaside Lagoon
 CI 8034

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
05/23/2003	May-03	Daily Maximum	TRC	1,800	8	µg/L	2	22,400	Serious	(h)(1)	\$3,000
05/23/2003	May-03	Monthly Average	TSS	76	50	mg/L	1	52	Serious	(h)(1)	\$3,000
05/28/2003	May-03	Daily Maximum	TRC	840	8	µg/L	2	10,400	Serious	(h)(1)	\$3,000
05/31/2003	May-03	Monthly Average*	TRC	1,320	2	µg/L	2	65,900	Serious	(h)(1)	\$3,000
06/24/2003	Jun-03	Monthly Average	TSS	64	50	mg/L	1	28	Chronic	(i)(1)	\$3,000
07/10/2003	Jul-03	Monthly Average	TSS	76	50	mg/L	1	52	Serious	(h)(1)	\$3,000
07/22/2003	Jul-03	30-Day Geometric Mean*	Enterococcus	99	24	MPN/100 ml	NA	NA	Chronic	(i)(1)	\$3,000
08/20/2003	Aug-03	Monthly Average	TSS	84	50	mg/L	1	68	Serious	(h)(1)	\$3,000
08/15/2005	Aug-05	Daily Maximum	BOD ₅	75	30	mg/L	1	150	Serious	(h)(1)	\$3,000
08/15/2005	Aug-05	Monthly Average	BOD ₅	75	20	mg/L	1	275	Serious	(h)(1)	\$3,000
09/26/2005	Sep-05	Daily Maximum	TSS	80	75	mg/L	1	7	Chronic	(i)(1)	\$0
10/24/2005	Oct-05	30-Day Rolling Average*	Total Coliform	2,014	1,000	MPN/100 ml	NA	NA	Chronic	(i)(1)	\$3,000
06/05/2006	Jun-06	Daily Maximum	TSS	112	75	mg/L	1	49	Serious	(h)(1)	\$3,000
06/05/2006	Jun-06	Monthly Average	TSS	112	50	mg/L	1	124	Serious	(h)(1)	\$3,000
9/24/2007	Sep-07	Daily Maximum	TRC	710	8	µg/L	2	8,775	Serious	(h)(1)	\$3,000
10/6/2007	Oct-07	Daily Maximum	TRC	2,100	8	µg/L	2	26,150	Serious	(h)(1)	\$3,000
10/6/2007	Oct-07	Monthly Average	TRC	2,100	2	µg/L	2	104,900	Serious	(h)(1)	\$3,000
7/28/2008	Jul-08	Daily Maximum	TRC	2,000	8	µg/L	2	24,900	Serious	(h)(1)	\$3,000
										Total	\$51,000

HEARING PANEL REPORT AND PROPOSED ORDER

City of Redondo Beach, Seaside Lagoon
ACL Complaint No. R4-2008-0058-M

This matter was heard on May 17, 2010 in Los Angeles, California before a panel consisting of Regional Board Members Ms. Madelyn Glickfeld (Chair), Ms. Francine Diamond, Ms. Jeanette Lombardo, and Mr. Steve Blois. Mr. Michael W. Webb, City Attorney, appeared on behalf of the City of Redondo Beach (Permittee). Mr. Samuel Unger, Mr. Russ Colby, and Ms. Mayumi Okamoto appeared for the Prosecution Team.

The Panel members make the following:

FINDINGS OF FACT

1. The Permittee owns and operates the Seaside Lagoon (facility) located at 200 Portofino Way, Redondo Beach, California. The facility is a 1.4 million gallon man-made saltwater lagoon which provides recreational services to the public. Water is supplied from a cooling water discharge outfall owned and operated by AES Redondo Beach, LLC Power Plant and chlorinated prior to entering the lagoon. To maintain the water level in the lagoon, the Permittee discharges up to 2.3 million gallons per day (MGD) of de-chlorinated wastewater to King Harbor, a navigable water of the United States.
2. The Permittee's wastewater discharges from the facility contain pollutants and are subject to the requirements and limitations set forth in California Water Code (CWC) § 13376 and Regional Board Order Nos. 99-057 and R4-2005-0016. CWC § 13376 prohibits the discharge of pollutants to surface waters, except as authorized by waste discharge requirements that implement the provisions of the Federal Clean Water Act. Order Nos. 99-057 and R4-2005-0016 set forth the waste discharge requirements and effluent limitations governing the discharges from the facility during the relevant period of time.
3. CWC § 13385(h)(1) 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.
4. 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.
5. The Prosecution Team identified fifty five (55) effluent limit violations of Order No. 99-057 and Order No. R4-2005-0016 in the Permittee's self-monitoring reports during the period May 2003 through July 2008. Out of the fifty five (55) violations, the Prosecution Team determined that fifty (50) were subject to mandatory minimum penalties. These violations include effluent limit exceedances for coliform and enterococcus bacteria, biochemical oxygen demanding substances (BOD₅), total residual chlorine (TRC), and total suspended solids (TSS).

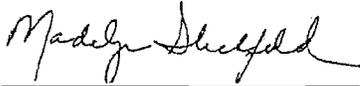
6. On February 16, 2010, the Assistant Executive Officer issued Complaint No. R4-2008-0058-M against the Permittee for a mandatory minimum penalty in the amount of \$150,000 for those violations of waste discharge identified in Exhibit "A".
7. On April 27, 2010, the Prosecution Team sent a letter in response to the Permittee's April 19, 2010 Brief in Opposition to Administrative Civil Liability. The Prosecution Team considered the arguments raised by the Permittee in section III.C. of its Opposition Brief and reviewed the Permittee's "Sampling Time Summary." (City Exhibit 18.) Based on the arguments raised, the Prosecution Team modified Exhibit "A" (attached as Amended Exhibit "A") to twenty-four (24) effluent limit violations, twenty-two (22) of which are subject to mandatory minimum penalties in the amount of \$66,000.
8. On considering the written record and evidence presented at the hearing the Panel finds that there were eighteen (18) effluent limit violations, seventeen (17) of which are subject to mandatory minimum penalties in the amount of \$51,000. The Panel specifically finds that those violations occurred as reported by the Permittee.
9. The Chair of the Regional Board Hearing Panel issued two pre-hearing orders ruling on procedural objections raised by the City (April 29, 2010) and on the equitable defense of laches and due process issues raised by the City (May 13, 2010). The Panel considered the Chair's April 29 and May 13, 2010 Pre-hearing Orders.

CONCLUSIONS OF LAW

1. The discharges of effluent containing coliform and enterococcus bacteria, biochemical oxygen demanding substances (BOD₅), total residual chlorine (TRC), and total suspended solids (TSS) in excess of the effluent limitations of Order Nos. 99-057 and R4-2005-0016 into navigable waters of the United States, as found in Finding of Fact No. 8 and Amended Exhibit "A" constitute seventeen (17) violations of effluent limitations contained in Order Nos. 99-057 and R4-2005-0016.
2. There are no statutes of limitations that apply to this administrative proceeding. 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 proceedings. 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.
3. Consistent with direction from the State Water Resources Control Board in Order WQ 2007-0010 (Escondido Creek Conservancy), the equitable doctrine of laches does not apply to mandatory minimum penalties.
4. \$51,000 is the mandatory minimum penalty amount that must be assessed against the Permittee under CWC § 13385 for the violations identified in Amended Exhibit "A".
5. The maximum amount of administrative civil liability assessable for the violations alleged in Complaint No. R4-2008-0058-M pursuant to CWC § 13385 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.

RECOMMENDED MANDATORY MINIMUM PENALTY

The amount of \$51,000 should be imposed on the Permittee as a mandatory minimum penalty for the violations found herein to have been committed by the Permittee. A proposed Order on Complaint No. R4-2008-0058-M is attached.



July 27, 2010

Madelyn Glickfeld
Chair

Date

Attachments:

Amended Exhibit "A"
Proposed Order on Complaint No. R4-2008-0058-M

AMENDED EXHIBIT "A"
 City of Redondo Beach
 Seaside Lagoon
 CI 8034

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
05/23/2003	May-03	Daily Maximum	TRC	1,800	8	µg/L	2	22,400	Serious	(b)(1)	\$3,000
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05/31/2003	May-03	Monthly Average*	TRC	1,320	2	µg/L	2	65,900	Serious	(b)(1)	\$3,000
06/24/2003	Jun-03	Monthly Average	TSS	64	50	mg/L	1	28	Chronic	(j)(1)	\$3,000
07/10/2003	Jul-03	Monthly Average	TSS	76	50	mg/L	1	52	Serious	(b)(1)	\$3,000
07/22/2003	Jul-03	30-Day Geometric Mean*	Enterococcus	99	24	MPN/100 ml	NA	NA	Chronic	(i)(1)	\$3,000
08/20/2003	Aug-03	Monthly Average	TSS	84	50	mg/L	1	68	Serious	(b)(1)	\$3,000
08/15/2005	Aug-05	Daily Maximum	BOD ₅	75	30	mg/L	1	150	Serious	(b)(1)	\$3,000
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09/26/2005	Sep-05	Daily Maximum	TSS	80	75	mg/L	1	7	Chronic	(j)(1)	\$0
10/24/2005	Oct-05	30-Day Rolling Average*	Total Coliform	2,014	1,000	MPN/100 ml	NA	NA	Chronic	(j)(1)	\$3,000
06/05/2006	Jun-06	Daily Maximum	TSS	112	75	mg/L	1	49	Serious	(b)(1)	\$3,000
06/05/2006	Jun-06	Monthly Average	TSS	112	50	mg/L	1	124	Serious	(b)(1)	\$3,000
9/24/2007	Sep-07	Daily Maximum	TRC	710	8	µg/L	2	8,775	Serious	(b)(1)	\$3,000
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7/28/2008	Jul-08	Daily Maximum	TRC	2,000	8	µg/L	2	24,900	Serious	(b)(1)	\$3,000
										Total	\$51,000

EXHIBIT “2”

Scott Franklin

From: Frances McChesney [FMcChesney@waterboards.ca.gov]
Sent: Wednesday, September 22, 2010 9:00 AM
To: Scott Franklin
Subject: RE: Sept. 2 Board Meeting - Hearing Room Change
Attachments: Michael Webb.PDF

Hi Mr. Franklin, The order went out by mail last week. Here is an electronic copy. Please let me know if you need anything else.

Frances

>>> Scott Franklin <SFranklin@michellawyers.com> 9/21/2010 5:39 PM >>>
Ms. McChesney:

The City has not received any final order regarding the decision to impose ACL made by the regional board on September 2, 2010, regarding the Seaside Lagoon facility. If an order has been issued, I would appreciate it if you would forward it to me at once. If it has not been issued, I would appreciate knowing when issuance is going to occur.

Thank you,

Scott Franklin
Attorney

Direct: (562) 216-4474
Main: (562) 216-4444
Fax: (562) 216-4445
Email: SFranklin@michellawyers.com
Web: <http://www.michellawyers.com>

180 E. Ocean Blvd.
Suite 200
Long Beach, CA 90802

This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

-----Original Message-----

From: Frances McChesney [mailto:FMcChesney@waterboards.ca.gov]
Sent: Monday, August 30, 2010 2:42 PM
To: Scott Franklin; Michael.Webb@redondo.org; Jennifer Fordyce; Russ Colby
Subject: Sept. 2 Board Meeting - Hearing Room Change

The meeting will be held at the Metropolitan Water District at 700 North Alameda Street in Los Angeles.

The agenda says the meeting will be held on the Second Floor Room 2-145; the meeting will now be held in the Board Room on the first floor.

Frances L. McChesney
Staff Counsel IV
Office of the Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814-2828
Phone: (916)341-5174
Facsimile: (916)341-5199

Email Address: fmcchesney@waterboards.ca.gov To comply with the Governor's order calling for furloughs, this Office will be closed the second, third, and fourth Fridays each month. This communication is privileged and confidential, and is intended only for the individual or entity named above. If you are not the intended recipient, please do not read, copy, use, or disclose this communication to others; also, please notify the sender by replying to this e-mail and then delete the email and any copies of it.

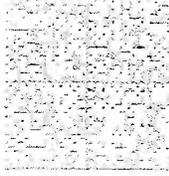
EXHIBIT “3”



STATE OF CALIFORNIA
 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
 LOS ANGELES REGION
 320 WEST 4th ST., SUITE 200
 LOS ANGELES, CALIFORNIA 90013



7005 1820 0001 2684 2369



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 90013
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SEP 27 2010

Mr. Michael Webb
 City of Redondo Beach
 415 Diamond Street
 Redondo Beach, CA 90277



EXHIBIT “4”



EXHIBIT “5”



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 Environmental Leadership Award from Keep California Beautiful

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.swrcb.ca.gov/rwqcb4>

Arnold Schwarzenegger
Governor

March 26, 2010

Mr. Michael W. Webb, City Attorney
City of Redondo Beach
415 Diamond Street
Redondo Beach, CA 90277-0639

VIA FEDEX
TRACKING NO. 8704 0546 7984

COMPLAINT NO. R4-2008-0058-M FOR MANDATORY MINIMUM PENALTY AGAINST THE CITY OF REDONDO BEACH, SEASIDE LAGOON, 200 PORTOFINO WAY, REDONDO BEACH, CA. (ORDER NOS. 99-057 AND R4-2005-0016, NPDES PERMIT NO. CA0064297, CI NO. 8034)

Dear Mr. Webb:

Unless waived, this matter is scheduled to be heard before a Hearing Panel of the Regional Water Quality Control Board (Regional Board) pursuant to California Water Code (CWC) §§ 13228.14 and 13323. Enclosed is a Preliminary Hearing Panel package and a copy of the PowerPoint slides for our next Hearing Panel, which starts at 10:00 a.m. on May 17, 2010 at the Public Utilities Commission Hearing Room, 320 W. 4th Street, 5th Floor, Los Angeles, California 90013. The Hearing Panel will hear the staff presentation, any evidence and argument you wish to present, and any comments offered by interested parties. All documentation that you wish the Hearing Panel to consider must be submitted to the attention of Russ Colby, Case Manager of the Prosecution Team, no later than 5:00pm on April 19, 2010.

The Hearing Panel will consider all evidence and comments, and will provide a proposed final order to the Regional Board. You will be notified of the date of the Regional Board meeting. At the Regional Board meeting, the Regional Board may adopt, modify, or reject the Hearing Panel's recommendation. The Regional Board will not ordinarily accept new evidence; thus, you should prepare to present all evidence and argument to the Hearing Panel.

On the day of the Hearing Panel, Regional Board staff may not be available to receive telephone messages; however, important calls may be made to the Regional Board's general number at (213) 576-6600 and the appropriate staff will be contacted.

If you have any questions regarding the matter, please contact Hugh Marley at (213) 620-6375 or Russ Colby at (213) 620-6373.

Sincerely,

Paula Rasmussen
Section Chief, Compliance and Enforcement

Enclosure

cc: Ms. Mayumi Okamoto, Office of Enforcement, SWRCB (w/o enclosure)

California Environmental Protection Agency



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

Mandatory Minimum Penalty for the City of Redondo Beach

Item X
24th Panel Hearing
May 17, 2010

Background

- Order No. 99-057
 - Adopted June 30, 1999
 - Effective July 6, 1999
 - 4.8 million gallons per day of de-chlorinated wastewater
 - Discharges to King Harbor, a navigable water of the U.S.
- Order No. R4-2005-0016
 - Adopted/Effective on March 3, 2005
 - Rescinded Order No. 99-057, except for enforcement purposes

Background (cont.)

- Time Schedule Order No. R4-2007-0024
 - Adopted April 26, 2007
 - Effective May 1, 2007 to January 31, 2008
 - Prescribed interim limits for
 - Total Suspended Solids (TSS), and
 - Biochemical Oxygen Demanding Substances (BOD₅)

3

Background (cont.)

- Time Schedule Order No. R4-2008-0002
 - Adopted January 31, 2008
 - Effective February 1, 2008 to February 28, 2010
 - Prescribed interim limits for
 - Total Suspended Solids (TSS)

4

Background (cont.)

- Order No. 99-057 (Part 2 page 5) includes the following effluent limitations for BOD₅, TRC, TSS, and enterococcus :

Constituent	Unit of Measure	Discharge Limitations	
		Daily Maximum	Monthly Average
BOD ₅	mg/L	30	20
TRC	µg/L	8	2
TSS	mg/L	150	50
Enterococcus	MPN/100 mL	(a) 30-day geometric mean ≤24 MPN/100 mL (b) 6-month geometric mean ≤12 MPN/100 mL	

µg/L = micrograms/liter, mg/L = milligrams/liter, MPN = most probable number

5

Background (cont.)

- Order No. R4-2005-0016 includes the following effluent limitations for BOD₅, O&G, TRC, TSS, pH, and total coliform :

Constituent	Unit of Measure	Discharge Limitations	
		Daily Maximum	Monthly Average
BOD ₅	mg/L	30	20
O&G	mg/L	15	10
TRC	mg/L	8	2
TSS	mg/L	150	50
pH	S.U.	(a) Instantaneous Minimum = 6.5 (b) Instantaneous Maximum = 8.5	
Total Coliform	MPN/100 mL	(a) 30-day geometric mean ≤24 MPN/100 mL (b) 6-month geometric mean ≤12 MPN/100 mL	

µg/L = micrograms/liter, mg/L = milligrams/liter, MPN = most probable number, S.U. = Standard Units

6

Violations

- MMP Complaint No. R4-2008-0058-M issued February 16, 2010
 - Permittee reported 55 effluent limit violations from June 2002 to July 2008
 - Violations of BOD₅, O&G, TRC, TSS, pH, enterococcus, and total coliform
 - Out of 55 effluent limit violations, 50 are subject to mandatory minimum penalties

7

Mandatory Minimum Penalties

- Mandatory Minimum Penalty of \$150,000
 - 34 serious violations under CWC § 13385(h); exceeded effluent limitations by 40% and 20% for Group I and II pollutants
 - 16 chronic violations under CWC § 13385(i)

8

Potential Maximum Civil Liability

- Effluent limit violations
 - 430 days x \$10,000 = \$4,300,000
 - 4.6 MGD discharged (minus 1,000 gallons) x \$10/gal = \$21.2 B
- Potential Maximum Penalty = **\$21.2 B**

9

Conclusions

- Permittee violated CWC section 13376 and Order Nos. 99-057 and R4-2005-0016
- \$150,000 mandatory minimum penalty must be assessed against the Permittee

10

Recommendation

- Make findings of fact and conclusions of law affirming Complaint No. R4-2008-0058-M for a mandatory minimum penalty of \$150,000

11

EXHIBIT “6”

Panel Hearing Transcript at
Page 12 (Lines 20-25) & Page 13 (Lines 1-25)

20 MR. WEBB: Mike Webb, City Attorney for the City of
21 Redondo Beach. What I'd like to propose is, one, we
22 never received the signed order of the April 29th -- the
23 signed copy of the April 29th order. We received an
24 e-mail saying that that was the decision and we would
25 receive a signed copy as soon as it was available. We

13

1 did receive the May 13th order regarding laches.

2 What I'd like to propose is -- I understand the
3 Chair's ruling regarding no additional evidence, although
4 we obviously would prefer to be able to present that on
5 laches, but what I'd propose is if we could use our hour,
6 instead of five minutes, for the objections, I think
7 ultimately that's going to be the basis of the ultimate
8 court action, whether it be a writ or whether it be a
9 collection action by the Water Quality Control Board.

10 I'd like to ask for 15 minutes to argue our
11 objections, understanding that the Chair is not going to
12 allow further evidence, and then just have that deducted
13 from our total hour. So that would leave 45 minutes for
14 the remaining -- for the remainder of our presenting
15 evidence and cross-examination.

16 MS. GLICKFELD: This is a dilemma because we did --
17 we already took a great deal of written evidence from you
18 on that matter. We certainly are here today to hear the

19 evidence on the water quality issues and the water
20 quality violations so that we can best decide on the --
21 on how the minimum penalty --

22 MS. MC CHESNEY: I would think it's okay if they
23 would like -- they would still get the total of 60
24 minutes.

25 MS. GLICKFELD: Fine.

Panel Hearing Transcript at
Page 21 (Lines 13-25) & Page 22 (Lines 1-14)

13 MS. MC CHESNEY: Mr. Webb, could I just interrupt for
14 a second?

15 MR. WEBB: Sure.

16 MS. MC CHESNEY: Are you -- you seem to be repeating
17 your arguments in the written materials. Are you
18 planning on making an objection --

19 MR. WEBB: I will make an objection.

20 MS. MC CHESNEY: -- soon?

21 MR. WEBB: I will go on. But, again, if this
22 isn't -- if the Panel is going to make the decision, I
23 was trying to give the background and then address the --
24 specifically with the Escondido case.

25 MS. GLICKFELD: As Chair, I know I spent extensive

22

1 time with both parties on this issue to be able to bring
2 before this Board something that we could decide on this
3 morning and they've received all the briefs. My
4 colleagues do their homework. They read their homework.
5 So I think it would be helpful if you would focus on your
6 objections to the ruling.

7 MR. WEBB: Okay. Then let me go to -- first and
8 foremost, it reversed the burden of proof.

9 If you could go on to the fact, again, do words
10 mean anything, the staff specifically in the September
11 2009 -- and I won't repeat it since you've done your

12 homework -- specifically recognized Fountain Valley as

13 good law and specifically recognized that it changed the

14 burden of proof.

Panel Hearing Transcript at
Page 25 (Lines 15-25) & Page 26 (1-10)

15 MR. BLOIS: Madam Chair, I object to your objections.
16 I think that he should be able to use his time however he
17 did, and I would say that he's got more than four
18 minutes. He's been interrupted five times so far.

19 MS. LOMBARDO: I agree.

20 MS. GLICKFELD: I'd like to adjourn this meeting to
21 a -- to a Board discussion, please, if we could.

22 I'm going to put you on hold and I'm going to
23 take a -- the Panel and I are going to have some
24 discussion on this procedure. Thank you.

25 (Discussion off the record)

26

1 MS. GLICKFELD: Are all the parties from both the
2 City and the Prosecution both up here?

3 Mr. Webb, you can go back up to the podium and
4 you can finish your presentation.

5 So you were on that slide and on Escondido Creek
6 Conservancy. Please proceed.

7 MR. WEBB: Thank you.

8 Again, the legal principle is you can't -- a
9 case or a decision is only as good as the facts that it
10 addressed. It can't be read beyond that, even if it's a
11 Supreme Court case.

Panel Hearing Transcript at
Page 35 (Lines 8-25) & Page 36 (Lines 1-12)

8 MR. COLBY: Good morning, Madam Chair and members of
9 the Panel. My name is Russ Colby. I'm an environmental
10 scientist with the Regional Board and Enforcement Unit.

11 I'm presenting for the Panel's consideration a
12 mandatory minimum penalty for the City of Redondo at
13 Seaside Lagoon for violating the waste discharge
14 requirements.

15 The purpose of this presentation is to brief you
16 on the basis of the MMP, provide the City with an
17 opportunity to contest the evidence on which the MMP is
18 based, and to present a recommendation to the Board to be
19 considered.

20 For the record, I would like to move into the
21 administrative record Exhibits 1 through 26 and submit
22 into evidence Exhibits 6 through 26 of your package.

23 The City operates the Seaside Lagoon located at
24 200 Portofino Way in Redondo Beach, California. The
25 facility contains a 1.4-million-gallon man-made saltwater

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1 lagoon which provides recreational services to the
2 public.

3 Water supply from Redondo generating station's
4 cool water discharge outfall is chlorinated prior to
5 entering the lagoon. The Redondo generating station's
6 discharge is regulated by this Regional Board under a

- 7 separate NPDES permit issued to the lagoon operator, A.S.
- 8 Redondo Beach, LLC.
- 9 The City discharges up to 2.3 million gallons
- 10 per day of dechlorinated wastewater generated from the
- 11 treatment of lagoon water at the facility into King
- 12 Harbor, a navigable water of the United States.

Panel Hearing Transcript at
Page 40 (Lines 11-25) & Page 41 (Lines 1-2)

11 MR. COLBY: California Water Code Section 13385(h)
12 requires the Regional Board to assess a mandatory minimum
13 penalty of \$3,000 for each serious violation. A serious
14 violation is defined as any waste discharge that violates
15 the effluent limitations contained in the applicable
16 waste discharge requirements for a Group II pollutant by
17 20 percent or more, or for a Group 1 pollutant by 40
18 percent or more.

19 California Water Code 13385(i) also requires the
20 Regional Board to assess a mandatory minimum penalty of
21 \$3,000 for each effluent limit violation in any period of
22 180 days, beginning with the fourth violation.

23 The maximum civil liability allowed by the Water
24 Code for the violation cited is \$10,000 per day of
25 violation, plus \$20 per gallon discharged but not cleaned

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1 up exceeding 1,000 gallons. Thus, the total potential
2 maximum civil liability is over 7 billion dollars.

Panel Hearing Transcript at
Page 43 (Lines 4-25), Page 44 (Lines 1-25) &
Page 45 (Lines 1-14)

4 BY MR. WEBB:

5 Q Now, you indicated that our potential maximum

6 penalty on these cases stretching back to 2003 is

7 7 billion dollars. How did you calculate that?

8 A That's based on the flow that you reported for

9 each day that was in violation.

10 Q And specifically, I'm asking you to walk me

11 through the math, because originally you reported that we

12 were -- based on the previous charges, that we were

13 facing a potential of 21.2 billion dollars, and that was

14 in error; correct?

15 A With the violations that were cited at the time,

16 that was correct.

17 Q Could you walk me through that? Your PowerPoint

18 referred to, for example, 4.6 million gallons per day.

19 Seaside Lagoon only puts out 2.3 million gallons per day;

20 correct?

21 A That's correct.

22 Q So that would be in error.

23 A Based on your submittals and the gallons per

24 minute that you said that were discharged, the assumption

25 at the time was correct.

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1 Q Okay. How is that correct? In your --

2 A In your submittals, you stated a gallon per

3 minute that you discharged.

4 Q In our submittals, it also has throughout that
5 in all the -- in all of the orders, it talks about the
6 fact that it only operates from 6:00 to 6:00 and it only
7 operates from Memorial Day to Labor Day; and you, in
8 fact, based it on 4.6 million gallons per day instead of
9 2.3 million gallons per day; correct?

10 A That's correct.

11 Q That's an error; correct?

12 A At the time, with the information we had, that
13 was a correct assumption.

14 MS. OKAMOTO: I'm just going to assert an objection.
15 I'm not sure how this line of questioning is relevant to
16 this proceeding.

17 The calculation that Mr. Webb is discussing
18 would be applicable if the Prosecution team were seeking
19 discretionary penalties under 13385, Subdivision (c).
20 Here, we're only seeking the mandatory minimum penalties,
21 so I'm not entirely sure that this line of questioning of
22 Mr. Colby is relevant.

23 MS. GLICKFELD: Was anything -- Ms. McChesney, was
24 there anything in the presentation by the Prosecution
25 witness to indicate -- to open up the issue of maximum

1 penalties?

2 MS. MC CHESNEY: The slides mentioned or the
3 information mentioned the flow, but I agree with
4 Ms. Okamoto that the penalties being assessed are not
5 based on the flow. So I'm unclear how it's relevant
6 also.

7 MR. WEBB: And I'll move on. But just for the
8 record, two things: He specifically mentioned the figure
9 of 7 billion dollars, so it was specifically brought up
10 by him in the potential.

11 MS. GLICKFELD: So what is before us today are the
12 minimum penalties, not the maximum penalties. So I'd
13 appreciate -- for the benefit of the Panel, I'd
14 appreciate it if you'd focus on that.

Panel Hearing Transcript at
Page 106 (Lines 7-25) & Page 107 (Lines 1-
14)

7 MS. GLICKFELD: Okay. Thank you very much.

8 So I'd just like to make one statement before we
9 go on to our next case, which is that I think the whole
10 Board recognizes that this is a special kind of facility.
11 I would suggest that this is a high-priority beneficial
12 use under our own Basin Plan for recreation, but this is
13 like many other places in Los Angeles County, and
14 Ms. Lombardo probably could identify places in Ventura
15 County as well.

16 We have the Malibu Lagoon, we have Mother's
17 Beach, we have Juan Cabrillo Beach, which are all places
18 that are sheltered like this is where people bring their
19 children and where children are attracted to warmer
20 water; and each and every one of them are sources -- are
21 pollutant problems that we can't seem to solve.

22 In the sense that these are high-priority
23 beneficial uses, children are specifically more
24 susceptible to disease from bacteria, to exposure to
25 contaminated sediments, to other kinds of problems that

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1 are existing here, and we are struggling in every single
2 one of these places to do very costly improvements to
3 remove these contaminants.

4 So whatever happens here today -- and what
5 happens here today never had anything to do with the

6 maximum penalty. I don't understand how the maximum
7 penalties in the billions came out, but we're talking
8 about thousands of dollars. And as far as I know from
9 the staff reports I've seen, I haven't seen anything more
10 than thousands of dollars being involved here, but I
11 would remark that this is not an easy -- this is not
12 going to be an easy problem to solve and that we're going
13 to have to work very carefully together in the future to
14 do so.

Panel Hearing Transcript at
Page 66 (Lines 17-25) , Page 67 (Lines 1-25)
& Page 68 (Lines 1-17)

17 MS. FORDYCE: Yes. Jennifer Fordyce. I'm assisting
18 the Prosecution team.

19 Mr. Colby has reviewed the self-monitoring
20 reports. Based on the City's testimony regarding the
21 two-hour time -- assuming that the two-hour time frame
22 between the time the sample is taken and the time the
23 report's samples come back, assuming that's true, he's
24 recalculated some of the monitoring data and the
25 Prosecution team will stipulate to drop six violations on

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1 the amended Exhibit A, which is on 4-24.

2 MS. GLICKFELD: Could you -- let us get to that.

3 MS. FORDYCE: Sure. So it's 4-24.

4 MS. GLICKFELD: 4-24. Proceed, please, Ms. Fordyce.

5 MS. FORDYCE: So within 4-24, the following
6 violations: 7/24/2006, 7/31/2006 -- so July 2006, those
7 two -- and then there's four on October 2nd, 2006.

8 And let me just correct something, because Russ
9 just whispered in my ear. The ones in October 2006,
10 that's based on the testimony from the City, assuming
11 that there's a two-hour time frame between the time the
12 sample is taken and the time the results are coming back.

13 The July 24, 2006 and the July 31st, 2006, that
14 was based on the high-tide and low-tide issue. That was

15 just something that was not pointed out by the City
16 people.

17 MS. GLICKFELD: So to clarify, Ms. Fordyce, on the
18 two items in July, we have no exact time when the samples
19 were taken and the Prosecution is willing to agree to the
20 estimates made by the City on that issue?

21 MS. FORDYCE: No. Let me say it one more time.

22 The July 2006, one of them was a zero penalty
23 already. That's a chronic. The monthly average
24 should have also been dropped.

25 MS. GLICKFELD: Okay.

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1 MS. FORDYCE: The October 2006 were the ones where
2 there was no time on the self-monitoring part of the time
3 that the sampling was taken.

4 Is this cutting in and out?

5 MS. GLICKFELD: Yes. That's why she's having
6 problems.

7 MS. FORDYCE: Let me try that. Is that better?

8 MS. GLICKFELD: No.

9 MS. FORDYCE: Is that better?

10 MS. GLICKFELD: Yes.

11 MS. FORDYCE: I won't move.

12 Okay. So one more time, so the July 2006, the
13 second violation of July 31st, 2006 should be zero, based

14 on the City's previous argument.

15 MS. GLICKFELD: I think we're going to need to get
16 somebody to fix that, 'cause obviously -- why don't you
17 take that one (indicating).

18 MS. FORDYCE: I think we did have problems with this
19 one last time. Is that better?

20 MS. GLICKFELD: Yes.

21 MS. FORDYCE: Okay. So the July 2006, the monthly
22 average for TSS on July 31st should be a
23 zero-for-zero-dollar penalty, based on the City's
24 previous argument that the sample was unrepresentative
25 because it was a high-tide intrusion.

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1 The four October 2006 samples is based on the
2 City's argument today that was raised for the first time
3 today that there was no time on the self-monitoring
4 reports and, therefore, we couldn't tell when it was high
5 tide and low tide. But assuming what they're saying is
6 correct, there's a two-hour difference between the time
7 the sample is taken and the time that the report -- the
8 results come back to the lab, then those samples would
9 also be unrepresentative because they would also be high
10 tide.

11 MS. GLICKFELD: So what is the penalty that the
12 Prosecution is now proposing?

13 MS. FORDYCE: So if you drop those five penalties,
14 the six violations, five of which are MMPs, the total
15 penalty would come down to \$51,000.

16 MS. GLICKFELD: Is that your total statement?

17 MS. FORDYCE: Yes.

EXHIBIT “7”

2

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 99-057
NPDES NO. CA0064297

WASTE DISCHARGE REQUIREMENTS
FOR
CITY OF REDONDO BEACH
(Seaside Lagoon)

The California Regional Water Quality Control Board, Los Angeles Region, (Regional Board) finds:

1. The City of Redondo Beach (City or Discharger) filed a report of waste discharge and has applied for waste discharge requirements and a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of wastes to surface waters.
2. The City has been operating a man-made lagoon, known as the Seaside Lagoon, at 200 Portifino Way in Redondo Beach. The lagoon was constructed in 1962 and has since been open to the public for swimming from Memorial Day to Labor Day each year from 6:00 a.m. to 6:00 p.m. At other times, the City may allow the use of the lagoon and nearby facilities for social functions. The surface area of the water in the lagoon is approximately 1.2 acres with a maximum depth of 7-feet. The volume of water in the lagoon is approximately 1.4 million gallons.
3. Water to the lagoon is supplied from the adjacent AES Redondo Beach, L.L.C., Power Plant (formerly the Southern California Edison Co., Redondo Generating Station) cooling water discharge outfall line. The AES Power Plant is located at 1100 Harbor Drive, Redondo Beach. When operated at design capacity, the AES Power Plant discharges up to 1,146 million gallons per day of once-through cooling water combined with a small volume of metal cleaning and low-volume wastes into the Pacific Ocean at Santa Monica Bay. This discharge is regulated under separate waste discharge requirements contained in Board Order No. 94-133.
4. The City is using only a small portion of the cooling water, which would otherwise be discharged directly to the ocean, from the power plant for recreational beneficial use. The warm temperature of the power plant's discharged cooling water is comforting to the swimmers. On the other hand, by passing the cooling water through the lagoon, the water temperature of the cooling water is lowered close to the ocean ambient temperature that is more favorable to the aquatic life in the receiving water.
5. Cooling water from the AES Power Plant is supplied to the lagoon through a supply line tapped into the power plant's outfall line. The supply is at a rate of

3,200 gallons per minute (gpm) whenever the lagoon is in use, equivalent to 2.3 million gallons per day from 6:00 a.m. to 6:00 p.m. The supply line is equipped with a valve controlled by a timer.

Before reaching the lagoon, chlorine in the form of sodium hypochlorite solution is injected into the supply line to meet the Los Angeles County Department of Health Services requirements. Studies conducted by the City has demonstrated that continuous chlorination at 1 mg/L residual chlorine will kill coliform, especially fecal, which comes from seagulls' dropping and swimmers defecating in the lagoon water. The hypochlorite solution is generated onsite by passing a sidestream of the cooling water from the supply line through an electrolytic chlorine/hypochlorite generator, located at the southwest portion of the lagoon. The chlorinated water then enters the lagoon along the face of the water slides through a series of nozzles and flows across the lagoon.

6. To maintain the water level in the lagoon, the City discharges also about 3,200 gpm of water to King Harbor when the lagoon is in use. The water is discharged through three overflow structures along the northwest edge of the lagoon. The water then flows by gravity to a manhole, then to a conduit that empties into King Harbor at the shoreline (Latitude: 33° 50' 38"; Longitude: 118° 23' 47") embankment. The discharge point is about 50 feet southwest for the water slide in the Seaside Lagoon. The discharge flow velocity to the harbor is about 0.7 foot per second. During periods when the lagoon is not open for public use, the lagoon water will be flushed periodically. Figure 1 is a line drawing of the influent and effluent water lines of the lagoon. Figure 2 is a vicinity map showing the Seaside Lagoon and the discharge point.
7. Test results, submitted by the City, have indicated that the residual chlorine concentration at the overflow structures is practically non-detectable. However, to ensure meeting the residual chlorine requirements prescribed in this Order, the lagoon is equipped with a dechlorination system, consisting of a chemical tank and a metering pump. The dechlorination system is integrated with the hypochlorite generation system. If necessary, the dechlorination chemical solution (ascorbic acid or sulfur dioxide or sodium thiosulfate) would be injected into the lagoon discharge conduit (at the manhole) about 60 feet before the discharge point at King Harbor.
8. The current chlorination and dechlorination system was installed in 1998. In the past, sodium hypochlorite was added directly to the lagoon water. In 1994, a temporary sodium hypochlorite system was installed whereby the hypochlorite solution was pumped into the supply line.
9. On June 13, 1994, this Regional Board adopted a revised Basin plan, *Water Quality Control Plan, Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties*. The plan incorporates by reference the State Water Resources Control Board's Water Quality Control Plans and policies on ocean water [*Water Quality Control Plan for Ocean Waters in California*, March 22, 1990], temperature [*Water Quality Control Plan for*

Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California, amended September 18, 1975] and antidegradation [Statement of Policy with Respect to Maintaining High Quality Waters in California, State Board Resolution No. 68-16, October 28, 1968].

10. Redondo Beach (Hydrologic Unit No. 045.12) that includes the King Harbor is part of the South Bay subwatershed in the Santa Monica Bay watershed. The Basin Plan contains water quality objectives for and lists the following beneficial uses for Redondo Beach:

Redondo Beach (Hydrologic Unit 405.12) – Navigation, water contact recreation, non-contact water recreation, commercial and sport fishing, marine habitat wildlife habitat, migration of aquatic organism, spawning, reproduction, and/or early development's shellfish harvesting.
11. The *Santa Monica Bay Restoration Plan*, 1994, identified the pollutants of concern for the South Bay subwatershed to include heavy metals (cadmium, chromium, copper, lead, nickel, silver, zinc), debris, pathogens, oil and grease, and polycyclic aromatic hydrocarbons (PAHs).
12. The 1996 State Water Resources Control Board's (SWRCB) *Water Quality Assessment Report [California 305(b) Report on Water Quality*, SWRCB, August 1996] identified the water quality condition of waterbodies in the Los Angeles Region. The assessment identified that Redondo Beach is either impaired or threatened to be impaired with regards to viruses, trash and debris, lead, copper, and silver.
13. On July 23, 1997, the SWRCB adopted a revised Water Quality Control Plan for the Ocean Waters of California (Ocean Plan). The revised plan contains water quality objectives for the coastal waters of California. This Order includes effluent and receiving water limitations, prohibitions, and provisions which implements the objectives of the Plan.
14. Effluent limitations and toxic and effluent standards established pursuant to §301, 302, 304, 306, and 307 of the Clean Water Act, as amended, are applicable to discharges under this Order.
15. For toxic constituents that are likely not to be present or in the discharge or determined that there is no reasonable potential of causing or contributing to excursions in water quality standards, no numerical limits are prescribed. Instead a narrative limit to comply with all water quality requirements is provided in lieu of such numerical limits. The Discharger is required to monitor these constituents in appropriate frequencies.
16. This Regional Board has implemented a Watershed Management Approach to address water quality protection in the Los Angeles region. The objective is to provide a comprehensive and integrated strategy resulting in water resource protection, enhancement, and restoration while balancing economic and

environmental impacts within a hydrologically defined drainage basin or watershed. The Management Approach emphasizes cooperative relationships between regulatory agencies, the regulated community, environmental groups, and other stakeholders in the watershed to achieve the greatest environmental improvements with the resources available. This Order and the accompanying *Monitoring and Reporting Program* fosters the implementation of this approach. The Executive Officer may require the Discharger to participate in a regional monitoring program for the watershed where the discharge is flowing.

17. The requirements contained in this Order were established by considering, and are consistent with, all the water quality control policies, plans, and regulations mentioned above and as they are met, will protect and maintain the beneficial uses of the receiving waters.
18. The issuance of waste discharge requirements and NPDES permit is exempt from the provisions of Chapter 3 (commencing with §21100, et. seq.), Division 13, Public Resources Code, pursuant to Water Code §13389.

The Regional Board has notified interested agencies, parties and persons of its intent to issue waste discharge requirements for this discharge and has provided them with an opportunity to submit their written views and recommendations.

The Board, in a public hearing, heard and considered all comments pertaining to the discharge to be regulated under this Order and to the tentative requirements.

This Order shall serve as an NPDES permit pursuant to §402 of the Clean Water Act, as amended, and shall take effect at the end of ten days from the date of its adoption provided the Regional Administrator of the United States Environmental Protection Agency, Region 9, has no objections.

IT IS HEREBY ORDERED that the City of Redondo Beach, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, and the provisions of the Federal Clean Water Act and regulations and guidelines adopted thereunder, shall comply with the following:

1. DISCHARGE PROHIBITIONS

- 1.1 The discharge of wastes other than the lagoon water, as proposed, is prohibited.
- 1.2 The purposeful or knowing discharge of polychlorinated biphenyls (PCBs) to waters of the State is prohibited.
- 1.3 The discharge of any radiological, chemical, or biological warfare agent or high level radiological wastes is prohibited.

2. EFFLUENT LIMITATIONS - The discharge of an effluent with constituents/properties in excess of the following limits is prohibited:

- 2.1 The pH of the discharge shall at all times be within the range of 6.0 and 9.0.
- 2.2 The temperature of the discharge shall not exceed 100°F.
- 2.3 The fecal coliform density for any 30-day period, shall not exceed a geometric mean of 200 per 100 ml nor shall more than 10 percent of the total samples during any 60-day period exceed 400 per 100 ml.
- 2.4 The density of total coliform organisms shall be less than 1000 per 100 ml (10 per ml): provided that not more than 20 percent of the samples, in any 30-day period, may exceed 1,000 per 100 ml (10 per ml), and provided further that no single sample when verified by a repeat sample taken within 48 hours shall exceed 10,000 per 100 ml (100 per ml).
- 2.5 The geometric mean enterococcus density of the discharge shall not exceed 24 organisms per 100 ml for a 30-day period or 12 organisms per 100 ml for a six month period.

2.6 Conventional and Nonconventional Pollutants

<u>Constituents</u>	<u>Units</u>	<u>Discharge Limitations</u>	
		<u>Monthly Average</u>	<u>Daily Maximum</u>
Total suspended solids	mg/L	50	150
Turbidity	NTU	50	150
BOD ₅ 20°C	mg/L	20	30
Oil and grease	mg/L	10	15
Total residual chlorine	ug/L	2	8

3. RECEIVING WATER LIMITATIONS

- 3.1 The discharge shall not cause the following to be present in receiving waters:
 - 3.1.1 Toxic pollutants at concentrations that will bioaccumulate in aquatic life to levels that are harmful to aquatic life or human health;

- 3.1.2 Biostimulatory substances at concentrations that promote aquatic growth to the extent that such growth causes nuisance or adversely affects beneficial uses;
 - 3.1.3 Chemical substances in amounts that adversely affect any designated beneficial use;
 - 3.1.4 Visible floating materials, including solids, liquids, foams, and scum;
 - 3.1.5 Oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the receiving water or on objects in the water;
 - 3.1.6 Suspended or settleable materials in concentrations that cause nuisance or adversely affect beneficial uses;
 - 3.1.7 Taste or odor-producing substances in concentrations that alter the natural tastes or odor and/or color of fish, shellfish, or other edible aquatic resources, cause nuisance, or adversely affect beneficial uses; and,
 - 3.1.8 Substances that result in increases of BOD₅20°C in receiving waters that adversely affect beneficial uses.
- 3.2. The discharge shall not cause the following to occur in the receiving waters:
- 3.2.1 The dissolved oxygen to be depressed below 5 mg/L;
 - 3.2.2 The pH to be depressed below 6.5 or raised above 8.5, and the ambient pH levels to be changed more than 0.5 units from natural conditions for inland waters;
 - 3.2.3 The temperature at any time or place and within any given 24-hour period to be altered by more than 5°F above natural temperature; but at no time be raised above 80°F;
 - 3.2.4 The turbidity to increase to the extent that such an increase causes nuisance or adversely affects beneficial uses. Such increase shall not exceed 20% and 10% when the natural turbidity is 50 NTU or less and over 50 NTU, respectively;
 - 3.2.5 Residual chlorine at concentrations that persist in receiving waters at any concentration that impairs beneficial uses; and,
 - 3.2.6 Any individual pesticide or combination of pesticides in concentrations that adversely affect beneficial uses of the receiving

waters nor increase pesticide concentration in bottom sediments or aquatic life.

- 3.3. The discharge shall not alter the color, create a visual contrast with the natural appearance nor cause aesthetically undesirable discoloration of the receiving waters.
- 3.4. The discharge shall not degrade surface water communities including vertebrate, invertebrate, and plant species.
- 3.5. The discharge shall not damage, discolor, nor cause formation of sludge deposits on flood control structures or facilities.
- 3.6. The discharge shall not cause problems associated with breeding of mosquitos, gnats, black flies, midges, or other pests.

4. PROVISIONS AND REQUIREMENTS

- 4.1. This Order includes the attached *Standard Provisions and General Monitoring and Reporting Requirements (Standard Provisions)* [Attachment N]. If there is any conflict between provisions stated in this Order and the attached *Standard Provisions*, the provisions in this Order prevail.
- 4.2. This Order includes the attached *Monitoring and Reporting Program*. This program may be revised by the Executive Officer to implement the regional monitoring program. The Executive Officer may require the Discharger to participate in that regional monitoring program. If there is any conflict between provisions stated in the *Monitoring and Reporting Program* and the attached *Standard Provisions*, the provisions in the former prevail.
- 4.3. The Discharger shall maintain a copy of this Order at the waste disposal facility where it will be available at all times to operating personnel.
- 4.4. Prior to application, the Discharger shall submit for Executive Officer's approval the list of chemicals and proprietary additives that may affect the discharge, including rates/quantities of application, compositions, characteristics, and material safety data sheets, if any.
- 4.5. Oil or oily materials, chemicals, refuse, or other materials that may cause pollution in storm water and/or urban runoff shall not be stored or deposited in areas where they may be picked up by rainfall/urban runoff and discharged to surface waters. Any spill of such materials shall be contained, removed and cleaned immediately.
- 4.6. The Discharger must comply with the lawful requirements of the county, city or municipality, drainage districts, and other local agencies where the discharge is located regarding discharges of storm water to the storm drain systems or other water courses under the jurisdiction of these

entities/agencies, including applicable requirements in the storm water management programs developed to comply with the NPDES permits issued by this Regional Board to these entities/agencies.

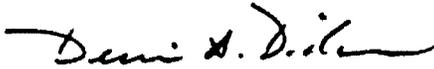
4.7 This Order may be modified, revoked, reissued, or terminated pursuant to 40 CFR §122, 124 and 125.

4.8 The Discharger shall not obtain water for the lagoon from the AES discharge line when AES is discharging metal cleaning and low volume wastes on this line.

5. **EXPIRATION DATE** - This Order expires on June 10, 2004.

Pursuant to 40 CFR §122.21(d) and California Code of Regulations Title 23 §2235.4, the City of Redondo must file a Report of Waste Discharge not later than 180 days before the expiration date of this Order as application for the reissuance of waste discharge requirements.

I, Dennis A. Dickerson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on June 30, 1999.



DENNIS A. DICKERSON
Executive Officer

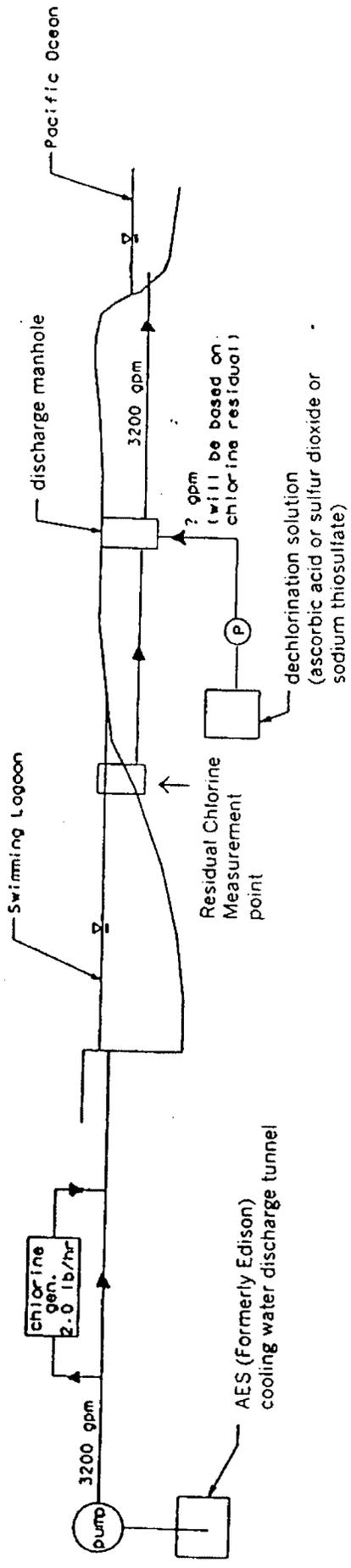
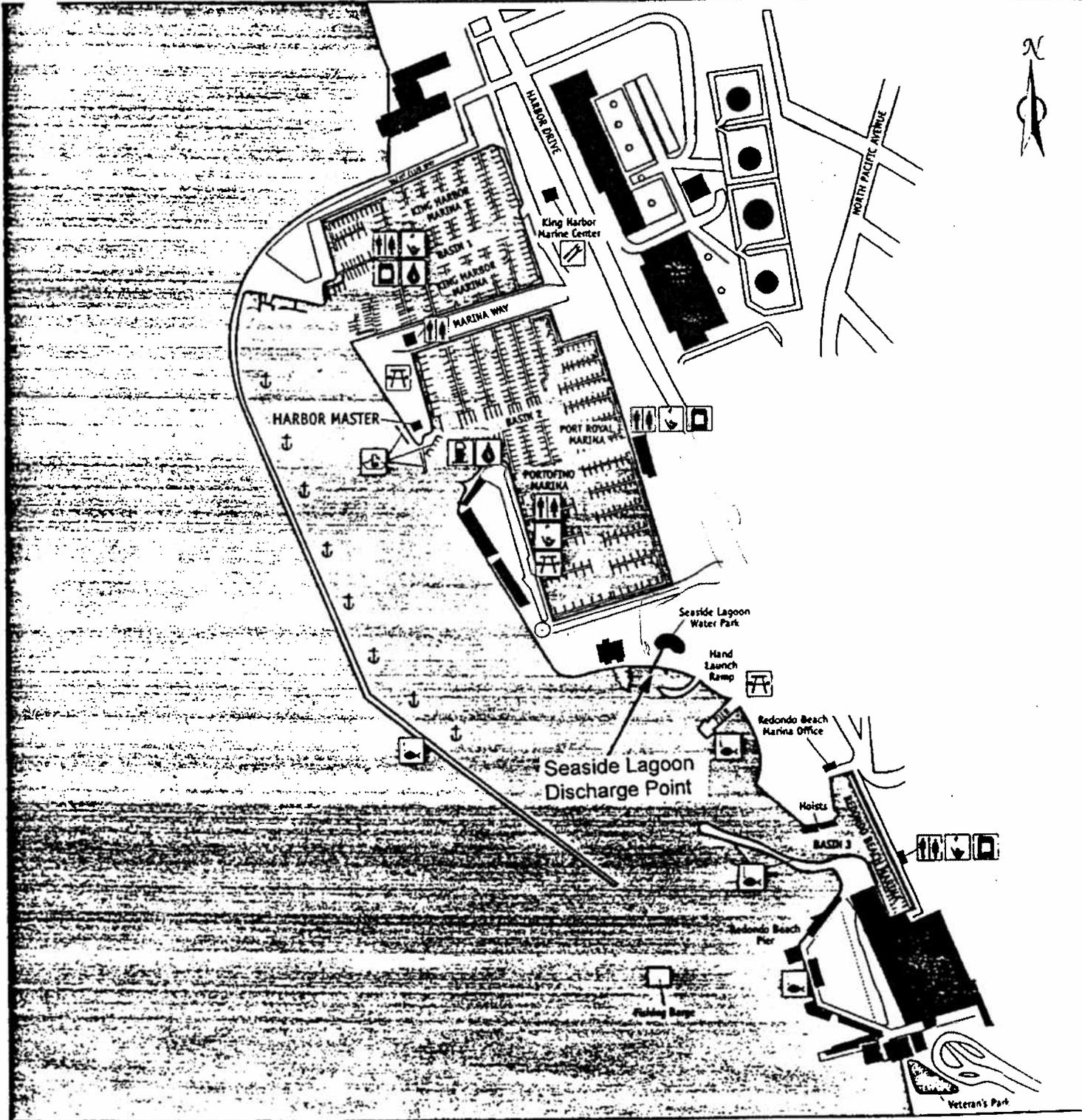


FIGURE 1

SEASIDE LAGOON - LINE DRAWING

REDONDO BEACH - KING HARBOR



THIS MAP IS NOT INTENDED FOR NAVIGATIONAL PURPOSES.

FIGURE 2: Vicinity Map Showing the Seaside Lagoon and the Discharge Point

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

**MONITORING AND REPORTING PROGRAM NO. CI-8034
FOR
CITY OF REDONDO BEACH
(SEASIDE LAGOON)**

Order No. 99-057
NPDES No. CA0064297

1. MONITORING AND REPORTING REQUIREMENTS

- 1.1 The Discharger shall implement this monitoring program on the effective date of this Order. The first monitoring report under this program shall be received by the Regional Board by August 31, 1999, covering the month of July 1999. Subsequent monitoring reports shall be received by the Regional Board according to the following schedule:

<u>Monitoring Period</u>	<u>Report Due</u>
Start of operation – June 30	July 31
July 1 – July 31	August 31
August 1 – End of operation	September 30
Annual Report	September 30 of each year

- 1.2 If no discharge occurs during the monitoring period, the report shall so state.
- 1.3 Laboratory analyses - all chemical, bacteriological, and toxicity analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services Environmental Laboratory Accreditation Program (ELAP) or approved by the Executive Officer. A copy of laboratory certification shall be provided each time a new and/or renewal is obtained from ELAP.
- 1.4 Water/wastewater samples must be analyzed within allowable holding time limits as specified in 40 CFR Part 136.3. All QA/QC items must be run on the same dates when samples are actually analyzed. The Discharger shall make available for inspection and/or submit the QA/QC documentation upon request by Board staff. Proper chain-of-custody procedures shall be followed and verification shall be submitted in the report.
- 1.5 The report of analyses shall specify the United States Environmental Protection Agency (USEPA) analytical method used and its Method Detection Limit (MDL). For the purpose of reporting compliance with effluent limitations, and receiving

June 30, 1999

water limitations, analytical data shall be reported with an actual numerical value or "non-detected (ND)" with the MDL indicated for the analytical method used.

- 1.6 The method detection limits must be lower than the permit limits established for a given parameter, unless the Discharger can demonstrate that a particular detection limit is not attainable and obtains an approval for a higher detection limit from the Executive Officer. At least once a year, the discharger shall submit a list of the analytical methods employed for each test and associated laboratory quality assurance/quality control procedures.

2. SUBMITTAL OF MONITORING AND ANNUAL REPORTS

- 2.1 All Monitoring and Annual Reports must be addressed to the Regional Board, Attention: Information Technology Unit. Reference the reports to Compliance File No. CI-8034 to facilitate routing to the appropriate staff and file.
- 2.2 The Discharger shall submit an annual report containing a discussion of the current year's effluent and receiving water monitoring data, as well as graphical and tabular summaries of the data. The data shall be submitted to the Regional Board on hard copy and on 3 1/2" computer diskette. The submitted data must be IBM compatible, preferably Microsoft Office Excel.

In the annual report, the Discharger shall discuss the compliance record, and in case of noncompliance, the corrective action/s taken or planned to bring the discharge into full and consistent compliance with waste discharge requirements. This annual report shall be received at the Regional Board on September 30 of each year following the operational period of the lagoon.

2.3 Database Management System

The Regional Board is developing a database management system that when it becomes fully operational may require the Discharger to submit the Monitoring and Annual Reports electronically.

3. EFFLUENT MONITORING PROGRAM

- 3.1 A sampling station shall be established for each point of discharge and shall be located where representative samples of the effluent can be obtained. The location of the sampling station shall be submitted to the Executive Officer. Thereafter, any changes in sampling location shall be approved by the Executive Officer.

3.2 The following shall constitute the effluent monitoring program for the Seaside Lagoon effluent:

<u>Constituents</u>	<u>Units</u>	<u>Type of Sample</u>	<u>Minimum Frequency of Analysis^[1]</u>
Total waste flow ^[2]	gallons/day	---	daily
Residual chlorine	mg/L	grab	weekly
Total coliform	#/100 mL	grab	weekly
Fecal coliform	#/100 mL	grab	weekly
Enterococcus	#/100 mL	grab	weekly
Total suspended solids	mg/L	grab	monthly ^[3]
Turbidity	TU	grab	monthly ^[3]
pH	pH units	grab	annually ^[4]
Temperature	°F	grab	annually ^[4]
BOD ₅ 20°C	mg/L	grab	annually ^{[3][4]}
Oil and grease	mg/L	grab	annually ^{[3][4]}

- [1] Monitoring for all the constituents shall be done within sixty days of the effective date of this Order. Thereafter, the frequency of monitoring shall be as specified in this program
- [2] Actual monitored flow from each outfall (not the maximum permitted flow) shall be reported.
- [3] During the first two months of discharge, monitoring for these constituents shall be on a weekly basis, to demonstrate compliance with the 30-day average limit. Thereafter the frequency of sampling shall be according to that specified in this program.
- [4] During the first year of discharge, monitoring for these constituents shall be on a monthly basis. Thereafter, the frequency of sampling shall be according to that specified in this program.

4. COMPLIANCE WITH THE 30-DAY AVERAGE LIMIT

If any result of a monthly or annual analysis exceeds the 30-day average limit, the frequency of analysis shall be increased to weekly within one week of knowledge of the test results. The weekly testing shall continue until compliance with the 30-day average limit is demonstrated, after which the frequency shall revert to the frequency indicated in this monitoring program.

5. REGIONAL MONITORING PROGRAM

Pursuant to 40 CFR § 122.41(j) and § 122.48(b), the monitoring program for NPDES permittee must determine compliance with NPDES permit terms and conditions, and demonstrate that water quality standards are met.

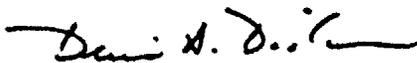
Since compliance effluent monitoring focuses only on the quality of the discharge, it is not designed to assess the impact of the discharge on the receiving water in combination with other point source discharges and other sources of pollution (e.g., nonpoint source runoff, aerial fallout) nor it is designed to evaluate the current status of important ecological resources on a regional basis. The Regional Board and the USEPA has been working with other groups in the development and implementation of a comprehensive monitoring program for the ocean waters of the Los Angeles Region. The goal is to establish a regional monitoring program to address public concerns, monitor trends in natural resources, assess regional impacts from all contaminant sources, and ensure protection of beneficial uses. The major objectives of the regional monitoring program will be to provide the information required to determine how safe it is to swim in the ocean, how safe it is to eat seafood from the ocean, and whether the marine ecosystem is being protected.

The Executive Officer may require the City of Redondo Beach to participate in the Regional Program.

6. The Discharger shall notify the Executive Officer in writing prior to use of any chemicals, such as corrosion additives, that pass through the discharge which may be toxic to humans and aquatic life. Such notification shall include:
- Name and general composition of the chemical
 - Frequency of use
 - Quantities to be used
 - Proposed discharge concentrations
 - USEPA registration number, if any.

No discharge of such chemical shall be made prior to the Executive Officer's approval.

Ordered by:



DENNIS A. DICKERSON
Executive Officer

Date: June 30, 1999

EXHIBIT “8”

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION

ORDER NO. R4-2005-0016
NPDES PERMIT NO. CA0064297

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND
WASTE DISCHARGE REQUIREMENTS
FOR
CITY OF REDONDO BEACH
(SEASIDE LAGOON)

The California Regional Water Quality Board, Los Angeles Region (hereinafter Regional Board), finds:

Background

1. The City of Redondo Beach (hereinafter, the City or Discharger) discharges dechlorinated lagoon water from Seaside Lagoon Facility (Seaside Lagoon or Facility) to King Harbor, a water of the United States. Wastes discharged from Seaside Lagoon by the City are regulated by Waste Discharge Requirements (WDRs) and a National Pollutant Discharge Elimination System (NPDES) permit contained in Board Order No. 99-057 (NPDES Permit No. CA0064297). Order No. 99-057 expired on June 10, 2004.
2. The City filed a Report of Waste Discharge and applied for renewal of its NPDES permit on April 9, 2004. The tentative Order is the reissuance of the WDRs and NPDES permit for discharges from Seaside Lagoon. A NPDES permit compliance evaluation inspection (CEI) was conducted on March 31, 2004, to observe operations and collect additional data to develop permit limitations and conditions.

Purpose of Order

3. The purpose of this NPDES permit is to renew the WDRs for the Facility. This NPDES permit regulates the discharge of dechlorinated lagoon swimming water through Discharge Serial No. 001 to King Harbor, a water of the United States. The point of discharge of dechlorinated lagoon water is located at Latitude 33° 50' 38"N and Longitude 118° 23' 47" W.

Facility Description

4. The Facility is located at 200 Portfino Way, Redondo Beach, California, and is owned and operated by the City. The Facility is a city park and consists of a 1.4 million gallon man-made saltwater lagoon, artificial beaches, children's play area, snack bar facilities, and other recreational areas. The Lagoon was constructed in 1962 and has since been open to the public for swimming from Memorial Day to Labor Day each year. At other times, the City may allow the use of the Facility for social functions which may result in discharges

into the receiving water outside the designated operational season. The surface area of the water in the Lagoon is approximately 1.2 acres with a maximum depth of 7 feet. Figure 1 provides a Facility location map.

Discharge Description

5. Water for Lagoon comes from a nearby steam generating plant (AES Redondo Beach, L.L.C., Power Plant) where the seawater is used to cool turbines. The Power Plant is located at 1100 Harbor Drive, Redondo Beach. When operated at design capacity, the AES Power Plant discharges up to 898 million gallons per day (mgd) of once-through cooling water combined with small volumes of metal cleaning and low-volume wastes into the Pacific Ocean at Santa Monica Bay. This discharge is regulated under separate waste discharge requirements contained in Board Order No. 00-085. Approximately 3,200 gallons per minute (gpm), which is equivalent to approximately 2.3 mgd, of once-through cooling water, is directed to the Lagoon.
6. The City is using only a small portion (0.26 %) of the cooling water from the Power Plant for recreational beneficial use, which would otherwise be discharged directly to the ocean. The warm temperature of the Power Plant's discharged cooling water is comforting to the swimmers. On the other hand, by passing the cooling water through the Lagoon, the water temperature of the cooling water is lowered close to the ocean ambient temperature that is more favorable to the aquatic life in the receiving water.
7. To maintain the water level in the Seaside Lagoon, the City discharges roughly 3,200 gpm (approximately 2.3 mgd) of dechlorinated saltwater to King Harbor when the Lagoon is in use. The water is discharged through three overflow structures located along the northwest edge of the Lagoon. The water then flows by gravity to a manhole, then to a conduit that empties into King Harbor at the shoreline (Latitude 33° 50' 38" N and Longitude 118° 23' 47" W) embankment, Discharge Serial 001. During periods when the Lagoon is not open for public use, the lagoon water will be flushed periodically.
8. The water supply system is equipped with both chlorination and de-chlorination facilities. The chlorination system consists of one, 1,000-gallon storage tank which holds 17% sodium hypochlorite, dual chemical feed pumps with manual controls, and related piping. The de-chlorination system consists of one, 1,000-gallon storage tank which holds 38% bi-sulfate, dual chemical feed pumps with manual controls, and related piping. The de-chlorination piping terminates at the overflow structures at which point the bi-sulfite solution is added to the effluent. Bi-sulfite is added at all three overflow structures. Figure 2 provides a schematic diagram of the pumping system.
9. The Discharger is considering the installation of a re-circulation pipe at the overflow collector pipe (prior to the discharge vault), to direct Lagoon water back to the Lagoon. A valve will be installed in the vault to stop all flow from being discharged. The de-chlorination system will be shut down and a chlorination feed pipe connected the re-circulation piping would allow chlorinated water to circulate in the Lagoon and collector pipe. The modification would reduce the amount of bacteria in the discharge.

Compliance History

10. A review of effluent monitoring data indicates that the Discharger may have exceeded the effluent limitation for Enterococcus in June 2002 and June 2003. Further, the available effluent monitoring data indicate that the Discharger has had multiple exceedances of the existing effluent limitations for total suspended solids (TSS) and total residual chlorine. The Regional Board issued a Notice of Violation (NOV) on May 4, 2001, addressing violations of effluent limitations for BOD and residual chlorine, for the period from July 1999 through August 2000. The City responded to the NOV in correspondence dated July 16, 2001. In the July 16, 2001, response, the City states that several laboratories were unable to detect residual chlorine accurately below 0.01 mg/L (the existing residual chlorine monthly average effluent limitation is 2 µg/L, or 0.002 mg/L) and that the monitoring location established in Order No. 99-057 is inappropriate for this facility. Further, the City requested that the residual chlorine effluent limitation be revised to 0.01 mg/L, and that the NOV be rescinded.
11. An Administrative Civil Liability (ACL) was issued to the City on March 29, 2002, in the amount of \$51,000 for violation of the residual chlorine effluent limitation. The City responded on April 10, 2002, and submitted payment to the Regional Board and committed to the preparation of a Supplemental Environmental Project, subject to Regional Board approval.

Applicable Plans, Policies, and Regulations

12. On June 13, 1994, the Regional Board adopted a revised *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* (Basin Plan) as amended on January 27, 1997, by Regional Board Resolution No. 97-02. The Basin Plan (i) designates beneficial uses for surface and groundwaters, (ii) sets narrative and numerical objectives that must be attained or maintained to protect the designated beneficial uses and conform to the state antidegradation policy (*Statement of Policy with Respect to Maintaining High Quality Waters in California*, State Board Resolution No. 68-16, October 28, 1968), and (iii) describes implementation programs to protect all waters in the Region. In addition, the Basin Plan incorporates (by reference) applicable State and Regional Board plans and policies and other pertinent water quality policies and regulations. The Regional Board prepared the 1994 update of the Basin Plan to be consistent with all previously adopted State and Regional Board plans and policies. This Order implements the plans, policies and provisions of the Regional Board's Basin Plan.
13. **Ammonia Water Quality Objective (WQO)** – The 1994 Basin Plan contained water quality objectives for ammonia to protect aquatic life, in Tables 3-1 through Tables 3-4. However, those ammonia objectives were revised on March 4, 2004, by the Regional Board with the adoption of Resolution No. 2004-022. The amendment revised the Basin Plan by updating the ammonia objectives for inland surface waters not characteristic of freshwater such that they are consistent with the U.S. EPA "Ambient Water Quality Criteria for Ammonia (Saltwater)-1989." The amendment revised the regulatory provisions of the Basin Plan by adding language to Chapter 3 "Water Quality Objectives."

For inland surface waters not characteristic of freshwater, the proposed objectives are a 4-day average concentration of unionized ammonia of 0.035 mg/L, and a one-hour average concentration of unionized ammonia of 0.233 mg/L. The proposed objectives are fixed concentrations of unionized ammonia, independent of pH, temperature, or salinity. The proposed amendment includes an implementation procedure to convert un-ionized ammonia objectives to total ammonia effluent limits. The proposed amendment also simplifies the implementation procedures for translating ammonia objectives into effluent limits in situations where a mixing zone has been authorized by the Regional Board. Finally, the proposed amendment revises the implementation procedure for determining saltwater, brackish or freshwater conditions, to be consistent with the proposed objectives. The proposed objectives will apply only to inland surface waters not characteristic of freshwater (including enclosed bays, estuaries and wetlands) and do not impact the Ammonia Water Quality Objectives for ocean waters contained in the California Ocean Plan.

The Office of Administrative Law approved the amendment on September 15, 2004. USEPA has 60 calendar days to approve this amendment. The amendment will become final when staff files the Notice of Decision document and final Certificate of Fee Exemption with the California Department of Fish and Game.

14. The Basin Plan contains water quality objectives and beneficial uses for inland surface waters and for the Pacific Ocean. Inland surface waters consist of rivers, streams, lakes, reservoirs, and inland wetlands. Beneficial uses for a surface water can be designated, whether or not they have been attained on a waterbody, in order to implement either federal or state mandates and goals (such as fishable and swimmable for regional waters).
15. The Basin Plan contains beneficial uses and water quality objectives for King Harbor (H.U. 405.12), an inland surface waterbody.

Existing uses: Industrial service supply; navigation; water contact recreation; non-contact water recreation; commercial and sport fishing; marine habitat; wildlife habitat; rare, threatened, or endangered species.

16. The State Water Resources Control Board (State Board) adopted a *Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Water and Enclosed Bays and Estuaries of California* (Thermal Plan) on May 18, 1972, and amended this plan on September 18, 1975. This plan contains temperature objectives for inland surface waters.
17. On May 18, 2000, the U.S. Environmental Protection Agency (U.S. EPA) promulgated numeric criteria for priority pollutants for the State of California [known as the *California Toxics Rule* (CTR) and codified as 40 CFR 131.38]. In the CTR, U.S. EPA promulgated criteria that protect the general population at an incremental cancer risk level of one in a million (10^{-6}), for all priority toxic pollutants regulated as carcinogens. The CTR also provides a schedule of compliance not to exceed five years from the date of permit issuance for a point source discharge if the Discharger demonstrates that it is infeasible to promptly comply with effluent limitations derived from the CTR criteria.

18. Under 40 CFR 122.44(d), Water Quality Standards and State Requirements, "Limitations must control all pollutants or pollutant parameters (either conventional, non-conventional, or toxic pollutants), which the Director [permitting authority] determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality." Where numeric effluent limitations for a pollutant or pollutant parameter have not been established in the applicable state water quality control plan, 40 CFR section 122.44(d)(1)(vi) specifies that Water Quality Based Effluent Limits (WQBELs) may be set based on U.S. EPA criteria, and may be supplemented where necessary by other relevant information to attain and maintain narrative water quality criteria, and to fully protect designated beneficial uses.
19. Effluent limitation guidelines requiring the application of best practicable control technology currently available (BPT), best conventional pollutant control technology (BCT), and best available technology economically achievable (BAT), were promulgated by the U.S. EPA for some pollutants in this discharge. Effluent limitations for pollutants not subject to the U.S. EPA effluent limitation guidelines are based on one of the following: Best Professional Judgment (BPJ) of BPT, BCT or BAT; current plant performance; or WQBELs. The WQBELs are based on the Basin Plan, other State plans and policies, or U.S. EPA water quality criteria which are taken from the CTR. These requirements, as they are met, will protect and maintain existing beneficial uses of the receiving water. The attached Fact Sheet for this Order includes specific bases for the effluent limitations.
20. State and Federal antibacksliding and antidegradation policies require Regional Board actions to protect the water quality of a water body and to ensure that the waterbody will not be further degraded. The antibacksliding provisions are specified in section 402(o) of the Clean Water Act (CWA) and in Title 40, Code of Federal Regulations (40 CFR), section 122.44(l). Those provisions require a reissued permit to be as stringent as the previous permit with some exceptions where effluent limitations may be relaxed.
21. Effluent limitations are established in accordance with sections 301, 304, 306, and 307 of the CWA, and amendments thereto. These requirements, as they are met, will maintain and protect the beneficial uses of King Harbor.

Watershed Management Approach and Total Maximum Daily Loads (TMDLs)

22. The Regional Board has implemented the Watershed Management Approach to address water quality issues in the region. Watershed management may include diverse issues as defined by stakeholders to identify comprehensive solutions to protect, maintain, enhance, and restore water quality and beneficial uses. To achieve this goal, the Watershed Management Approach integrates the Regional Board's many diverse programs, particularly Total Maximum Daily Loads (TMDLs), to better assess cumulative impacts of pollutants from all point and non-point sources. A TMDL is a tool for implementing water quality standards and is based on the relationship between pollution sources and in-stream water quality conditions. The TMDL establishes the allowable loadings or other quantifiable parameters for a waterbody and thereby provides the basis to establish water quality-based controls. These controls should provide the pollution reduction necessary

for a waterbody to meet water quality standards. This process facilitates the development of watershed-specific solutions that balance the environmental and economic impacts within the watershed. The TMDLs will establish waste load allocation (WLAs) and load allocations (LAs) for point and non-point sources, and will result in achieving water quality standards for the waterbody.

23. King Harbor receives discharges from highly industrial areas. However, 2002 State Board's California 303(d) List does not classify King Harbor as impaired.

Data Availability and Reasonable Potential Monitoring

24. 40 CFR 122.44(d)(1)(i) and (ii) require that each toxic pollutant be analyzed with respect to its reasonable potential to (1) cause; (2) have the reasonable potential to cause; or (3) contribute to the exceedance of a receiving water quality objective. This is done by performing a reasonable potential analysis (RPA) for each pollutant.
25. Section 1.3 of the SIP requires that a limitation be imposed for a toxic pollutant if (1) the maximum effluent concentration (MEC) is greater than the most stringent CTR criteria, or (2) the background concentration is greater than the CTR criteria, or (3) other information is available. Sufficient effluent data are needed for this analysis.
26. There are insufficient monitoring data available to perform an RPA of the priority pollutants associated with dechlorinated lagoon water from the Redondo Beach Lagoon facility. The Policy for Implementation of Toxic Standards (SIP) for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Policy) requires the dischargers to submit sufficient data to conduct the determination of priority pollutants requiring WQBELs and to calculate the effluent limitations. Thus, this permit includes monitoring requirements to obtain the necessary data to evaluate reasonable potential.
27. Regional Board staff has determined that pollutants that have effluent limitations in the current permit will be included in this permit. Certain effluent limitations have been established based on the revised water quality criteria contained in the CTR and the requirements contained in Section 1.4 of the SIP. This permit also includes requirements for additional monitoring to provide the data needed to perform an RPA on all of the priority pollutants.
28. This permit may be reopened to include effluent limitations for toxic pollutants determined to be present in significant amounts in the discharge based on the more comprehensive monitoring program included as part of this Order and based on the results of the RPA.
29. The previous permit does not contain acute toxicity limitations or monitoring requirements. This Order includes effluent limitations for acute toxicity and requires the Discharger to monitor the discharge for acute toxicity.

CEQA and Notifications

30. The Regional Board has notified the Discharger and interested agencies and persons of its intent to issue waste discharge requirements for this discharge, and has provided them with an opportunity to submit their written views and recommendations.
31. The Regional Board, in a public hearing, heard and considered all comments pertaining to the discharge and to the tentative requirements.
32. This Order shall serve as a National Pollutant Discharge Elimination System permit pursuant to section 402 of the Federal Clean Water Act or amendments thereto, and is effective 30 days (April 2, 2005) from the date of its adoption, in accordance with federal law, provided the Regional Administrator, U.S. EPA, has no objections.
33. Pursuant to California Water Code section 13320, any aggrieved party may seek review of this Order by filing a petition with the State Board. A petition must be sent to the State Water Resources Control Board, Office of Chief Counsel, ATTN: Elizabeth Miller Jennings, Senior Staff Counsel, 1001 I Street, 22nd Floor, Sacramento, California, 95814, within 30 days of adoption of this Order.
34. The issuance of waste discharge requirements for this discharge is exempt from the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code (CEQA) in accordance with the California Water Code, section 13389.

IT IS HEREBY ORDERED that City of Redondo Beach, for Seaside Lagoon Facility, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted there under, and the provisions of the Federal Clean Water Act and regulations and guidelines adopted there under, shall comply with the following:

I. DISCHARGE REQUIREMENTS

A. Discharge Prohibitions

1. Wastes discharged shall be limited to a maximum of 2.3 mgd of dechlorinated lagoon swimming water as described in the Findings. The discharge of wastes from accidental spills or other sources is prohibited.
2. Discharges of water, materials, thermal wastes, elevated temperature wastes, toxic wastes, deleterious substances, or wastes other than those authorized by this Order, to a storm drain system, King Harbor, or other waters of the State, are prohibited.

B. Effluent Limitations

The discharge of an effluent in excess of the following limitations is prohibited:

1. A pH value less than 6.5 or greater than 8.5.

2. Temperature:
 - a. A temperature greater than 86 °F; and
 - b. The maximum temperature of the discharge shall not exceed the natural receiving water temperature by more than 20 °F.
3. Toxicity limitations:
 - a. Acute Toxicity Limitation and Requirements
 - i. The acute toxicity of the effluent shall be such that: (i) the average survival in the undiluted effluent for any three (3) consecutive 96-hour (or shorter test duration period with Executive Officer approval) static or continuous flow bioassay tests shall be at least 90%, and (ii) no single test shall produce less than 70% survival.
 - ii. If either of the above requirements [Section I.B.3.a.(i)] is not met, the Discharger shall conduct six additional tests over a 6-week period, if possible. The Discharger shall ensure that they receive results of a failing acute toxicity test within 24 hours of the completion of the test, and the additional tests shall begin within 3 business days of the receipt of the result. If the additional tests indicate compliance with acute toxicity limitation, the Discharger may resume regular testing. However if the results of any two of the six accelerated tests are less than 90% survival, then the Discharger shall begin a Toxicity Identification Evaluation (TIE). The TIE shall include all reasonable steps to identify the source(s) of toxicity. Once the source(s) of toxicity is identified, the Discharger shall take all reasonable steps to reduce the toxicity to meet the objective.
 - iii. If the initial test and any of the additional six acute toxicity bioassay tests result in less than 70% survival, including the initial test, the Discharger shall immediately begin a TIE.
 - iv. The Discharger shall conduct acute toxicity monitoring as specified in Monitoring and Reporting Program No. CI-8034.
4. Final effluent limitations: In addition to the Requirements I.B.1 through I.B.3, the discharge of dechlorinated lagoon swimming water from Discharge Serial No. 001 (Latitude 33° 50' 38" N and Longitude 118° 23' 47" W) containing pollutants in excess of the following limitations is prohibited:

Pollutant	Units	Monthly Average Effluent Limitations ¹	Daily Maximum Effluent Limitations
Total Suspended Solids	mg/L	50	75
BOD ₅ @20°C	mg/L	20	30
Oil and Grease	mg/L	10	15
Turbidity	NTU	50	75
Total Coliform	mpn/100 ml	1000 ²	10,000
Fecal Coliform	mpn/100 ml	200 ³	400
Enterococcus	mpn/100 ml	35 ⁴	104
Total Residual Chlorine ⁵	µg/L	2	8

1. The monthly average concentration shall be the arithmetic average of all the values of daily concentrations calculated using the results of analyses of all samples collected during the month. If only one sample is taken in that month, compliance shall be based on this sample result.
2. The geometric mean density of total coliform organisms shall be less than 1000 per 100 ml (10 per ml): provided that not more than 20 percent of the samples, in any 30-day period, may exceed 1,000 per 100 ml (10 per ml), and provided further that no single sample when verified by a repeat sample taken within 48 hours shall exceed 10,000 per 100 ml (100 per ml). Also, the total coliform density shall not exceed 1000 per 100 ml if the ratio of fecal to total coliform exceeds 0.1.
3. The fecal coliform density for any 30-day period, shall not exceed a geometric mean of 200 per 100 ml nor shall more than 10 percent of the total samples during any 60-day period exceed 400 per 100ml.
4. The geometric mean enterococcus density of the discharge shall not exceed 35 organisms per 100 ml for a 30-day period or 12 organisms per 100 ml for a six-month period.
5. If there is no analytical method with a detection level below the effluent limitation, then the most sensitive method must be used. If the sample result is non-detect, the Discharger shall report the results as less than the method detection level and provide the actual detection level achieved.

C. Receiving Water Limitations

1. The discharge shall not cause the following conditions to exist in the receiving waters:
 - a. Floating, suspended, or deposited macroscopic particulate matter or foam;
 - b. Alteration of temperature, turbidity, or apparent color beyond present

- natural background levels;
- c. Visible, floating, suspended or deposited oil or other products of petroleum origin;
 - d. Bottom deposits or aquatic growths; or,
 - e. Toxic or other deleterious substances present in concentrations or quantities that cause deleterious effects on aquatic biota, wildlife, or waterfowl or render any of these unfit for human consumption either at levels created in the receiving waters or as a result of biological concentration.
2. The discharge shall not cause nuisance or adversely affect beneficial uses of the receiving water.
 3. No discharge shall cause a surface water temperature rise greater than 5°F above the natural temperature of the receiving waters at any time or place.
 4. The discharge shall not cause the following limitations to be exceeded in the receiving waters at any place within the waterbody of the receiving waters:
 - a. The pH shall not be depressed below 6.5 nor raised above 8.5, nor caused to vary from normal ambient pH levels by more than 0.5 units;
 - b. Dissolved oxygen shall not be less than 5.0 mg/L anytime, and the median dissolved oxygen concentration for any three consecutive months shall not be less than 80 percent of the dissolved oxygen content at saturation;
 - c. Dissolved sulfide shall not be greater than 0.1 mg/L;
 - d. The ammonia limitations in the 1994 Basin Plan were revised by Regional Board Resolution No. 2004-022, adopted on March 4, 2004. Total ammonia (as N) shall not exceed concentrations specified in the Regional Board Resolution 2004-022.
 5. The discharge shall not cause a violation of any applicable water quality standards for receiving waters adopted by the Regional Board or State Board. If more stringent applicable water quality standards are promulgated or approved pursuant to Section 303 of the Clean Water Act, or amendments thereto, the Regional Board will revise or modify this Order in accordance with such standards.
 6. The discharge shall not cause the following to be present in receiving waters:
 - a. Biostimulatory substances at concentrations that promote aquatic growth to

- the extent that such growth causes nuisance or adversely affects beneficial uses;
- b. Chemical substances in amounts that adversely affect any designated beneficial use;
 - c. Oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the receiving water or on objects in the water;
 - d. Suspended or settleable materials in concentrations that cause nuisance or adversely affect beneficial uses;
 - e. Taste or odor-producing substances in concentrations that alter the natural taste, odor, and/or color of fish, shellfish, or other edible aquatic resources; cause nuisance; or adversely affect beneficial uses;
 - f. Substances that result in increases of BOD₅20⁰C that adversely affect beneficial uses;
7. The discharge shall not alter the color, create a visual contrast with the natural appearance, nor cause aesthetically undesirable discoloration of the receiving waters.
 8. The discharge shall not degrade surface water communities and population including vertebrate, invertebrate, and plant species.
 9. The discharge shall not damage, discolor, nor cause formation of sludge deposits on flood control structures or facilities nor overload their design capacity.
 10. The discharge shall not cause problems associated with breeding of mosquitoes, gnats, black flies, midges, or other pests.

II. REQUIREMENTS

- A. Pursuant to the requirements of 40 CFR 122.42(a), the Discharger must notify the Board as soon as it knows, or has reason to believe (1) that it has begun or expected to begin, to use or manufacture a toxic pollutant not reported in the permit application, or (2) a discharge of toxic pollutant not limited by this Order has occurred, or will occur, in concentrations that exceed the specified limitations in 40 CFR 122.42(a).
- B. The discharger shall at all times properly operate and maintain all facilities and systems installed or used to achieve compliance with this Order.
- C. The Discharger shall comply with the waste load allocations that will be developed

from the TMDL process for the 303 (d) listed pollutants.

- D. The discharge of any product registered under the Federal Insecticide, Fungicide, and Rodenticide Act to any waste stream which may ultimately be released to waters of the United States, is prohibited unless specifically authorized elsewhere in this permit or another NPDES permit. This requirement is not applicable to products used for lawn and agricultural purposes.
- E. The discharge of any waste resulting from the combustion of toxic or hazardous wastes to any waste stream which ultimately discharges to waters of the United States is prohibited, unless specifically authorized elsewhere in this permit.
- F. The Discharger shall notify the Executive Officer in writing no later than 6 months prior to planned discharge of any chemical, other than chlorine or other product previously reported to the Executive Officer, which may be toxic to aquatic life. Such notification shall include:
 - 1. Name and general composition of the chemical,
 - 2. Frequency of use,
 - 3. Quantities to be used,
 - 4. Proposed discharge concentrations, and
 - 5. U.S. EPA registration number, if applicable.

No discharge of such chemical shall be made prior to the Executive Officer's approval.

- G. The Regional Board and U.S. EPA shall be notified immediately by telephone, of the presence of adverse conditions in the receiving waters or on beaches and shores as a result of wastes discharged; written confirmation shall follow as soon as possible but not later than five working days after occurrence.

III. PROVISIONS

- A. This Order includes the attached *Standard Provisions and General Monitoring and Reporting Requirements* (Standard Provisions, Attachment N). If there is any conflict between provisions stated herein and the attached Standard Provisions, those provisions stated herein shall prevail.
- B. This Order includes the attached Monitoring and Reporting Program (*MRP*) No. 8034. If there is any conflict between provisions stated in the *MRP* and the Standard Provisions, those provisions stated in the former shall prevail.
- C. This Order may be modified, revoked, reissued, or terminated in accordance with the provisions of 40 CFR sections 122.44, 122.62, 122.63, 122.64, 125.62 and 125.64. Causes for taking such actions include, but are not limited to: failure to comply with any condition of this Order; endangerment to human health or the environment resulting from the permitted activity; or acquisition of newly-obtained information

which would have justified the application of different conditions if known at the time of Order adoption. The filing of a request by the Discharger for an Order modification, revocation, and issuance or termination, or a notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

- D. The Discharger must comply with the lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding discharges of storm water to storm drain systems or other water courses under their jurisdiction; including applicable requirements in municipal storm water management program developed to comply with NPDES permits issued by the Regional Board to local agencies.
- E. Discharge of wastes to any point other than specifically described in this Order and permit is prohibited and constitutes a violation thereof.
- F. The Discharger shall comply with all applicable effluent limitations, national standards of performance, toxic effluent standards, and all federal regulations established pursuant to Sections 301, 302, 303(d), 304, 306, 307, 316, and 423 of the Federal Clean Water Act and amendments thereto.
- G. Compliance Determination
 - 1. Compliance with single pollutant effluent limitation – If the concentration of the pollutant in the monitoring sample is greater than the effluent limitation and greater than or equal to the reported Minimum Level (see Reporting Requirement II.C. of *MRP*), then the Discharger is out of compliance.
 - 2. Compliance with monthly average limitations - In determining compliance with monthly average limitations, the following provisions shall apply to all pollutants:
 - a. If the analytical result of a single sample, monitored monthly, quarterly, semiannually, or annually, does not exceed the monthly average limitation for that pollutant, the Discharger has demonstrated compliance with the monthly average limitation for that month.
 - b. If the analytical result of a single sample, monitored monthly, quarterly, semiannually, or annually, exceeds the monthly average limitation for any pollutant, the Discharger shall collect up to four additional samples at approximately equal intervals during the month. All analytical results shall be reported in the monitoring report for that month, or 45 days after results for the additional samples were received, whichever is later.

When all sample results are greater than or equal to the reported Minimum Level (see Reporting Requirement II.C. of *MRP*), the numerical average of the analytical results of these samples will be used for compliance determination.

When one or more sample results are reported as “Not-Detected (ND)” or “Detected, but Not Quantified (DNQ)” (see Reporting Requirement III. D. of *MRP*), the median value of these samples shall be used for compliance determination. If one or both of the middle values is ND or DNQ, the median shall be the lower of the two middle values.

- c. In the event of noncompliance with a monthly average effluent limitation, the sampling frequency for that pollutant shall be increased to weekly and shall continue at this level until compliance with the monthly average effluent limitation has been demonstrated.
 - d. If only one sample was obtained for the month or more than a monthly period and the result exceed the monthly average, then the Discharger is in violation of the monthly average limitation.
3. Compliance with effluent limitations expressed as a sum of several pollutants – If the sum of the individual pollutant concentrations is greater than the effluent limitation, then the Discharger is out of compliance. In calculating the sum of the concentrations of a group of pollutants, consider pollutants reported as ND or DNQ to have concentrations equal to zero, provided that the applicable ML is used.
 4. Compliance with effluent limitations expressed as a median – in determining compliance with a median limitation, the analytical results in a set of data will be arranged in order of magnitude (either increasing or decreasing order); and
 - a. If the number of measurements (n) is odd, then the median will be calculated as $= X_{(n+1)/2}$, or
 - b. If the number of measurements (n) is even, then the median will be calculated as $= [X_{n/2} + X_{(n/2)+1}]$, i.e. the midpoint between the n/2 and n/2+1 data points.
- H. In calculating mass emission rates from the monthly average concentrations, use one half of the method detection limit for “Not Detected” (ND) and the estimated concentration for “Detected, but Not Quantified” (DNQ) for the calculation of the monthly average concentration. To be consistent with section II.G.3., if all pollutants belonging to the same group are reported as ND or DNQ, the sum of the individual pollutant concentrations should be considered as zero for the calculation of the monthly average concentration.

IV. REOPENERS

- A. This Order may be reopened and modified, in accordance with SIP Section 2.2.2.A, to incorporate new limits based on future RPA to be conducted, upon completion of the collection of additional data by the Discharger.

- B. This Order may be reopened and modified, to incorporate in accordance with the provisions set forth in 40 CFR Parts 122 and 124, to include requirements for the implementation of the watershed management approach.
- C. This Order may be reopened and modified, in accordance with the provisions set forth in 40 CFR Parts 122 and 124, to include new MLs.
- D. This Order may be reopened and modified to revise effluent limitations as a result of future Basin Plan Amendments, such as an update of an objective or the adoption of a TMDL for the King Harbor.
- E. This Order may also be reopened and modified, revoked, and reissued or terminated in accordance with the provisions of 40 CFR sections 122.44, 122.62 to 122.64, 125.62, and 125.64. Causes for taking such actions include, but are not limited to, failure to comply with any condition of this Order and permit, and endangerment to human health or the environment resulting from the permitted activity.

V. EXPIRATION DATE

This Order expires on February 10, 2010.

The Discharger must file a Report of Waste Discharge in accordance with Title 23, California Code of Regulations, not later than 180 days in advance of such date as application for issuance of new waste discharge requirements.

V. RESCISSION

Order No. 99-057, adopted by this Regional Board on June 30, 1999, is hereby rescinded except for enforcement purposes.

I, Jonathan S. Bishop, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on March 3, 2005.

Jonathan S. Bishop
Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

MONITORING AND REPORTING PROGRAM NO. 8034
for
CITY OF REDONDO BEACH
(SEASIDE LAGOON)
(CA0064297)

I. Reporting Requirements

- A. The City of Redondo Beach, (hereinafter Redondo Beach or Discharger) shall implement this monitoring program for Seaside Lagoon Facility (Lagoon or Facility) on the effective date of this Order. All monitoring reports must be received by the Regional Board by the dates in the following schedule. All monitoring reports should be addressed to the Regional Board, Attention: Information Technology Unit. The first monitoring report under this Program is due by August 1, 2005.

Reporting Period	Report Due
Start of Operation – June 30	August 1
July 1 – July 31	September 1
August 1 – End of Operation	October 1
Annual Summary Report	October 1 of each year

Monitoring reports for off-season discharges shall be submitted 45 days after sampling.

If there is no discharge during any reporting period, the report shall so state.

- B. The Discharger shall submit an annual summary report, containing a discussion of the previous year's effluent and receiving water monitoring data, as well as graphical and tabular summaries of the data. The data shall be submitted to the Regional Board on hard copy and on a 3 ½ " computer diskette. Submitted data must be IBM compatible, preferably using EXCEL software. This annual report is to be received by the Regional Board by October 1 of each year.
- C. Each monitoring report shall contain a separate section titled "Summary of Non-Compliance" which discusses the compliance record and corrective actions taken or planned that may be needed to bring the discharge into full compliance with waste discharge requirements. This section shall clearly list all non-compliance with waste discharge requirements, as well as all excursions of effluent limitations.
- D. The Discharger shall inform the Regional Board well in advance of any proposed construction activity that could potentially affect compliance with applicable requirements.

II. Effluent Monitoring Requirements

- A. A sampling station shall be established at the point of discharge. The sampling station shall be located where representative samples of that effluent can be obtained.
- B. This Regional Board shall be notified in writing of any change in the sampling stations once established or in the methods for determining the quantities of pollutants in the individual waste streams.
- C. Pollutants shall be analyzed using the analytical methods described in 40 CFR sections 136.3, 136.4, and 136.5 (revised May 14, 1999); or, where no methods are specified for a given pollutant, by methods approved by this Regional Board or the State Board. Laboratories analyzing effluent samples and receiving water samples shall be certified by the California Department of Health Services Environmental Laboratory Accreditation Program (ELAP) or approved by the Executive Officer and must include quality assurance/quality control (QA/QC) data in their reports. A copy of the laboratory certification shall be provided each time a new certification and/or renewal of the certification is obtained from ELAP.

The monitoring reports shall specify the analytical method used, the Method Detection Limit (MDL), and the Minimum Level (ML) for each pollutant. For the purpose of reporting compliance with numerical limitations, performance goals, and receiving water limitations, analytical data shall be reported by one of the following methods, as appropriate:

1. An actual numerical value for sample results greater than or equal to the ML; or,
2. "Detected, but Not Quantified (DNQ)" if results are greater than or equal to the laboratory's MDL but less than the ML; or,
3. "Not-Detected (ND)" for sample results less than the laboratory's MDL with the MDL indicated for the analytical method used.

Current MLs (Attachment B) are those published by the State Water Resources Control Board in the *Policy for the Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, March 2, 2000*.

- D. Where possible, the MLs employed for effluent analyses shall be lower than the permit limitations established for a given parameter. If the ML value is not below the effluent limitation, then the lowest ML value and its associated analytical method shall be selected for compliance purposes. At least once a year, the Discharger shall submit a list of the analytical methods employed for each test and associated laboratory QA/QC procedures.

The Regional Board, in consultation with the State Board Quality Assurance Program, shall establish a ML that is not contained in Attachment B to be included in the Discharger's permit in any of the following situations:

1. When the pollutant under consideration is not included in Attachment B;
 2. When the Discharger and Regional Board agree to include in the permit a test method that is more sensitive than that specified in 40 CFR Part 136 (revised May 14, 1999);
 3. When the Discharger agrees to use an ML that is lower than that listed in Attachment B;
 4. When the Discharger demonstrates that the calibration standard matrix is sufficiently different from that used to establish the ML in Attachment B, and proposes an appropriate ML for their matrix; or,
 5. When the Discharger uses a method whose quantification practices are not consistent with the definition of an ML. Examples of such methods are the U.S. EPA-approved method 1613 for dioxins and furans, method 1624 for volatile organic substances, and method 1625 for semi-volatile organic substances. In such cases, the Discharger, the Regional Board, and the State Board shall agree on a lowest quantifiable limit and that limit will substitute for the ML for reporting and compliance determination purposes.
- E. For total residual chlorine, if there is no analytical method with a detection level below the effluent limitation, then the most sensitive method must be used. If the sample result is non-detect, the Discharger shall report the results as less than the method detection level and provide the actual detection level achieved.
- F. Water/wastewater samples must be analyzed within allowable holding time limits as specified in 40 CFR section 136.3. All QA/QC items must be run on the same dates the samples were actually analyzed, and the results shall be reported in the Regional Board format, when it becomes available, and submitted with the laboratory reports. Proper chain of custody procedures must be followed, and a copy of the chain of custody shall be submitted with the report.
- G. All analyses shall be accompanied by the chain of custody, including but not limited to data and time of sampling, sample identification, and name of person who performed sampling, date of analysis, name of person who performed analysis, QA/QC data, method detection limits, analytical methods, copy of laboratory certification, and a perjury statement executed by the person responsible for the laboratory.

- H. For parameters that both monthly average and daily maximum limitations are specified and the monitoring frequency is less than four times a month, the following shall apply. If an analytical result is greater than the monthly average limitation, the Discharger shall collect four additional samples at approximately equal intervals during the month, until compliance with the monthly average limitation has been demonstrated. All five analytical results shall be reported in the monitoring report for that month, or 45 days after results for the additional samples were received, whichever is later. In the event of noncompliance with a monthly average effluent limitation, the sampling frequency for that pollutant shall be increased to weekly and shall continue at this level until compliance with the monthly average effluent limitation has been demonstrated. The Discharger shall provide for the approval of the Executive Officer a program to ensure future compliance with the monthly average limitation.

III. Effluent Monitoring Program

- A. The effluent monitoring program for the discharge of dechlorinated lagoon water through Discharge Serial No. 001 (Latitude 33° 50' 38" and Longitude 118° 23' 47") is described in the Table below.
- B. In addition to monitoring to determine compliance with effluent limitations, the Discharger must monitor the effluent for priority pollutants to determine reasonable potential. Pursuant to the California Water Code, section 13267, the Discharger is required to submit data sufficient for: (1) determining if water quality-based effluent limitations for priority pollutants are required, and (2) to calculate effluent limitations, if required. The *Policy for the Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (March 2, 2000) requires that the Regional Boards require periodic monitoring for pollutants for which criteria or objectives apply and for which no effluent limitations have been established. Accordingly, the Regional Board is requiring that the Discharger monitor the effluent for the priority pollutants listed in Section VI. The results of monitoring for reasonable potential determination shall be submitted in accordance with Section I.A of this Monitoring and Reporting Program.
- C. The effluent monitoring program for the discharge of dechlorinated lagoon water from Discharge Serial No. 001 (Latitude 33° 50' 38"N and Longitude 118° 23' 47"W) is:
1. Regular Season (Memorial Day to Labor Day)

Constituents	Units	Type of Sample	Sampling Frequency
Total Waste Flow	gpd	Estimated	Daily
Total Residual Chlorine [†]	mg/l	Grab	Weekly
Fecal Coliform	mpn/100 ml	Grab	Weekly
Total Coliform	mpn/100 ml	Grab	Weekly

Constituents	Units	Type of Sample	Sampling Frequency
Enterococcus	mpn/100 ml	Grab	Weekly
pH	S.U.	Grab	Annually
Total Suspended Solids	mg/l	Grab	Monthly
Turbidity	NTU	Grab	Monthly
Temperature	°F	Grab	Annually
Ammonia	mg/l	Grab	Monthly
Oil and grease	mg/l	Grab	Annually
Biochemical Oxygen Demand (BOD ₅ 20°C)	mg/l	Grab	Annually
Priority Pollutants (as listed in Section VI of the MRP)	ì g/l	Grab	Annually
Acute Toxicity	% survival	Grab	Annually

1. If there is no analytical method with a detection level below the effluent limitation, then the most sensitive method must be used. If the sample result is non-detect, the Discharger shall report the results as less than the method detection level and provide the actual detection level achieved.

2. Off-Season

Constituents	Units	Type of Sample	Sampling Frequency
Total Waste Flow	gpd	Estimated	Daily
Total Residual Chlorine ¹	ì g/l	Grab	Once per discharge ²
Fecal Coliform	mpn/100 ml	Grab	Once per discharge ²
Total Coliform	mpn/100 ml	Grab	Once per discharge ²
Enterococcus	mpn/100 ml	Grab	Once per discharge ²
pH	S.U.	Grab	Once per discharge ²
Total Suspended Solids	mg/l	Grab	Once per discharge ²
Turbidity	NTU	Grab	Once per discharge ²
Temperature	°F	Grab	Once per discharge ²
Ammonia	mg/l	Grab	Once per discharge ²
Oil and grease	mg/l	Grab	Once per discharge ²
Biochemical Oxygen Demand (BOD ₅ 20°C)	mg/l	Grab	Once per discharge ²

1. If there is no analytical method with a detection level below the effluent limitation, then the most sensitive method must be used. If the sample result is non-detect, the Discharger shall report the results as less than the method detection level and provide the actual detection level achieved.

2. Not more than one sample per week shall be collected.

IV. Toxicity Monitoring Requirements

A. Acute Toxicity Effluent Monitoring Program

1. The Discharger shall conduct acute toxicity tests on effluent grab samples by methods specified in 40 CFR Part 136 which cites U.S. EPA's *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, Fifth Edition, October 2002, U.S. EPA, Office of Water, Washington D.C. (EPA/821-R-02-012) or a more recent edition to ensure compliance in 100 % effluent.
2. The fathead minnow, *Pimephales promelas*, shall be used as the test species for fresh water discharges and the topsmelt, *Atherinops affinis*, shall be used as the test species for brackish effluent. The method for topsmelt is found in U.S. EPA's *Short-term Method for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms*, Third Edition, October 2002 (EPA/821-R-02-014).
3. In lieu of conducting the standard acute toxicity testing with the fathead minnow, the Discharger may elect to report the results or endpoint from the first 48 hours of the chronic toxicity test as the results of the acute toxicity test.
4. Effluent samples shall be collected after all treatment processes and before discharge to the receiving water.

B. Quality Assurance

1. Concurrent testing with a reference toxicant shall be conducted. Reference toxicant tests shall be conducted using the same test conditions as the effluent toxicity tests (e.g., same test duration, etc).
2. If either the reference toxicant test or effluent test does not meet all test acceptability criteria (TAC) as specified in the test methods manuals (EPA/821-R-02-013 and EPA/821-R-02-014), then the Discharger must re-sample and re-test at the earliest time possible.
3. Control and dilution water should be receiving water or laboratory water, as appropriate, as described in the manual. If the dilution water used is different from the culture water, a second control using culture water shall be used.

C. Accelerated Monitoring

1. If toxicity exceeds the limitations (as defined in Order No. R4-2004-0069, Section I.B.3.a.i.), then the Discharger shall immediately implement accelerated testing as specified in Section I.B.3.a.ii. The Discharger shall ensure that they receive results of a failing acute toxicity test within 24 hours of the close of the test and the additional tests shall begin within 3 business days of the receipt of the result. If the accelerated testing shows consistent toxicity, the Discharger shall immediately implement the Initial Investigation of the Toxicity Reduction Evaluation (TRE) Workplan.
2. If implementation of the initial investigation TRE Workplan indicates the source of toxicity (e.g., a temporary plant upset, etc.), then the Discharger may discontinue the Toxicity Identification Evaluation (TIE).
3. The first step in the initial Investigation TRE Workplan for downstream receiving water toxicity can be a toxicity test protocol designed to determine if the effluent from Discharge Serial No. 001 causes or contributes to the measured downstream acute toxicity. If this first step TRE testing shows that the Discharge Serial No. 001 effluent does not cause or contribute to downstream acute toxicity, using U.S. EPA's *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, Fifth Edition, October 2002, U.S. EPA, Office of Water, Washington D.C. (EPA/821-R-02-012), then a report on this testing shall be submitted to the Board and the TRE will be considered to be completed. Routine testing in accordance with MRP No.8034 shall be continued thereafter.

D. Steps in TRE and TIE procedures:

1. Following a TRE trigger, the Discharger shall initiate a TRE in accordance with the facility's initial investigation TRE workplan. At a minimum, the Discharger shall use EPA manuals EPA/600/2-88/070 (industrial) or EPA/833B-99/002 (municipal) as guidance or current versions. At a minimum, the TRE workplan must contain the provision in Attachment C. The Discharger shall expeditiously develop a more detailed TRE workplan for submittal to the Executive Officer within 30 days of the trigger, which will include, but not be limited to:
 - a. Further actions to investigate and identify the cause of toxicity;
 - b. Actions the Discharger will take to mitigate the impact of the discharge and prevent the recurrence of toxicity;

- c. Standards the Discharger will apply to consider the TRE complete and to return to normal sampling frequency; and,
 - d. A schedule for these actions.
2. The following is a stepwise approach in conducting the TRE:
 - a. Step 1 - Basic data collection. Data collected for the accelerated monitoring requirements may be used to conduct the TRE:
 - b. Step 2 - Evaluates optimization of the treatment system operation, facility housekeeping, and the selection and use of in-plant process chemicals;
 - c. If Steps 1 and 2 are unsuccessful, Step 3 implements a TIE and employment of all reasonable efforts and using currently available TIE methodologies. The objective of the TIE is to identify the substance or combination of substances causing the observed toxicity;
 - d. Assuming successful identification or characterization of the toxicant(s), Step 4 evaluates final effluent treatment options;
 - e. Step 5 evaluates in-plant treatment options; and,
 - f. Step 6 consists of confirmation once a toxicity control method has been implemented.

Many recommended TRE elements parallel source control, pollution prevention, and storm water control program best management practices (BMPs). To prevent duplication of efforts, evidence of implementation of these control measures may be sufficient to comply with TRE requirements. By requiring the first steps of a TRE to be accelerated testing and review of the facility's TRE workplan, a TRE may be ended in its early stages. All reasonable steps shall be taken to reduce toxicity to the required level. The TRE may be ended at any stage if monitoring indicates there is no longer toxicity (or six consecutive chronic toxicity results are less than or equal to 1.0 TU_c).

3. The Discharger may initiate a TIE as part of the TRE process to identify the cause(s) of toxicity. The Discharger shall use the EPA acute and chronic manuals, EPA/600/6-91/005F (Phase I)/EPA/600/R-96-054 (for marine), EPA/600/R-92/080 (Phase II), and EPA-600/R-92/081 (Phase III) as guidance.
4. If a TRE/TIE is initiated prior to completion of the accelerated testing schedule required by Section I.B.3.a.ii of this permit, then the accelerated testing

schedule may be terminated, or used as necessary in performing the TRE/TIE, as determined by the Executive Officer.

5. Toxicity tests conducted as part of a TRE/TIE may also be used for compliance, if appropriate.
6. The Board recognizes that toxicity may be episodic and identification of causes of and reduction of sources of toxicity may not be successful in all cases. Consideration of enforcement action by the Board will be based in part on the Discharger's actions and efforts to identify and control or reduce sources of consistent toxicity.

D. Reporting

1. The Discharger shall submit a full report of the acute toxicity test results, including any accelerated testing conducted during the month as required by this permit. Test results shall be reported as % survival with the discharge monitoring reports (DMR) for the month in which the test is conducted.
2. If an initial investigation indicates the source of toxicity and accelerated testing is unnecessary, then those results also shall be submitted with the DMR for the period in which the investigation occurred.
 - a. The full report shall be submitted on or before the end of the month in which the DMR is submitted.
 - b. The full report shall consist of (1) the results; (2) the dates of sample collection and initiation of each toxicity test; (3) the acute toxicity average limitation or chronic toxicity limitation or trigger.
3. The Discharger shall provide a compliance summary, which includes a summary table of toxicity data from all annual samples and any accelerated samples from the term of this permit.

The Discharger shall notify by telephone or electronically, this Regional Board of any toxicity exceedance of the limitation or trigger within 24 hours of receipt of the results followed by a written report within 14 calendar days of receipt of the results. The verbal or electronic notification shall include the exceedance and the plan the Discharger has taken or will take to investigate and correct the cause(s) of toxicity. It may also include a status report on any actions required by the permit, with a schedule for actions not yet completed. If no actions have been taken, the reasons shall be given.

V. Receiving Water Monitoring

Pursuant to the California Water Code, section 13267, the Discharger is required to submit data sufficient for: (1) determining if water quality-based effluent limitations for priority pollutants are required, and (2) to calculate effluent limitations, if required. The *Policy for the Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (March 2, 2000) requires that the Regional Boards require periodic monitoring for which criteria or objectives apply and for which no effluent limitations have been established. Accordingly the Regional Board is requiring that the Discharger conduct annual receiving water monitoring for the priority pollutants listed in Section VI. The results of monitoring for reasonable potential determination shall be submitted in accordance with Section I.A of this *MRP*. Receiving water sampling shall be conducted at the same time as the effluent sampling. The receiving water monitoring location shall be within 50 feet from the discharge point, outside the influence of the discharge, in King Harbor.

The required monitoring frequency and type of sample for pH, hardness, salinity, and toxic pollutants are listed in Section VI of this Monitoring and Reporting Program.

VI. Priority Pollutant Monitoring for Reasonable Potential Determination

- A. As described in Sections III.B and V of this *MRP*, the Discharger is required to monitor both the effluent and receiving water for pollutants listed in the table below in order to determine reasonable potential.
- B. Monitoring for reasonable potential determination shall occur at the following locations:
 - Effluent: Monitoring shall be conducted at Discharge Serial No. 001 (Latitude 33° 50' 38" N and Longitude 118° 23' 47" W) on the final effluent; and
 - Receiving water: Monitoring shall be conducted at a location within 50 feet from the discharge point, outside the influence of the discharge, in King Harbor.

Pollutant	Units	Type of Sample	Sampling Frequency
pH	standard units	Grab	Annually ¹
Hardness (as CaCO ₃)	mg/L	Grab	Annually ¹
Salinity	g/L	Grab	Annually ¹
Antimony	µg/L	Grab	Annually
Arsenic ²	µg/L	Grab	Annually
Beryllium	µg/L	Grab	Annually
Cadmium ²	µg/L	Grab	Annually
Chromium III ²	µg/L	Grab	Annually
Chromium VI ²	µg/L	Grab	Annually
Copper ²	µg/L	Grab	Annually

Pollutant	Units	Type of Sample	Sampling Frequency
Lead ²	µg/L	Grab	Annually
Mercury	µg/L	Grab	Annually
Nickel ²	µg/L	Grab	Annually
Selenium	µg/L	Grab	Annually
Silver ²	µg/L	Grab	Annually
Thallium	µg/L	Grab	Annually
Zinc ²	µg/L	Grab	Annually
Cyanide	µg/L	Grab	Annually
Asbestos	Fibers/L	Grab	Annually
Acrolein	µg/L	Grab	Annually
Acrylonitrile	µg/L	Grab	Annually
Benzene	µg/L	Grab	Annually
Bromoform	µg/L	Grab	Annually
Carbon Tetrachloride	µg/L	Grab	Annually
Chlorobenzene	µg/L	Grab	Annually
Chlorodibromomethane (Dibromochloromethane)	µg/L	Grab	Annually
Chloroethane	µg/L	Grab	Annually
2-Chloroethylvinyl ether	µg/L	Grab	Annually
Chloroform	µg/L	Grab	Annually
Dichlorobromomethane (Bromodichloromethane)	µg/L	Grab	Annually
1,1-Dichloroethane	µg/L	Grab	Annually
1,2-Dichloroethane	µg/L	Grab	Annually
1,1-Dichloroethylene	µg/L	Grab	Annually
1,2-Dichloropropane	µg/L	Grab	Annually
1,3-Dichloropropylene	µg/L	Grab	Annually
Ethylbenzene	µg/L	Grab	Annually
Methyl Bromide (Bromomethane)	µg/L	Grab	Annually
Methyl Chloride (Chloromethane)	µg/L	Grab	Annually
Methylene Chloride	µg/L	Grab	Annually
1,1,2,2-Tetrachloroethane	µg/L	Grab	Annually
Tetrachloroethylene	µg/L	Grab	Annually
Toluene	µg/L	Grab	Annually
1,2-Trans-Dichloroethene	µg/L	Grab	Annually
1,1,1-Trichloroethane	µg/L	Grab	Annually
1,1,2-Trichloroethane	µg/L	Grab	Annually
Trichloroethylene	µg/L	Grab	Annually
Vinyl Chloride	µg/L	Grab	Annually

Pollutant	Units	Type of Sample	Sampling Frequency
2-Chlorophenol	µg/L	Grab	Annually
2,4-Dichlorophenol	µg/L	Grab	Annually
2,4-Dimethylphenol	µg/L	Grab	Annually
2-Methyl- 4,6-Dinitrophenol	µg/L	Grab	Annually
2,4-Dinitrophenol	µg/L	Grab	Annually
2-Nitrophenol	µg/L	Grab	Annually
4-Nitrophenol	µg/L	Grab	Annually
3-Methyl 4-Chlorophenol	µg/L	Grab	Annually
Pentachlorophenol	µg/L	Grab	Annually
Phenol	µg/L	Grab	Annually
2,4,6-Trichlorophenol	µg/L	Grab	Annually
Acenaphthene	µg/L	Grab	Annually
Acenaphthylene	µg/L	Grab	Annually
Anthracene	µg/L	Grab	Annually
Benzidine	µg/L	Grab	Annually
Benzo(a)Anthracene	µg/L	Grab	Annually
Benzo(a)Pyrene	µg/L	Grab	Annually
Benzo(b)Fluoranthene	µg/L	Grab	Annually
Benzo(ghi)Perylene	µg/L	Grab	Annually
Benzo(k)Fluoranthene	µg/L	Grab	Annually
Bis(2-Chloroethoxy)Methane	µg/L	Grab	Annually
Bis(2-Chloroethyl)Ether	µg/L	Grab	Annually
Bis(2-Chloroisopropyl)Ether	µg/L	Grab	Annually
Bis(2-Ethylhexyl)Phthalate	µg/L	Grab	Annually
4-Bromophenyl Phenyl Ether	µg/L	Grab	Annually
Butylbenzyl Phthalate	µg/L	Grab	Annually
2-Chloronaphthalene	µg/L	Grab	Annually
4-Chlorophenyl Phenyl Ether	µg/L	Grab	Annually
Chrysene	µg/L	Grab	Annually
Dibenzo(a,h)Anthracene	µg/L	Grab	Annually
1,2-Dichlorobenzene	µg/L	Grab	Annually
1,3-Dichlorobenzene	µg/L	Grab	Annually
1,4-Dichlorobenzene	µg/L	Grab	Annually
3,3'-Dichlorobenzidine	µg/L	Grab	Annually
Diethyl Phthalate	µg/L	Grab	Annually
Dimethyl Phthalate	µg/L	Grab	Annually
Di-n-Butyl Phthalate	µg/L	Grab	Annually

Pollutant	Units	Type of Sample	Sampling Frequency
2,4-Dinitrotoluene	µg/L	Grab	Annually
2,6-Dinitrotoluene	µg/L	Grab	Annually
Di-n-Octyl Phthalate	µg/L	Grab	Annually
1,2-Diphenylhydrazine	µg/L	Grab	Annually
Fluoranthene	µg/L	Grab	Annually
Fluorene	µg/L	Grab	Annually
Hexachlorobenzene	µg/L	Grab	Annually
Hexachlorobutadiene	µg/L	Grab	Annually
Hexachlorocyclopentadiene	µg/L	Grab	Annually
Hexachloroethane	µg/L	Grab	Annually
Indeno(1,2,3-cd)Pyrene	µg/L	Grab	Annually
Isophorone	µg/L	Grab	Annually
Napthalene	µg/L	Grab	Annually
Nitrobenzene	µg/L	Grab	Annually
N-Nitrosodimethylamine	µg/L	Grab	Annually
N-Nitrosodi-n-Propylamine	µg/L	Grab	Annually
N-Nitrosodiphenylamine	µg/L	Grab	Annually
Phenanthrene	µg/L	Grab	Annually
Pyrene	µg/L	Grab	Annually
1,2,4-Trichlorobenzene	µg/L	Grab	Annually
Aldrin	µg/L	Grab	Annually
alpha-BHC (hexachloro-cyclohexane)	µg/L	Grab	Annually
beta-BHC	µg/L	Grab	Annually
gamma-BHC	µg/L	Grab	Annually
delta-BHC	µg/L	Grab	Annually
Chlordane	µg/L	Grab	Annually
4,4' -DDT	µg/L	Grab	Annually
4,4' -DDE (linked to DDT)	µg/L	Grab	Annually
4,4' -DDD	µg/L	Grab	Annually
Dieldrin	µg/L	Grab	Annually
Alpha-Endosulfan	µg/L	Grab	Annually
beta-Endosulfan	µg/L	Grab	Annually
Endosulfan Sulfate	µg/L	Grab	Annually
Endrin	µg/L	Grab	Annually
Endrin Aldehyde	µg/L	Grab	Annually
Heptachlor	µg/L	Grab	Annually

Pollutant	Units	Type of Sample	Sampling Frequency
Heptachlor Epoxide	µg/L	Grab	Annually
PCBs sum ³	µg/L	Grab	Annually
Toxaphene	µg/L	Grab	Annually

1. Sampling and analysis for pH, salinity, and hardness is required for samples of receiving water, only.
2. Measured as total recoverable.
3. PCBs sum refers to sum of PCB Aroclors 1016, 1221, 1232, 1242, 1248, 1254, and 1260.

- C. The Discharger is shall conduct effluent/receiving water monitoring for the presence of the 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD or Dioxin) congeners. The monitoring shall be a grab sample with a minimum frequency of twice during the permit term (once during the 2nd year of the permit and once during the 4th year) of the permit term. The Discharger is required to calculate Toxic Equivalence (TEQ) for each congener by multiplying its analytical concentration by the appropriate Toxicity Equivalence Factors (TEF) provided below.

Congeners	TEF
2,3,7,8-tetra CDD	1.0
1,2,3,7,8-penta CDD	1.0
1,2,3,4,7,8-hexa CDD	0.1
1,2,3,6,7,8-hexa CDD	0.1
1,2,3,7,8,9-hexa CDD	0.1
1,2,3,4,6,7,8-hepta CDD	0.01
Octa CDD	0.0001
2,3,7,8-tetra CDF	0.1
1,2,3,7,8-penta CDF	0.05
2,3,4,7,8-penta CDF	0.5
1,2,3,4,7,8-hexa CDF	0.1
1,2,3,6,7,8-hexa CDF	0.1
1,2,3,7,8,9-hexa CDF	0.1
2,3,4,6,7,8-hexa CDF	0.1
1,2,3,4,6,7,8-hepta CDF	0.01
1,2,3,4,7,8,9-hepta CDF	0.01
Octa CDF	0.0001

- D. Please note that the report for this required monitoring must be submitted with the self-monitoring reports in accordance with the schedule provided in Section I.A of this *MRP* No. 8034. The reports shall reference "Monitoring Results for CTR Priority Pollutants Reasonable Potential Determination".
- E. SWRCB-approved laboratory methods and the corresponding MLs for the examination of each priority pollutant are listed in Attachment B-1. Reporting requirements for the data to be submitted are listed in Attachment D. We recommend that you select the analytical method from Attachment B-1 capable of achieving the lowest ML for each pollutant as listed on Attachment B. ML is necessary for determining compliance for a priority pollutant when an effluent limitation is below the MDL.
- F. The laboratory analytical data shall include applicable MLs, MDL, quality assurance/quality control data, and shall comply with the reporting requirements contained in the Attachments B & C.

Ordered by: _____
Jonathan S. Bishop
Executive Officer

Date: March 3, 2005

EXHIBIT “9”

Please print or type in the unshaded areas only.

FORM 1 GENERAL

EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY
GENERAL INFORMATION
 Consolidated Permit Program
(Read the "General Instructions" before starting.)

Form Approved, OMB No. 2040-0086

EPA ID NUMBER

GENERAL INSTRUCTIONS
 If a proposed unit has been previously sited in the designated areas, review the information carefully. If any of the information in the areas below does not apply to the proposed unit, check the box in the left column of the label space. The information not checked appears, unless possible in the proper label space below. If the label is complete and correct, you need not complete items I, II, V, and VI. General V-2 which will be provided. Refer to the Instructions for detailed form descriptions and for the legal authorities under which this form is enforced.

II. POLLUTANT CHARACTERISTICS

INSTRUCTIONS: Complete A through J to determine whether you need to submit any permit application forms to the EPA. If you answer "yes" to any questions, you must submit this form and the supplemental form listed in the parentheses following the question. Mark "X" in the box in the third column if the supplemental form is attached. If you answer "no" to each question, you need not submit any of these forms. You may answer "no" if your activity is excluded from permit requirements; see Section C of the instructions. See also, Section D of the instructions for definitions of listed-based forms.

SPECIFIC QUESTIONS	List IV			SPECIFIC QUESTIONS	List V		
	YES	NO	FORM ATTACHED		YES	NO	FORM ATTACHED
A. Is this facility a publicly owned treatment works which results in a discharge to waters of the U.S.? (FORM 2A)		X		B. Does or will this facility (either existing or proposed) include a conventional animal feeding operation or aquaculture production facility which results in a discharge to waters of the U.S.? (FORM 2B)		X	
C. Is this a facility which currently results in discharges to waters of the U.S. other than those described in A or B above? (FORM 2C)	X			D. Is this a proposed facility (either new or expansion of an existing facility) which will result in a discharge to waters of the U.S.? (FORM 2D)		X	
E. Does or will this facility treat, store, or dispose of hazardous materials? (FORM 3)		X		F. Do you or will you inject at this facility industrial or municipal effluent below the lowest natural confining stratum within one quarter mile of the well bore, underground sources of drinking water? (FORM 4)		X	
G. Do you or will you inject at this facility any produced water or other fluids which are brought to the surface in connection with conventional oil or natural gas production, inject fluids used for enhanced recovery of oil or natural gas, or inject fluids for storage of liquid hydrocarbons? (FORM 4)		X		H. Do you or will you inject at this facility fluids for special processes such as mining of sulfur by the Frasch process, stream mining of minerals, in situ combustion of fossil fuel, or recovery of geothermal energy? (FORM 4)		X	
I. Is this facility a proposed stationary source which is one of the 20 industrial categories listed in the instructions and which will potentially emit 100 tons per year of any air pollutant regulated under the Clean Air Act and may affect or be located in an attainment area? (FORM 5)		X		J. Is this facility a proposed stationary source which is NOT one of the 20 industrial categories listed in the instructions and which will potentially emit 250 tons per year of any air pollutant regulated under the Clean Air Act and may affect or be located in an attainment area? (FORM 5)		X	

III. NAME OF FACILITY

SEASIDE LAAGOON

IV. FACILITY CONTACT

A. NAME & TITLE (last, first, & middle)
 MIKE WITZANSKY, DIRECTOR REC. & COMMUNITY SRVC DEPT

B. PHONE (area code & no.)
 (310) 318-0610

V. FACILITY MAILING ADDRESS

A. STREET OR P.O. BOX
 302 KNOB HILL

B. CITY OR TOWN
 REDONDO BEACH

C. STATE
 CA

D. ZIP CODE
 90277

VI. FACILITY LOCATION

A. STREET, ROUTE NO. OR OTHER SPECIFIC IDENTIFIER
 100 PORTOPINO WAY

B. COUNTY NAME
 LOS ANGELES

C. CITY OR TOWN
 REDONDO BEACH

D. STATE
 CA

E. ZIP CODE
 90277

F. COUNTY CODE (if different from B)

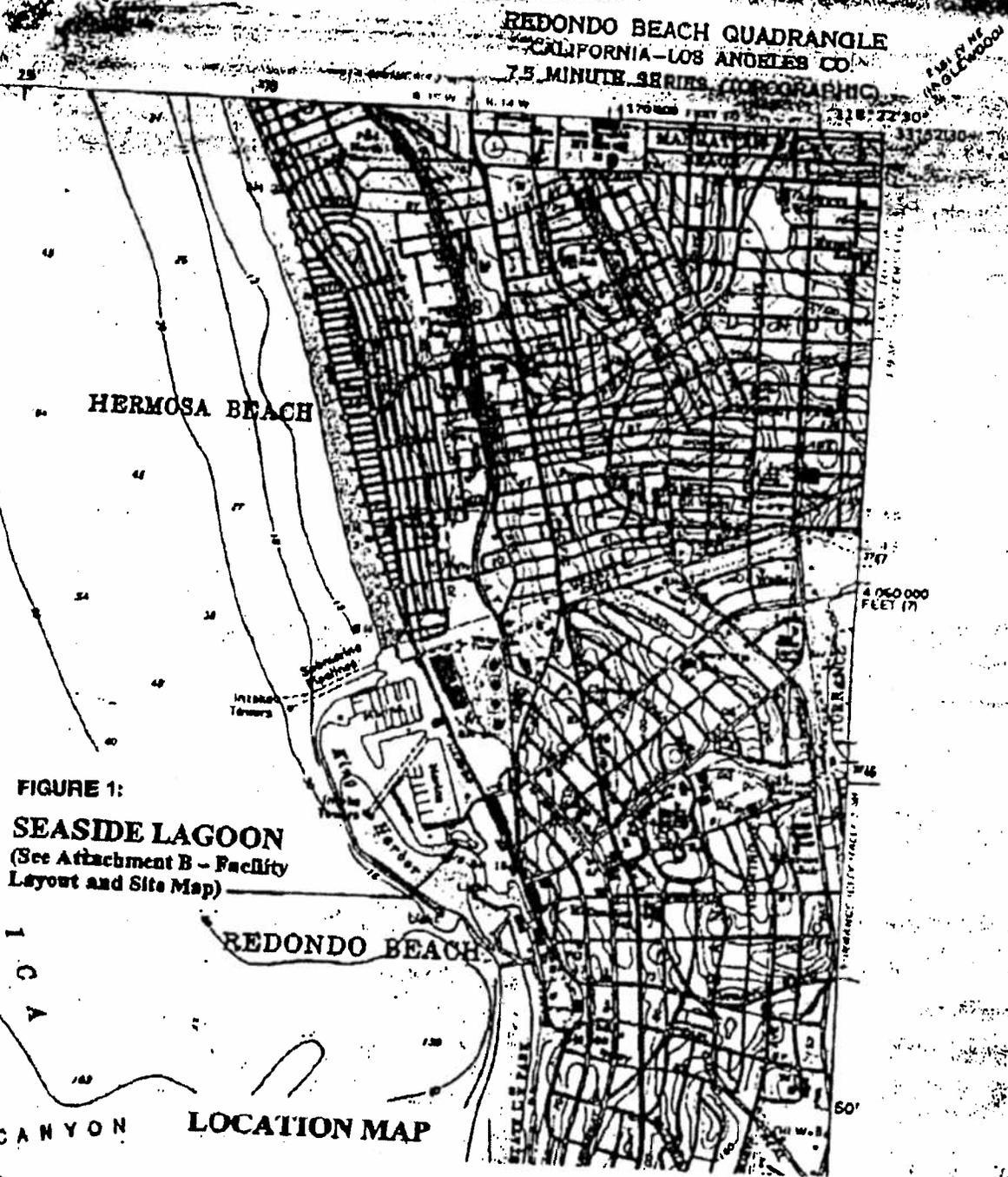
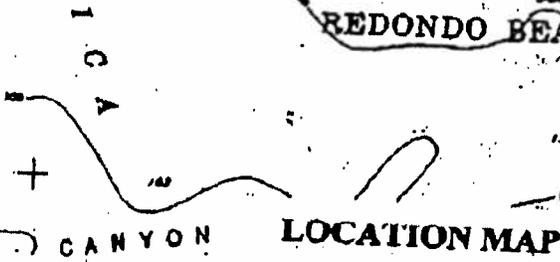


FIGURE 1:
SEASIDE LAGOON
(See Attachment B - Facility
Layout and Site Map)



EPA ID Number (copy from Part 1 of Form 1)

Receiving Water (name)
Santa Monica Bay

1 33.00 50.00 38.00 118.00 23.00 47.00

B. DISCHARGE DATE (If a new discharge, the date you expect to begin discharging)

A. Check the box(es) indicating the general type(s) of wastes discharged.

Sanitary Wastes Restaurant or Carberia Wastes Noncontact Cooling Water Other Nonprocess Wastewater (Identify)

B. If any cooling water additives are used, list them here. Briefly describe their composition if this information is available.

	<2 mg/l		<2	2.00	
	50 mg/l		29	5.00	
	20 mg/l		10.6	16.00	
	200 ppb		21 ppb	17.00	
	6 mg/l		6 mg/l	1.00	
	<.1 mg/l		<.1 mg/l		
Value	2.3 mgd		2.3 mgd		
Value	5.5-8.5		6.5-8.5		
	°C		°C		
	24.20 °C		21.70 °C	14.00	

*If noncontact cooling water is discharged

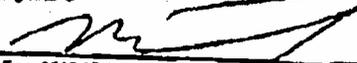
EPA Form 3510-2E (8-00)

Page 1 of 2

Discharge will occur between the last weekend in May and the first weekend in September each year (approximately 100 days). Discharge occurs between 6:00 am and 6:00 pm daily at a rate of 1200 gpm (2.3 mgd). Yes No

Influent is chlorinated w/ sodium hyperchlorite solution to maintain a chlorine residual of approximately 1.0 ppm in the lagoon. Effluent is de-chlorinated w/ sodium bi-sulfite to reduce the chlorine residual below 10 ppb.

See Attached A - Seaside Lagoon Facilities Report

<p>A. Name & Official Title Michael Witzansky, Recreation & Community Services Director</p>	<p>B. Phone No. (area code & no.) 310-318-0671</p>
<p>C. Signature </p>	<p>D. Date Signed 8/13/09</p>

**ATTACHMENT A
SEASIDE LAGOON
FACILITIES REPORT**

NPDES PERMIT NO. CA0064297

FACILITIES DESCRIPTION:

The Seaside Lagoon is a man-made saltwater swimming lagoon located at 200 Portofino Way. A rock revetment was constructed to form the lagoon and it has a sand bottom. A 140 foot by 30 foot concrete structure was constructed adjacent to the revetment to house the water distribution system and provide platform for installing recreational equipment (slides) used to enter the lagoon. The lagoon has a surface area of 1.2 acres with a maximum depth of 7 feet and contains a volume of 1.4 million gallons.

The revetment and sand surfaces are pervious and therefore a constant inflow of water is needed to maintain the designed water surface elevation. The influent water is supplied from the cooling water discharge tunnel owned and operated by the AES Redondo Beach, L.L.C. Power Plant located at 1100 N. Harbor Drive. The source of the Power Plant's cooling water is an intake pipe that opens beyond Redondo Beach King Harbor's outer breakwater. The water in the Plant's discharge tunnel is conveyed from a pump station, located over the tunnel near the intersection of Beryl and Harbor, through a 1400 foot, 14" PVC pipeline. The influent enters the lagoon through a series of nozzles placed along the platform structure. The effluent leaves the lagoon through three overflow structures located along the northwest edge of the lagoon. The water then flows by gravity to a discharge manhole, and finally through a 60 foot long conduit into inner King Harbor at the edge of the revetment. Samples for compliance monitoring are taken from the discharge manhole.

Additionally, the Lagoon's water supply system is equipped with both chlorination and de-chlorination facilities. The chlorination system consists of one 1000 gallon storage tank which holds 17% Sodium hypochlorite; dual chemical feed pumps with manual controls; and related piping. The chlorination system pipe connects to the influent piping where it enters the facility. The de-chlorination system consists of one 1000 gallon storage tank which holds 38% Bi-sulfite; dual chemical feed pumps with manual controls and related piping. The de-chlorination piping terminates at the overflow structures at which point the bi-sulfite solution is added to the effluent. Bi-sulfite is added at all three overflow structures.

See Attachments B System Schematic Diagram.

OPERATION DESCRIPTION:

The lagoon is open daily to the public for swimming from Memorial Day to Labor Day and several weekends in September each year from 6:00 a.m. to 6:00 p.m. At other times the lagoon and adjacent recreational facilities maybe used for social functions.

During the operational hours the water supply system pumps 3,200 gpm through the lagoon (2.3 million gallons per day). The facility operates as a single pass-through system with no provisions for recirculation. The pump is operated by a time clock.

To meet Los Angeles County Department of Health Services requirement the supply water is chlorinated prior to entering the lagoon. The amount of chlorine added is sufficient to maintain a minimum of 1 ppm chlorine residual throughout the lagoon which is necessary to insure that bacteria are killed. The bi-sulfite is added to the effluent at the overflow structures. The amount added is sufficient to reduce the chlorine residual in the effluent to below the detection limit (10 ppb)

City staff monitors the lagoon on an hourly basis for residual chlorine however an independent laboratory performs all permit compliance monitoring.

In the past, the lagoon effluent has experience some elevated bacteria readings. In assessing this problem it was concluded that a potential source is the collector pipe that runs between the overflow structures and the monitoring vault. Since the effluent is de-chlorinated at the overflow structures there is the potential that bacteria sources could accumulate in the collector pipe during the period the lagoon is not operating (October thru May). It is also speculated that this buildup could dislodge sometime after operations resume and thus result in a high bacteria sample result. To mitigate this potential the City has instituted a new pre-season operational process. This process is performed just prior to the opening of the lagoon on the Memorial Day weekend. The end of the collector pipe is plug just upstream of the monitoring vault and chlorinated water is the circulated thru the collector pipe for several hours. The chlorinated water is collected at the plugged end and then pumped back into the lagoon preventing chlorinated water from being discharge into the receiving waters (see Attachment C). This process will kill any bacteria that may accumulate in the pipe and removes other materials that might trap the bacteria.

The facility has also experienced incidences of chlorine residual exceedances. The investigation into the cause found that the 36" slide gate valve on the bypass pipe was leaking resulting in a small amount of highly chlorinate water being introduced into the effluent in the monitoring vault. This problem has been corrected by installing addition bracing on the valve frame that insures the valve seats are kept watertight.

NPDES PERMIT AND TIME SCHEDULE ORDER BACKGROUND:

The current NPDES Permit was issued on March 3, 2005 and has an expiration date of February 10, 2010. During the 2005 and 2006 operating periods the facility experienced a number of permit limit exceedances. The more problematic parameters were Total Suspended Solids (TSS) and Biochemical Oxygen Demand (BOD). These problems caused the City to initiate contact with the Regional Board.

On February 13, 2007 the Regional Board and City Staff meet to discuss the problems and possible solutions. On April 3, 2007 the City Council held a workshop to review the issue with the Regional Board Executive Officer. The conclusion of this discussion resulted in the Regional Board issuing a Time Schedule Order (TSO) No. R4-2007-0024. The TSO temporarily modified the TSS and BOD limits and directed the City to conduct

a source identification study and submit a Source Identification Report (SIR) to the Regional Board. The TSO was set to expire on January 31, 2008.

The study could not replicate the high BOD concentrations exhibit in the prior years and therefore it was concluded that this was an anomaly. Regarding TSS, the SIR concluded that the predominate source of TSS in the effluent was from the Lagoon's influent with only a negligible amount (approximately 6%) being contributed by Lagoon operation. Considering the high variability of the concentration of TSS in both the influent and effluent the Lagoon's 6% contribution is considered statistically insignificant. The response from the Regional Board regarding this fact was to inform the City that regardless of the TSS concentration of the influent the City would still have to meet the permit TSS limit on the effluent.

Based on the SIR findings and the Board's position at the time, the City concluded that there was no economic corrective action that could be taken to ensure the permit limit could be achieved on a continuous basis. After discussing this conclusion further with the Board it was decided that the best option was to pursue a complete reconstruction of the lagoon and ultimately eliminate all discharge of facility water into the Harbor.

On December 13, 2007, the City sent a letter to the Regional Board stating that the discharge would be eliminated before the existing permit was to expire and that the City would not request a renewal. Based on this, the Regional Board on January 31, 2007 issued a second TSO (No. R4-2008-0002) that modified the Lagoon's TSS limit. The TSO is scheduled to expire on February 28, 2010.

Since January 2007, the City has worked diligently to prepare the design documents needed to begin the Lagoon reconstruction process and eliminate the facility's water discharge into the Harbor. However, over the course of the two year community outreach and design approval period two significant things occurred that have changed the City's need to continue operation of the existing facility and therefore pursue a new NPDES permit. The first is the nationwide economic collapse and its impact on the City's revenue and capital resources. The cost to replace the Lagoon's existing 45,000 sq. ft. pass through water feature with only a 20,000 sq. ft. closed circuit filtration system (as approved by City Council in March 2009) has been estimated to cost nearly \$12,000,000. While this expenditure may have been feasible during the economic climate that existed in 2007 it is clearly not feasible today. The second is that the Lagoon's water quality discharge during the 2008 and 2009 operating seasons has been better than in previous years. The Lagoon has operated within the TSO limits and largely within the original NPDES permit limits as well.

It will likely be many years before the City has the fiscal resources needed to reconstruct the Seaside Lagoon and again finds itself in the difficult position of either shutting down the facility following the 2009 operating season or pursuing a new NPDES permit for continued discharge of water into the Harbor. While the Board would likely have no difficulty issuing a permit with limitations that matched or were more restrictive than those in the existing permit, the City remains concerned that the TSS maximum daily and monthly average limits in the original NPDES permit would be too stringent to continue operation of the facility and that past permits have not properly accounted for the Lagoon's unique circumstances. When considering the facility utilizes water from an

ocean source that is generally cleaner than the Harbor water that it is discharged into and that it has been proven that the Lagoon is responsible for less than 6% of the TSS in its effluent, and is entirely dependent on the quality of the water it takes in, it is the City's position that any new permit must contain modified TSS limits.

PROPOSED PERMIT MODIFICATION:

In order to continue operating a highly unique water recreational amenity that has served millions of regional patrons over the years, the City requests that the Board approve a new NPDES permit for the Seaside Lagoon according to the following conditions:

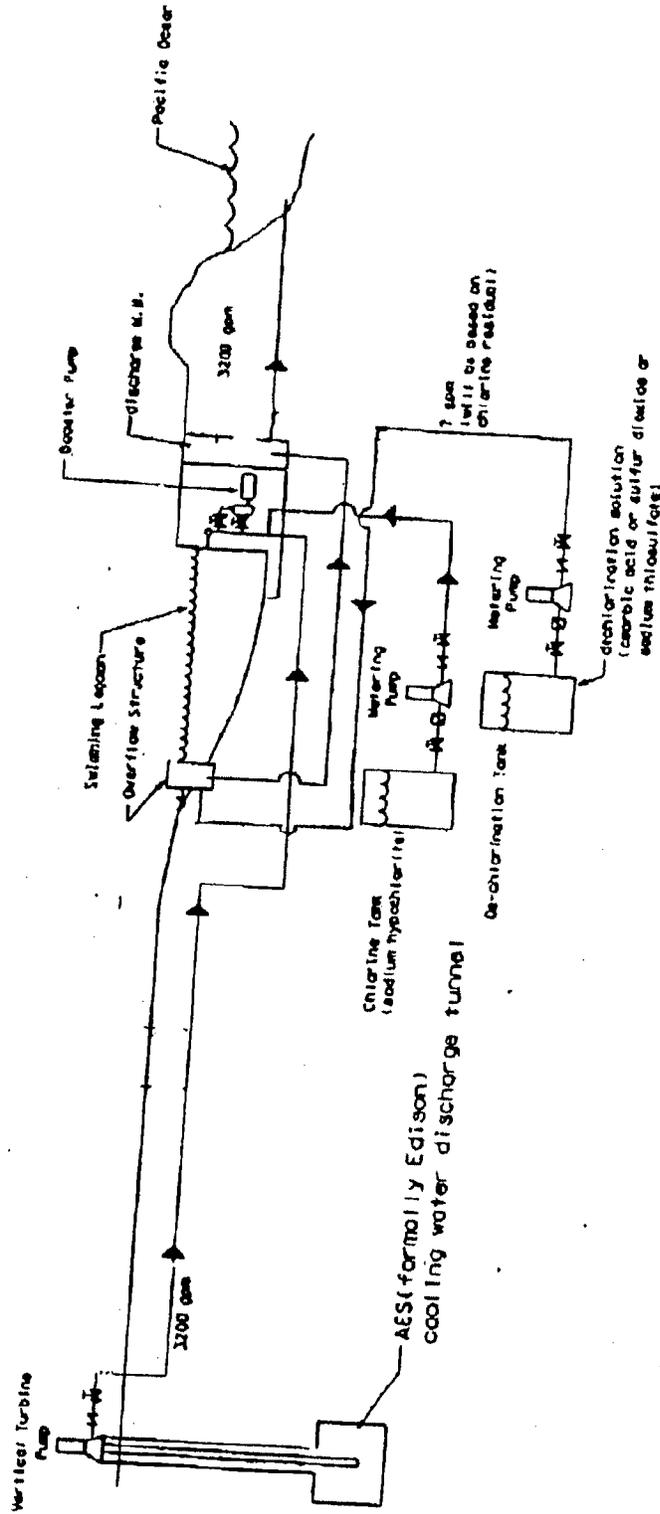
1. **Effluent and Receiving Water Monitoring Program** – the existing permit in Sections III B and V required monitoring for Priority Pollutants. The monitoring results over the last five years show no priority pollutants detected in the effluent or receiving waters. It is requested that this requirement be removed from the next permit.
2. **Total Suspended Solid Limit** – due to the operational configuration of the facility it is not possible to control the TSS concentration in the effluent thru treatment. Over the last five years the effluent limit has been exceeded. In 2007 the Regional Board issued the facility a Time Schedule Order (TSO) that increased the limit for TSS from 50 mg/l monthly average and 75 mg/l daily maximum to 200 mg/l and 250 mg/l respectively. The TSO also required the City to conduct a source identification study. The results of this study showed that the major cause of the high TSS concentration in the effluent was the TSS concentration in the influent. It was determined that only approximately 6% of the TSS (2-3 mg/l) in the effluent was contributed by the lagoon. However, over the study period the maximum monthly average of the influent was 50 mg/l while the effluent was only 43 mg/l. The maximum daily results were 115 mg/l and 123 mg/l for the influent and effluent respectively.

In 2008 the Regional Board issued a second TSO with an expiration date that coincided with the original permit. The TSS limit was modified to 60 mg/l monthly average and 120 mg/l daily maximum. The monitoring results for 2008 showed that neither the TSO nor the original permit limits were exceeded. However the monitoring results for the first month of 2009 showed that the sample in May and the first sample in June exceeded the TSO limit. As a result, additional sampling was instituted to determine if these higher concentrations would continue. The results of this additional sampling showed that the concentrations for each of the subsequent weekly samples were lower than the prior week. This resulted in a monthly average for June of 41 mg/l. If the single May sample is included in the June results the average would be 50 mg/l.

In conclusion, the TSO source identification report showed that the vast majority of TSS in the Lagoon's effluent is in the water before it enters the facility and that the influent TSS concentration is so erratic that it can at times alone exceed the permit limit. Based on this the City requests that:

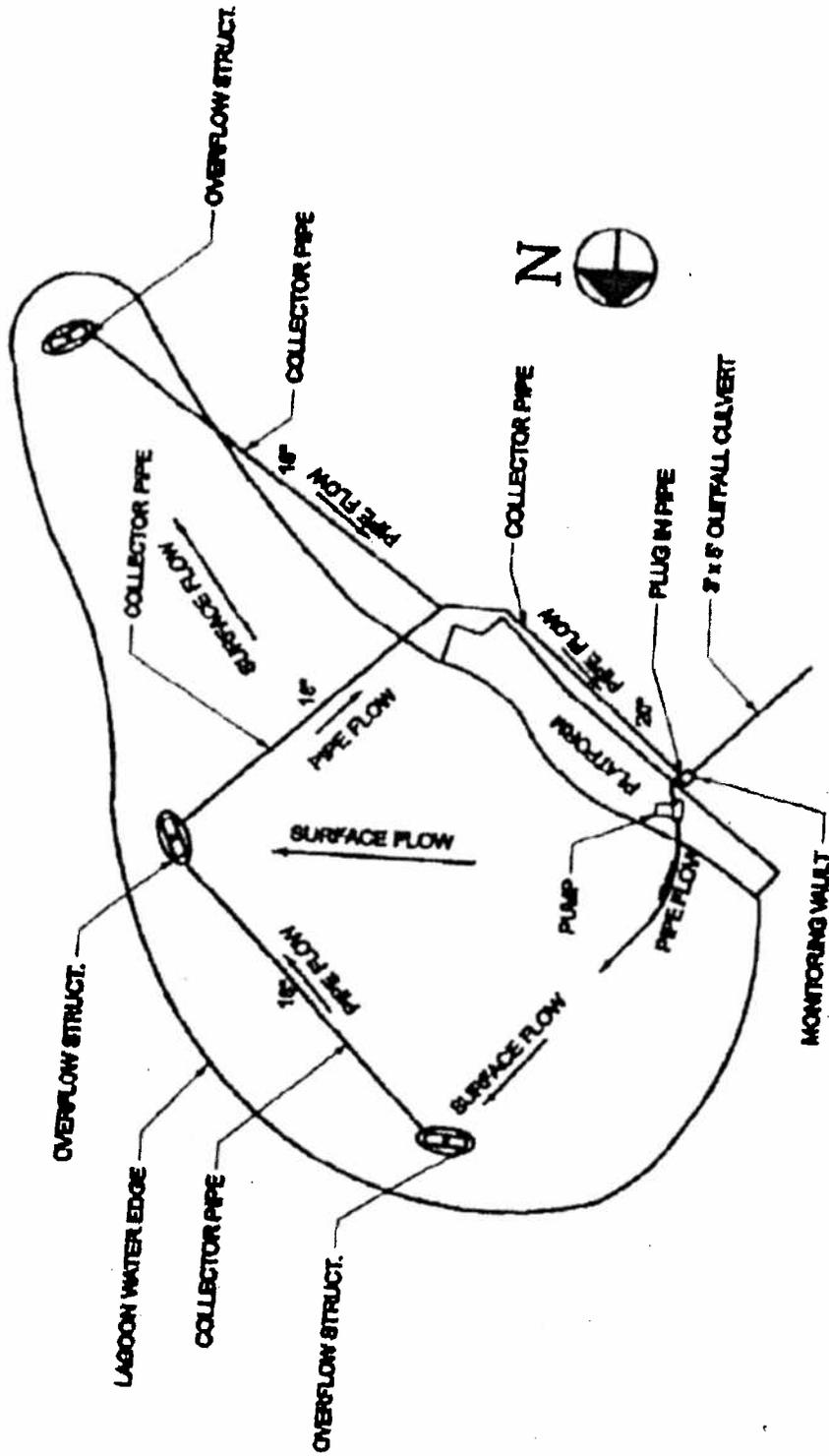
- The TSS limit for the new NPDES permit be increased to match the current TSO limit;

- The May result be incorporated into the June monthly average calculation due to the fact that only one sample was taken in May; and,
- The sampling and analysis frequency for TSS be increased from monthly to weekly on an ongoing basis.



PUMPING SYSTEM SCHEMATIC DIAGRAM

Attachment B



COLLECTOR PIPE RE-CIRCULATION PLAN

Attachment C

EXHIBIT “10”



Wlston H. Hickox
Secretary for
Environmental
Protection

California Regional Water Quality Control Board

Los Angeles Region

(50 Years Serving Coastal Los Angeles and Ventura Counties)

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640
Internet Address: <http://www.swrcb.ca.gov/rwqcb4>



Gray Davis
Governor

May 4, 2001

Ms. Sylvia Glazer
Director of Public Works
City of Redondo Beach
545 N. Gertruda Avenue
Redondo Beach, CA 90277

Certified Mail
Return Receipt Requested
No. 7000 1530 0000 9785 8609

Dear Ms. Glazer:

NOTICE OF VIOLATION AND REQUIREMENT TO SUBMIT INFORMATION - CITY OF REDONDO BEACH (SEASIDE LAGOON) (PERMIT NO. CA0064297, ORDER NO. 99-057, CI NO. 8034).

Board Order No. 99-057 contains requirements and a monitoring and reporting program for your waste discharge. Monitoring and Reporting Program CI No. 8034 provides for monitoring of specific constituents at a required frequency and the intervals at which these reports should be submitted to this Regional Board.

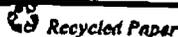
You are hereby notified that, based on your self monitoring reports for July 1999; August 1999; June 2000; July 2000; and August 2000, the discharge from the subject facility was in violation of the following constituent limitations contained in Order No. 99-057, as follows:

Constituent	Reported Discharge for	Reported Value	Permit Limit		Over Limit
BOD	07/99/1999	90 mg/L	30 mg/L	Daily Maximum	200 %
Residual Chlorine	08/31/1999	150 µg/L	8 µg/L	Daily Maximum	1,775 %
Residual Chlorine	06/02/2000	310 µg/L	8 µg/L	Daily Maximum	3,775 %
Residual Chlorine	06/09/2000	20 µg/L	8 µg/L	Daily Maximum	150 %
Residual Chlorine	06/14/2000	40 µg/L	8 µg/L	Daily Maximum	300 %
Residual Chlorine	06/22/2000	500 µg/L	8 µg/L	Daily Maximum	6,150 %
Residual Chlorine	06/27/2000	70 µg/L	8 µg/L	Daily Maximum	775 %
Residual Chlorine	June 2000	190 µg/L	2 µg/L	Monthly Average	9,400 %
Residual Chlorine	07/05/2000	280 µg/L	8 µg/L	Daily Maximum	3,400 %
Residual Chlorine	07/12/2000	820 µg/L	8 µg/L	Daily Maximum	10,150 %
Residual Chlorine	07/17/2000	10 µg/L	8 µg/L	Daily Maximum	25 %
Residual Chlorine	July 2000	280 µg/L	2 µg/L	Monthly Average	13,900 %
Residual Chlorine	08/02/2000	400 µg/L	8 µg/L	Daily Maximum	4,900 %
Residual Chlorine	08/09/2000	10 µg/L	8 µg/L	Daily Maximum	25 %
Residual Chlorine	08/23/2000	20 µg/L	8 µg/L	Daily Maximum	25 %
Residual Chlorine	08/30/2000	3,060 µg/L	8 µg/L	Daily Maximum	38,150 %
Residual Chlorine	June 2000	700 µg/L	2 µg/L	Monthly Average	34,900 %

You are required to comply with the following tasks:

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/ochallenge.html>



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

Ms. Sylvia Glazer

- 2 -

May 4, 2001

1. Implement corrective and preventive actions to bring your discharge into full compliance with the Effluent Limitations contained in Board Order No. 95-041.
2. Submit, for approval by the Regional Board Executive Officer, a report detailing the corrective actions taken and the results thereof.

Pursuant to sections 13260, 13261, 13267 and 13268 of the California Water Code, you are required to achieve compliance with the requirements of Board Order No. 95-041. You are now subject to an enforcement action by the Regional Board and the assessment of penalties of up to \$1,000 per day of each day per violation. Pursuant to section 13385 of the California Water Code, you are also subject to penalties ranging from a mandatory minimum penalty of \$3,000 for each serious violation (as defined by section 13385 of the California water Code) to \$10,000 for each day in which each violation occurs plus \$10 multiplied by the number of gallons by which the volume discharge but not cleaned up exceeds 1,000 gallons. These civil liabilities can be assessed by the Regional Board for failure to comply, and without further warning.

Please contact Hugh Marley at (213) 576-6687 or Rafael Maestu at (213) 576-6781 if you have any questions regarding the matter.

Sincerely,



Dennis A. Dickerson
Executive Officer

cc: Mr. Tom Huetteman, Clean Water Act Compliance, EPA, Region IX
Mr. Jorge Leon, Office of Chief Counsel, State Water Resources Control Board
Mr. Robert Sams, Office of Chief Counsel, State Water Resources Control Board
Mr. Jim Kassel, Division of Water Quality, State Water Resources Control Board
Mr. Bill Tippets, Department of Fish and Game
Ms. Vera Melnyk Vecchio, Drinking Water Field Operations Branch, State Department of Health Services
Mr. Mark Gold, Heal the Bay
Mr. Patrick Rogan, Surfrider Foundation
Mr. Steve Fleischli, Santa Monica Bay Keeper
Mr. Terry Tamminen, Environment Now

California Environmental Protection Agency

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EXHIBIT “11”

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:) **Complaint No. R4-2004-0159**
) **Mandatory Minimum Penalty**
) **for**
AES REDONDO BEACH, LLC) **Violation of California Water Code § 13376**
REDONDO GENERATING) **and**
STATION)
REDONDO BEACH, CA) **Order No. 00-085 (NPDES No. CA0001201)**

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) § 13385, subdivisions (h) & (i) is issued to AES Redondo Beach, LLC (hereinafter Permittee) based on findings of violations of waste discharge requirements prescribed in Order No. 00-085 (NPDES No. CA0001201, CI No. 0536).

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

1. The Permittee operates the Redondo Generating Station (hereinafter facility) located at 1100 Harbor Drive, Redondo Beach. The Permittee can discharge up to 898 million gallons per day (MGD) of wastewater at the facility. The wastewater is susceptible of containing residual chlorine, free chlorine, suspended solids 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.). The wastewater flows into Santa Monica Bay, a navigable water of the United States.
2. On June 29, 2000, the Regional Board adopted Order No. 00-085, which prescribes waste discharge requirements to the Permittee for the discharge of treated wastes from the facility.
3. Order No. 00-085 (Part I.A., page 10) includes the following effluent limitations for residual chlorine and free chlorine from Discharge Serial Nos. 001 and 002:

Constituent	Unit of Measure	Discharge Limitations (daily maximum)
Total Residual Chlorine	mg/L	0.2
Free Available Chlorine	mg/L	0.2

mg/L = milligrams/liter

Order No. 00-085 (Part I.A.7.b., page 13) includes the following effluent limitation for suspended solids from low volume wastes:

November 1, 2004

Constituent	Unit of Measure	Discharge Limitations (daily maximum)	Discharge Limitations (monthly average)
Suspended Solids	mg/L	100	30

mg/L = milligrams/liter

Any discharge containing pollutants violating the effluent limitations set in the waste discharge requirements is prohibited by CWC § 13376.

4. Among the provisions in the Permittee's waste discharge requirements are the requirements to implement a discharge monitoring program and to prepare and submit monthly NPDES self-monitoring reports to the Regional Board.
5. Twenty-one (21) violations of Order No. 00-085 were noted in the Permittee's self-monitoring reports during the period 8/4/00 through 5/17/01. These violations include effluent limit exceedances for residual chlorine, free chlorine and suspended solids. The violations are identified in Table 1 attached hereto and incorporated herein by reference.
6. 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, as specified in Appendix A to § 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to § 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.
7. 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.
8. A portion of the penalty not to exceed fifteen thousand dollars (\$15,000) plus fifty percent (50%) of the penalty amount that exceeds fifteen thousand dollars (\$15,000) may be directed to be expended on a Supplemental Environmental Project (SEP) pursuant to CWC § 13385(l).
9. The maximum amount of administrative civil liability assessable pursuant to CWC § 13385 for each day of violation 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.

YOU ARE HEREBY GIVEN NOTICE THAT:

10. The Executive Officer proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$60,000 for the violations which occurred during August 2000, October 2000, February 2001, and May 2001. Refer to Table 1 for the calculation of the amount of mandatory minimum penalty.

11. A hearing shall be conducted on this Complaint by the Regional Board or Regional Board Hearing Panel (Hearing Panel) within 90 days after service of this Complaint on the Permittee pursuant to CWC §§ 13228.14 and 13323. The Permittee will be notified of the date, time and location of the hearing. The Permittee may waive the right to a hearing. Should the Permittee choose to waive the right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver to the Regional Board at 320 West 4th Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on December 3, 2004. If the hearing is waived, the following options are available to satisfy the civil liability:
 - a. A check in the amount of \$60,000 (payable to the State Water Resources Control Board Cleanup and Abatement Account) shall accompany the signed waiver; or
 - b. The Permittee may pay up to \$37,500 of the civil liability by contributing to a SEP on the Regional Board approved SEP List at www.swrcb.ca.gov/rwqcb4/html/programs/enforcement.html. To the greatest degree practicable, there must be a nexus demonstrated with the violations cited in this Complaint and the chosen SEP.

If the Permittee elects to contribute to a SEP, a check in the amount of \$22,500 (payable to the State Water Resources Control Board Cleanup and Abatement Account) shall accompany the signed waiver along with a written statement indicating the SEP chosen and proof of payment shall be submitted to the Regional Board by the close of business of December 3, 2004.
12. 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.
13. 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.
14. Regulations of the US 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.

November 1, 2004

Jonathan Bishop
Executive Officer
Los Angeles Regional Water Quality Control Board

WAIVER OF THE RIGHT TO A HEARING

By signing below and returning this Waiver, I hereby waive the right of AES Redondo Beach, LLC to a hearing before the Regional Board to dispute the allegations and civil liability set forth in Administrative Civil Liability Complaint No. R4-2004-0159 (Complaint) issued by the Regional Board Executive Officer. AES Redondo Beach, LLC understands that this Waiver gives up the rights to contest the allegations of the Complaint and the amount of civil liability it imposes.

AES Redondo Beach, LLC elects to pay the civil liability in the following manner [check the relevant boxes]:

- o Enclosed herewith in full payment of the civil liability is a \$60,000 check payable to "State Water Resources Control Board Cleanup and Abatement Account."

Or

- o Enclosed herewith are a \$22,500 check payable to "State Water Resources Control Board Cleanup and Abatement Account" and proof of payment of \$ 37,500 to a Supplemental Environmental Project (SEP) listed on the Regional Board-approved SEP list.

AES Redondo Beach, LLC understands that this Waiver gives up the rights to argue against the allegations made by the Executive Officer in this Complaint and against imposition of, and the amount of, civil liability imposed. AES Redondo Beach, LLC also understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment in full will be due thirty days after the date of the adoption of the Order.

I hereby affirm that I am duly authorized to act on behalf of and to bind AES Redondo Beach, LLC in the making and giving of this Waiver.

AES Redondo Beach, LLC

Date: _____

By: _____
(Signed name)

(Printed or typed name)

Position: _____

EXHIBIT “12”



California Regional Water Quality Control Board Los Angeles Region



Winston H. Hickox
Secretary for
Environmental
Protection

(50 Years Serving Coastal Los Angeles and Ventura Counties)

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640
Internet Address: <http://www.swrcb.ca.gov/rwqcb4>



March 29, 2002

Ms. Sylvia V. Glazer
Director of Public Works
City of Redondo Beach
545 N. Gertruda Avenue
Redondo Beach, CA 90277

By Fax and
Certified Mail
Return Receipt Requested
No. 7000 1530 0000 9785 8579

Dear Ms. Glazer:

COMPLAINT NO. R4-2002-0014 FOR ADMINISTRATIVE CIVIL LIABILITY FOR THE CITY OF REDONDO BEACH, SEASIDE LAGOON, 200 PORTOFINO WAY, REDONDO BEACH (NPDES No. CA0064297, Order No. 99-057, CI No. 8034).

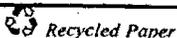
Enclosed is Complaint No. R4-2002-0014 for Mandatory Administrative Civil Liability in the amount of \$51,000 against the City of Redondo Beach for violation of Waste Discharge Requirements contained in Order No. 99-057. Also enclosed for your information is a copy of the Regional Board Revised Procedures for the Conduct of Hearing Panel Proceedings.

Unless waived, a Hearing before a Regional Board Hearing Panel will be held on this Complaint pursuant to California Water Code section 13323. Should the City of Redondo Beach choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. R4-2002-0014 and return it to the Regional Board by April 12, 2002. If we do not receive the waiver and payment of the mandatory minimum penalty by April 12, 2002, this matter will be heard before the Hearing Panel. An agenda containing the date, time, and location of the Hearing will be mailed to you not less than ten (10) days prior to the Hearing date.

The Hearing Panel will hear the staff presentation, any evidence and argument the City of Redondo Beach wishes to present, and any comments offered by interested parties. To ensure that the Hearing Panel members are given the opportunity to fully study and consider the information the City of Redondo Beach wishes to present at the Hearing, all documentation that the City of Redondo Beach wishes to be considered must be submitted to this office at least five (5) working days prior to the date of the Hearing. The documentation must include: (a) any written comments, (b) a list identifying each witness to be called, and (c) the estimated time required by witnesses to present testimony. Failure to comply with these requirements is grounds for the Hearing Panel to refuse to admit the proposed written comments or exhibits into evidence (Title 23, California Code of Regulations, section 648.4).

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>



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Ms. Sylvia V. Glazer

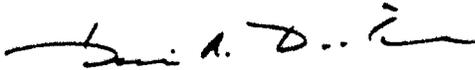
- 2 -

March 29, 2002

The City of Redondo Beach may be allowed by the Regional Board to perform a Supplemental Environmental Project in lieu of paying a portion of the mandatory minimum penalty.

Please contact Hugh Marley at (213) 620-6375 or Lala Kabadaian at (213) 620-6370 should you have any questions.

Sincerely,



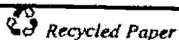
Dennis A. Dickerson
Executive Officer

Enclosures

cc: Mr. Michael Lauffer, Office of Chief Counsel, State Water Resources Control Board
Mr. Robert Sams, Office of Chief Counsel, State Water Resources Control Board
Mr. Jim Kassel, Division of Water Quality, State Water Resources Control Board
Mr. Bill Tippets, Department of Fish and Game
Ms. Vera Melnyk Vecchio, Drinking Water Field Operations Branch, State Department of Health Services

California Environmental Protection Agency

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**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:) **Complaint No. R4-2002-0014**
) **Mandatory Minimum Penalty**
CITY OF REDONDO BEACH) **for**
SEASIDE LAGOON) **Violation of California Water Code § 13376**
) **and**
) **Order No. 99-057 (NPDES No. CA0064297)**

This Complaint to assess the mandatory minimum penalty pursuant to Water Code § 13385(h) is issued to the City of Redondo Beach (hereafter referred to as the Discharger) based on a finding of violation of Waste Discharge Requirements prescribed in Board Order No. 99-057 (NPDES No. CA0064297, CI No. 8034).

The Executive Officer finds the following:

1. The Discharger operates a Seaside Lagoon (facility) at 200 Portofino Way, Redondo Beach, California. The facility is a man-made lagoon which provides water recreational services to the public. Water to the lagoon is supplied from the adjacent AES Redondo Beach, L.L.C., Power Plant cooling water discharge outfall line. The Discharger generates as much as 2.5 million gallons per day of wastewater, consisting of wastes that it discharges from this site (Latitude 33°50'38", Longitude 118°23'47"). This wastewater can contain solids, nutrients, chlorine, and other pollutants which can degrade water quality and impact beneficial uses, and which are defined as wastes under the Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.).
2. On June 30, 1999, the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), adopted Order No. 99-057 which prescribes Waste Discharge Requirements to the Discharger for the discharge of treated wastes from the Seaside Lagoon. The wastes flow to King Harbor, a navigable water of the United States.
3. Order No. 99-057, Part 2, includes the following effluent limitations for total residual chlorine constituents:

Constituent	Unit of Measure	Discharge Limitations	
		Daily Maximum	Monthly Average
Residual Chlorine*	µg/L	8	2

µg/L = micrograms per liter
* Total Residual Chlorine

March 29, 2002

Any discharge containing pollutants exceeding the effluent limitations set in the Waste Discharge Requirements is prohibited by § 13376 of the California Water Code.

4. Among the provisions in the Discharger's Waste Discharge Requirements are the requirements to implement a discharge monitoring program and to prepare and submit monthly NPDES self-monitoring reports to the Regional Board.

In its monthly report for June 2000, the Discharger reported that it exceeded effluent limitations as follows:

Date	Violation Type	Constituent	Reported Value	Permit Limit	% Exceeded
6/2/00	Daily	Residual Chlorine*	310 µg /L	8 µg /L	3,775
6/9/00	Daily	Residual Chlorine*	20 µg /L	8 µg /L	150
6/14/00	Daily	Residual Chlorine*	40 µg /L	8 µg /L	400
6/22/00	Daily	Residual Chlorine*	500 µg /L	8 µg /L	6,150
6/27/00	Daily	Residual Chlorine*	70 µg /L	8 µg /L	775
6/30/00	Monthly	Residual Chlorine*	188 µg /L [†]	2 µg /L	9,300

µg /L = micrograms per Liter

*Total Residual Chlorine

[†] Not reported by the facility. Monthly average value calculated by staff based on additional data submitted by the facility's laboratory on November 20, 2001.

In its monthly report for July 2000, the Discharger's laboratory reported that the Discharger exceeded effluent limitations as follows:

Date	Violation Type	Constituent	Reported Value	Permit Limit	% Exceeded
7/5/00	Daily	Residual Chlorine*	320 µg /L	8 µg /L	3,900
7/12/00	Daily	Residual Chlorine*	860 µg /L	8 µg /L	10,650
7/17/00	Daily	Residual Chlorine*	60 µg /L	8 µg /L	650
7/31/00	Monthly	Residual Chlorine*	190 µg /L [†]	2 µg /L	9,400

µg /L = micrograms per Liter

*Total Residual Chlorine

[†] Not reported by the facility. Monthly average value calculated by staff based on additional data submitted by the facility's laboratory on November 20, 2001.

In its monthly report for August 2000, the Discharger's laboratory reported that the Discharger exceeded effluent limitations as follows:

Date	Violation Type	Constituent	Reported Value	Permit Limit	% Exceeded
8/2/00	Daily	Residual Chlorine*	460 µg /L	8 µg /L	5,650

Date	Violation Type	Constituent	Reported Value	Permit Limit	% Exceeded
8/9/00	Daily	Residual Chlorine*	30 µg /L	8 µg /L	275
8/16/00	Daily	Residual Chlorine*	30 µg /L	8 µg /L	275
8/23/00	Daily	Residual Chlorine*	60 µg /L	8 µg /L	650
8/30/00	Daily	Residual Chlorine*	3,170 µg /L	8 µg /L	39,525
8/31/00	Monthly	Residual Chlorine*	750 µg /L [†]	2 µg /L	37,400

µg /L = micrograms per Liter

*Total Residual Chlorine

[†] Monthly average value calculated by staff

In its monthly report for July 2001, the Discharger reported that it exceeded effluent limitations as follows:

Date	Violation Type	Constituent	Reported Value	Permit Limit	% Exceeded
7/12/01	Daily	Residual Chlorine*	50 µg /L	8 µg /L	525

µg /L = micrograms per Liter

*Total Residual Chlorine

Residual chlorine is specified as a Group II pollutant in Appendix A to § 123.45 of Title 40 of the Code of Federal Regulations (CFR). Pursuant to CWC § 13385(h)(2)(A) a “serious violation” is defined as any waste discharge that exceeds the effluent limitations by 40% or more for a Group I pollutant or by 20% or more for a Group II pollutant. The Discharger’s discharge on June 2, June 9, June 14, June 22, June 27, June 30, July 5, July 12, July 17, July 31, August 2, August 9, August 16, August 23, August 30, August 31, 2000, and July 12, 2001 constitute serious violations under CWC § 13385.

5. On November 20, 2001, Regional Board staff contacted Mr. Richard Gossett, Laboratory Manager at CRG Marine Laboratories, to inquire about the residual chlorine data provided in the Discharger’s monitoring reports. Mr. Gossett explained that the laboratory reports provided by CRG Marine Laboratories, Inc. in 1999 and 2000 for the Discharger have the total residual chlorine mistakenly reported as combined chlorine. Combined chlorine is determined by subtracting free chlorine from the total residual chlorine result. Upon reviewing the laboratory notebook, Mr. Gossett determined that this calculation was not performed during the 1999 and 2000 reporting periods. Therefore, all the combined chlorine results in the Discharger’s monitoring reports during 1999 and 2000 were in fact results for total residual chlorine.
6. CWC § 13385(h) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for the first serious violation in any six-month period or, in lieu of the penalty for the first serious violation require the Discharger to spend an equal amount to carry out a supplemental environmental project (SEP) or to develop a pollution prevention plan (PPP). That section also requires the assessment of additional penalties for subsequent serious violations.

7. The maximum amount of administrative civil liability pursuant to § 13385 of the California Water Code for each day of violation 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.

The Discharger IS HEREBY GIVEN NOTICE THAT:

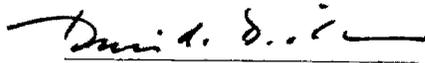
1. The Executive Officer of the Regional Board proposes that the Discharger be assessed a mandatory minimum penalty in the amount of \$51,000 for the serious violations which occurred during June, July, August 2000, and July 2001.
2. A hearing shall be conducted on this Complaint by the Regional Board or Regional Board Hearing Panel (Hearing Panel) within 60 days after service of this Complaint on the Discharger pursuant to CWC § 13323. The Discharger will be notified of the date, time and location of the Hearing. The Discharger may waive the right to a hearing. Should the Discharger choose to waive the right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver to the Regional Board at 320 West 4th Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on April 12, 2002. If the hearing is waived, the following options are available to satisfy the civil liability:
 - a. A check in the amount of \$51,000 (payable to the State Water Resources Control Board Cleanup and Abatement Account) shall accompany the signed waiver or;
 - b. In the event that the Discharger proposes to invest in a SEP or PPP, a letter clearly stating that the Discharger will provide a proposal for a SEP or PPP, and a check for the remaining \$45,000 of the assessed administrative civil liability (payable to the State Water Resources Control Board Cleanup and Abatement Account) shall be sent along with the executed waiver and received by the Regional Board by the close of business on April 12, 2002. The SEP or PPP proposal shall be received by the Regional Board by the close of business on April 26, 2002.

The proposal for a SEP or PPP will be subject to the approval of the Regional Board.

Should the Regional Board not approve the Discharger's proposal for a PPP or SEP, or should the Discharger later elect not to implement the PPP or SEP, the remainder of the total Administrative Civil Liability will be due and payable within 30 days of such and event.

3. In the event that the Discharger fails to comply with the requirements of this Complaint, the Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement

4. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of Discharger's Waste Discharge Requirements.
5. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code § 21100 et seq., in accordance with California Code of Regulations, title 14, § 15321.



Dennis A. Dickerson
Executive Officer

Dated March 29, 2002

WAIVER OF THE RIGHT TO A HEARING

By signing below and attaching a check for the amount of civil liability (\$51,000) proposed in Administrative Civil Liability Complaint No. R4-2002-0014, or by signing below and attaching a signed statement committing to preparation of a Pollution Prevention Plan or a Supplemental Environmental Project subject to Regional Board approval for \$6,000, and by attaching a check for the remainder of the civil liability (\$45,000), the City of Redondo Beach, on behalf of itself, waives the right to a hearing before the Regional Board or Hearing Panel. The City of Redondo Beach understands that it is forgoing its right to argue against the allegations made by the Executive Officer in this Complaint, and against imposition of, and the amount of, civil liability imposed. Furthermore, the City of Redondo Beach understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment will be due thirty days after the date of adoption.

Signature: _____

Name: _____

Position: _____

City of Redondo Beach

Date: _____

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION

REVISED PROCEDURES
FOR THE CONDUCT OF HEARING PANEL PROCEEDINGS

1. A Hearing Panel shall consist of three (3) or more Board Members.
2. The Executive Officer, in consultation with the Board Chairperson, is authorized to designate matters that shall be heard before Hearing Panels.
3. The Panel Hearing shall take place at a time and place designated by the Executive Officer with the approval of the Board Chairperson. Due notice shall be provided to all known interested parties.
4. At the commencement of the Panel Hearing, Panel members shall designate from among their membership a Panel Chair, who shall conduct the hearing, determine the order of the proceedings, and rule on all hearing issues.
5. The parties shall present all evidence and argument that they intend to offer to the Regional Board during the Panel Hearing prior to the close of the record.
6. At the discretion of the Hearing Panel, a hearing that is commenced on one day may be continued for good cause to a future day.
7. Upon completion of testimony and argument, the Hearing Panel shall deliberate upon the evidence and its proposed decision and order. At its discretion, the Hearing Panel may deliberate in open or closed session. The Panel Chair shall thereafter declare the record closed and the hearing completed.
8. Upon completion of the Panel Hearing, the Hearing Panel shall designate one of the Panelists to prepare and present the Panel's written report consisting of findings of fact and proposed decision and order to the Regional Board.
9. At a regularly scheduled meeting of the Regional Board, the designated Panelist shall present the Hearing Panel's report to the Regional Board. The Hearing Panel report shall become a part of the Regional Board record for the case in question.
10. Upon its consideration of a decision and Order in the matter, the Regional Board shall accept the Hearing Panel's findings of fact, and shall not ordinarily permit additional evidence to be submitted; however, the Regional Board may take additional evidence and entertain additional argument from any of the parties as may be necessary if the evidence or argument could not reasonably have been offered before the Hearing Panel.
11. The Regional Board shall make an independent review of the record before adopting a final Regional Board decision and Order. The Regional Board, at its discretion, may deliberate in open or closed session.
12. The Regional Board decision and Order may adopt, with or without revision, the proposed decision and order of the Hearing Panel.
13. The Regional Board members who served on the Hearing Panel may participate in the Regional Board's consideration of the Hearing Panel report and decision in the matter.

EXHIBIT “13”

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

TIME SCHEDULE ORDER NO. R4-2007-0024

REQUIRING CITY OF REDONDO BEACH
TO COMPLY WITH THE REQUIREMENTS PRESCRIBED IN
ORDER NO. R4-2005-0016
(NPDES PERMIT NO. CA0064297)

The California Regional Water Quality Control Board, Los Angeles Region, (hereinafter Regional Board), finds:

1. City of Redondo Beach (hereinafter City or Discharger), discharges wastewater under Waste Discharge Requirements (WDRs) contained in Order No. R4-2005-0016 adopted by the Regional Board on March 3, 2005, which serves as the National Pollutant Discharge Elimination System (NPDES) permit (CA0064297) for the facility known as Seaside Lagoon.

2. Seaside Lagoon is located at 200 Portfino Way, Redondo Beach, California, and is owned and operated by the City. Seaside Lagoon is a city park and consists of a 1.4 million gallon man-made saltwater lagoon, artificial beaches, children's play area, snack bar facilities, and other recreational areas. The park is open to the public for swimming from Memorial Day to Labor Day each year.

Water for the Lagoon comes from a nearby steam generating plant (AES Redondo Beach, L.L.C., Power Plant) where the seawater is used to cool turbines. The Power Plant is located at 1100 Harbor Drive, Redondo Beach. When operated at design capacity, the AES Power Plant discharges up to 898 million gallons per day (mgd) of once-through cooling water. This discharge is regulated under separate WDRs contained in Board Order No. 00-085. Approximately 3,200 gallons per minute (gpm), which is equivalent to approximately 2.3 mgd, of once-through cooling water, is directed to the Seaside Lagoon.

The City is using only a small portion (0.26 %) of the cooling water from the Power Plant for recreational beneficial use, which would otherwise be discharged directly to the ocean. The warm temperature of the Power Plant's discharged cooling water is comforting to the swimmers.

To maintain the water level in the Seaside Lagoon, the City discharges roughly 3,200 gpm (approximately 2.3 mgd) of dechlorinated saltwater to King Harbor, at the shoreline (Latitude 33° 50' 38" N and Longitude 118° 23' 47" W) embankment through Discharge Serial 001.

3. NPDES Order No. R4-2005-0016 prescribes effluent limits for total suspended solids (TSS) (50 mg/L for monthly average and 75 mg/L daily maximum) and biochemical oxygen demand (BOD) (20 mg/L for monthly average and 30 mg/L for daily maximum). Data collected during the NPDES permit monitoring for the discharge had concentrations of TSS up to 250 mg/L and BOD up to 100 mg/L. These concentrations exceed the discharge limits.
4. The Discharger cannot meet the prescribed effluent limits for TSS and BOD. Hence, the Order includes interim limits that will allow the Discharger to discharge elevated concentrations of the

contaminant during: 1) the characterization of the discharge; 2) the identification of potential sources; 3) the investigation of possible corrective operational changes; 4) the evaluation of alternate treatment technology; and 5) the implementation of the chosen operational changes and/or treatment technology. The Discharger will conduct the necessary investigations and submit a plan by October 31, 2007, that describes the operational and/or infrastructure modifications that will be implemented to ensure that the discharge meets the discharge limits of the NPDES permit.

5. California Water Code Section 13300 States:

"Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements."

6. The Regional Board has determined that the actions delineated in Item 4 above will provide critically needed data for determining the mechanism to come into compliance with the discharge limits specified in Order No. R4-2005-0016. Interim limits included in this Order are based on maximum discharge effluent concentration.
7. This revision does not modify any of the Discharger's final water quality-based effluent limitations.
8. The Regional Board may reopen this Time Schedule Order (TSO) at its discretion or at the request of the Discharger, if warranted.
9. This enforcement action is being taken for the protection of the environment and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21100, et.seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to the California Water Code Section 13300, City of Redondo Beach shall:

1. Comply with the following interim effluent limits from May 1, 2007, to January 31, 2008:

Constituents	Units	Discharge Limitation	
		Daily Maximum	Monthly Average
Total suspended solids	mg/L	250	200
Biochemical Oxygen Demand	mg/L	100	100

Discharges after January 31, 2008, must comply with the final effluent limits in Order R4-2005-0016.

2. The City shall submit, in addition to the monthly monitoring report required by the NPDES permit, the following information:
 - October 1st - results from discharge characterization and identification of potential sources and evaluation of potential operation modifications, infrastructure modifications, and treatment technologies
 - October 31st - a compliance plan fully describing the chosen operational and/or technology modifications to be implemented to bring the discharge into compliance with the original NPDES permit limits, along with schedule of implementation
3. The City shall present the above-mentioned results and the proposed plan to bring the discharge into full compliance. Depending on the solution(s) presented by the City, the Regional Board will consider further regulatory requirements for implementation.
4. If the Discharger fails to comply with any provisions of this Order, the Executive Officer may issue an Administrative Civil Liability Complaint pursuant to California Water Code Section 13323. The Regional Board may also refer the case to the Attorney General for injunction and civil monetary remedies, pursuant to California Water Code sections 13331 and 13385.
5. The interim limits in TSO Order No. R4-2007-0024 modifies the final effluent limits contained in NPDES Order No. R4-2005-0016 for the duration of the TSO. All other provisions of NPDES Order No. R4-2005-0016 not in conflict with this Order are in full force and effect.

I, Jonathan S. Bishop, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on April 26, 2007.

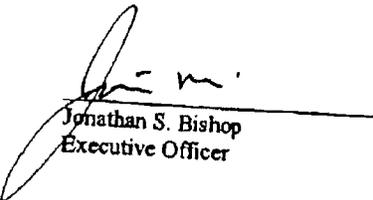

Jonathan S. Bishop
Executive Officer

EXHIBIT “14”

City of Redondo Beach

Seaside Lagoon

TSO Source Identification Report

October 1, 2007

Submitted to:

*Regional Water Quality Control Board
Los Angeles Region*

Prepared by: CDM

City of Redondo Beach – Seaside Lagoon TSO Source Identification Report – Draft

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Executive Summary

This Source Identification Report (SIR) is prepared as part of a comprehensive effort undertaken by the City of Redondo Beach to identify potential sources of recent high BOD and TSS concentrations in the Seaside Lagoon effluent and to evaluate options to bring the effluent quality back in compliance with the applicable NPDES permit, consistent with the terms of Time Schedule Order (TSO) No. R4-2007-0024 dated April 26, 2007 issued by the California Regional Water Quality Control Board (RWQCB) – Los Angeles Region.

A Monitoring Plan intended to identify potential sources was prepared and implemented as the first step in this effort. Samples were collected at seven different sampling locations representing influent to the lagoon, water quality within the lagoon, effluent from the lagoon, and background water quality at two locations in the harbor. BOD, COD, TSS, VSS, turbidity, total and fecal coliform, DO, temperature, pH, chlorine residual, TOC, and/or SEM-EDX analyses were performed on one or more of these samples at various frequencies over the lagoon's summer 2007 operating period (Memorial day through Labor day).

Results indicate that BOD and COD concentrations in influent as well as effluent are very low, with effluent BOD well within the monthly average permit limit of 20 mg/L. These readings indicate low organic content, which is corroborated by low TOC and VSS concentrations. Effluent coliform and chlorine residuals were also well within permit limits during this period. Preliminary results indicated that effluent TSS was the only parameter that exceeded the monthly average permit limit of 50 mg/L and the daily limit of 75 mg/L during this period. Further efforts were therefore focused on identifying potential TSS sources.

Evaluation of several parameters (temperature, DO, number of swimmers, tidal backwater effects) and their correlation with TSS indicated that the lagoon influent was the most likely source of TSS in the effluent. The data shows that on average, the lagoon effluent TSS was only about 6.6 percent higher than the lagoon influent TSS, indicating that most of the effluent TSS is already present in the influent. The influent and effluent also showed statistical frequency distributions that matched closely. No significant correlation was found between effluent TSS and other parameters.

Attempts to "fingerprint" influent and effluent solids with intent to provide further support for the influent-effluent link yielded limited success because of various sampling and analytical limitations. However, scanning electron microscopy with energy dispersive x-ray spectrometry (SEM-EDX) did establish petroleum oil and several metals to be common components of both influent and effluent.

The conclusion of this Source Identification Study is that the lagoon influent is the source of the majority of the TSS in the lagoon effluent. While the data show that the lagoon does result in a small increase in the TSS (2 to 3 mg/L on average), this is insignificant compared to the baseline TSS concentration in the influent (about 40

mg/L average). Further, harbor sampling in two locations showed that the seawater that serves as both the source for the lagoon influent and receiving water for lagoon effluent has an average TSS concentration of about 45 mg/L, which is higher than the lagoon effluent TSS. The lagoon effluent therefore does not adversely impact the harbor background TSS concentration.

1.1 Background and Objective

This Source Identification Report (SIR) is prepared as part of a comprehensive effort undertaken by the City of Redondo Beach to evaluate options to bring the Seaside Lagoon effluent quality back into compliance with the applicable NPDES permit, consistent with the terms of Time Schedule Order (TSO) No. R4-2007-0024 dated April 26, 2007 issued by the California Regional Water Quality Control Board (RWQCB) – Los Angeles Region.

The ultimate objective of the City's efforts is to reestablish permit compliance. The first step towards this objective was to implement the Seaside Lagoon Monitoring Plan (Appendix A) to collect data on various water quality parameters in order to trace potential sources that may help explain recently observed high effluent Biological Oxygen Demand (BOD) and Total Suspended Solids (TSS) concentrations. The objective of the SIR is to identify potential contaminant sources based on the data collected during the implementation of the Monitoring Plan. Potential solutions that may help reestablish effluent compliance will subsequently be evaluated and described in a separate report. The sampling locations, parameters tested, and testing procedures summarized here are described in more detail in the Monitoring Plan in Appendix A. Modifications were made to the Monitoring Plan at various times based on ongoing concurrent data analysis. These modifications are described below where applicable in the "Monitoring Plan Implementation Results" section of this report.

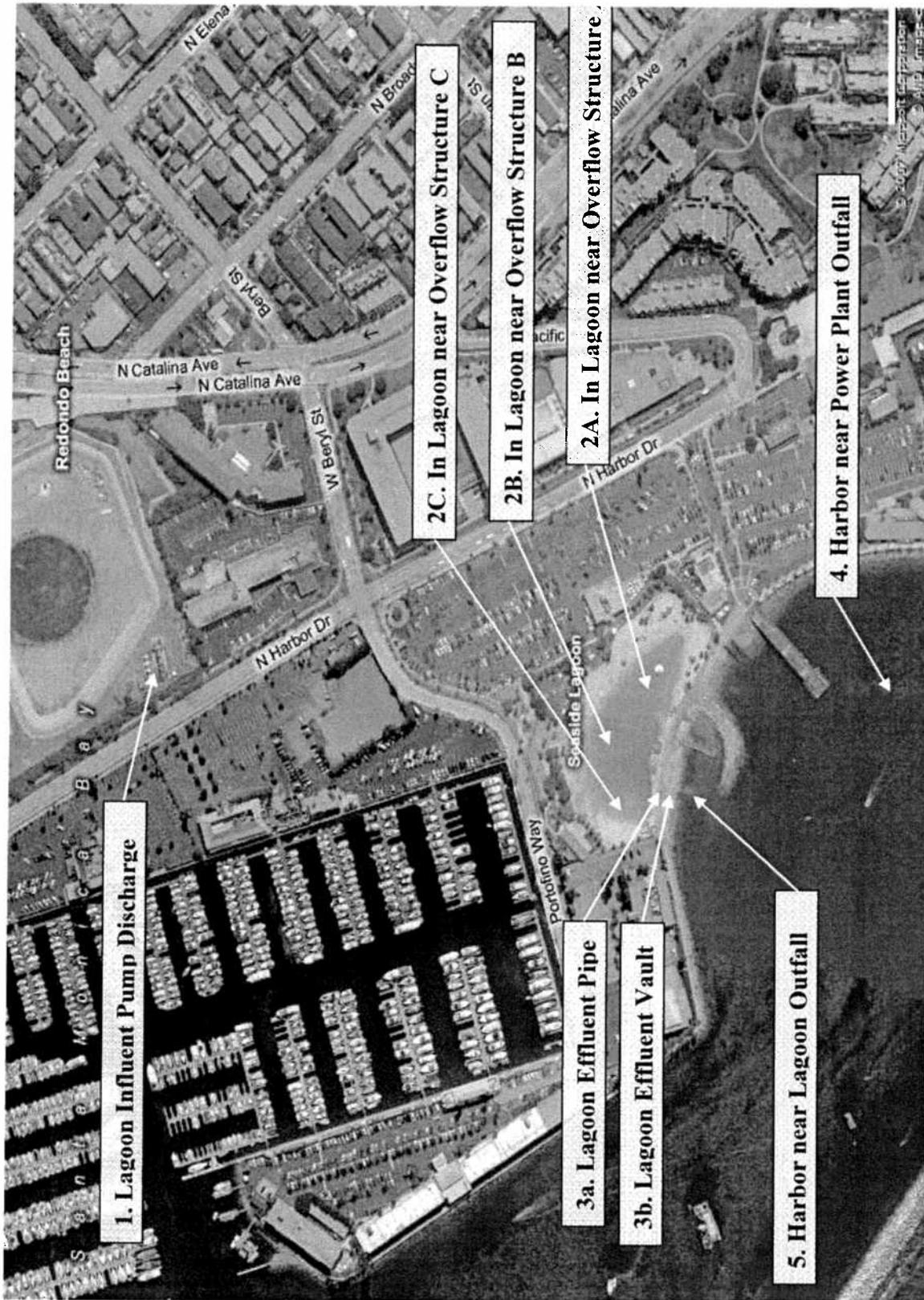
Samples were collected at the following seven (7) sampling locations (see Figure 1):

1. Lagoon Influent Pump Discharge (1-Inf). This sample was intended to represent the lagoon influent water quality.
2. A, B, and C (2a-LOA, 2b-LOB, and 2c-LOC). In Lagoon near Overflow Structures A, B, and C. These samples were intended to represent the water quality within the lagoon.
3. Lagoon Effluent Pipe (3a-Eff-Pipe). This sample was intended to represent the quality of the combined lagoon effluent. Historical data prior to this study was based on samples taken from the effluent vault and had a higher probability of being influenced by tidal backwater from the Lagoon outfall and material floating on the surface of the water. Effluent samples for this study were collected 2 to 3 feet upstream of the vault, from within the 20-inch combined effluent pipe, to mitigate the risk of contamination while still collecting a representative combined effluent sample.
4. Harbor near Power Plant Outfall (4-HPO). This sample was intended to provide a general indication of background harbor water quality in the vicinity of the discharge end of the power plant outfall pipe. This location is significant because during periods of low power plant effluent flow and/or

high tide, water from the harbor can flow back into the outfall pipe and can be pumped as influent to the Lagoon by the Lagoon Influent Pump.

5. Harbor near Lagoon Outfall (5-HLO). This sample was intended to provide a general indication of background harbor water quality in the vicinity of the discharge end of the Lagoon outfall.

Figure 1 – Seaside Lagoon Sampling Locations



The parameters tested at some or all of the above locations include BOD, Chemical Oxygen Demand (COD), TSS, Volatile Suspended Solids (VSS), turbidity, total and fecal coliform (TC and FC), Dissolved Oxygen (DO), temperature, pH, chlorine residual, and Total Organic Carbon (TOC). Heavier, fast settling sediment from the lagoon influent and effluent sample containers was also analyzed using scanning electron microscopy with energy-dispersive x-ray spectrometry (SEM-EDX).

Samples collected at the Lagoon Influent Pump Station and the Lagoon Effluent Pipe were composite samples unless otherwise noted. Samples collected at the other locations were grab samples. Temperature and pH were in-situ field measurements.

The sampling and analysis was performed by Michelson Laboratories, Commerce, California under contract with the City, except that TOC analysis was subcontracted to Weck Laboratories, Inc., City of Industry, California, and SEM-EDX analysis was subcontracted to S&N Labs, Santa Ana, California.

1.2 Monitoring Plan Implementation Results

This section describes the results of the sampling and analysis performed as part of the implementation of the Monitoring Plan. The complete dataset resulting from this sampling and analysis is provided separately in electronic format.

1.2.1 BOD and COD

Lagoon effluent BOD and COD were well within compliance limits during the sampling period. Figure 2 shows that most BOD samples collected were at or below the detection limit of 2 mg/L. The highest effluent BOD was 3.9 mg/L. All COD values were at or below the detection limit of 10 mg/L. Because all samples were consistently below the compliance limits, the sampling plan was modified to test for BOD and COD only once per week at the Lagoon Effluent Pipe location. This change went into effect during the tenth week of testing.

1.2.2 Total Coliform (TC) and Fecal Coliform (FC)

Some lagoon effluent TC and FC values exceeded compliance limits during the first few weeks when composite samples were being used (see Figure 2). Coliform sampling was changed from composite to grab to prevent potential regrowth in composite sample containers. This change began the week of July 1, 2007. Coliform concentrations were well within compliance limits for all subsequent grab samples. Enterococcus samples were also taken at the influent and effluent locations and were all at or below the detection limit of 10 MPN/100 mL, with the exception of one composite influent sample.

Figure 2 - BOD and COD

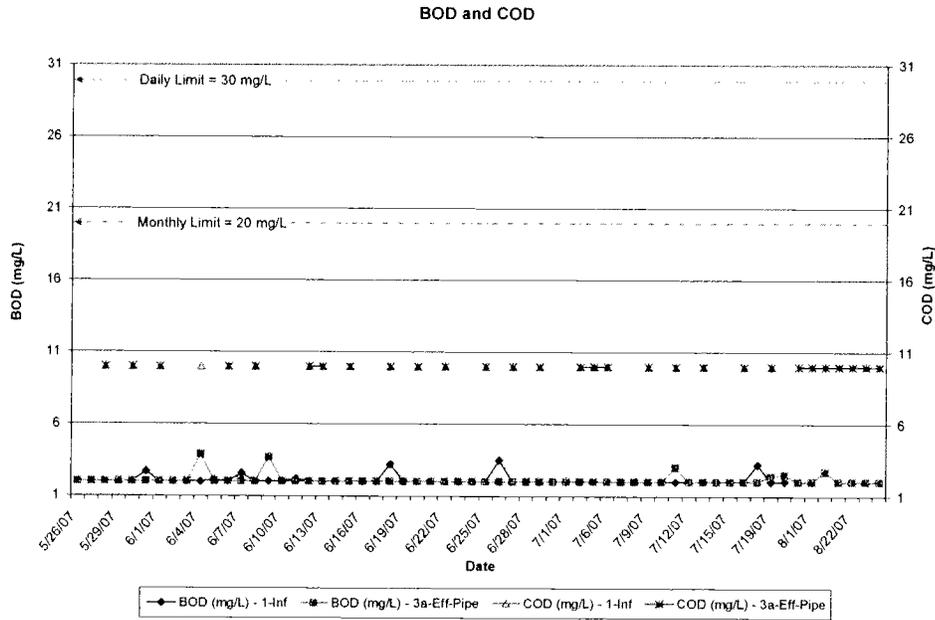
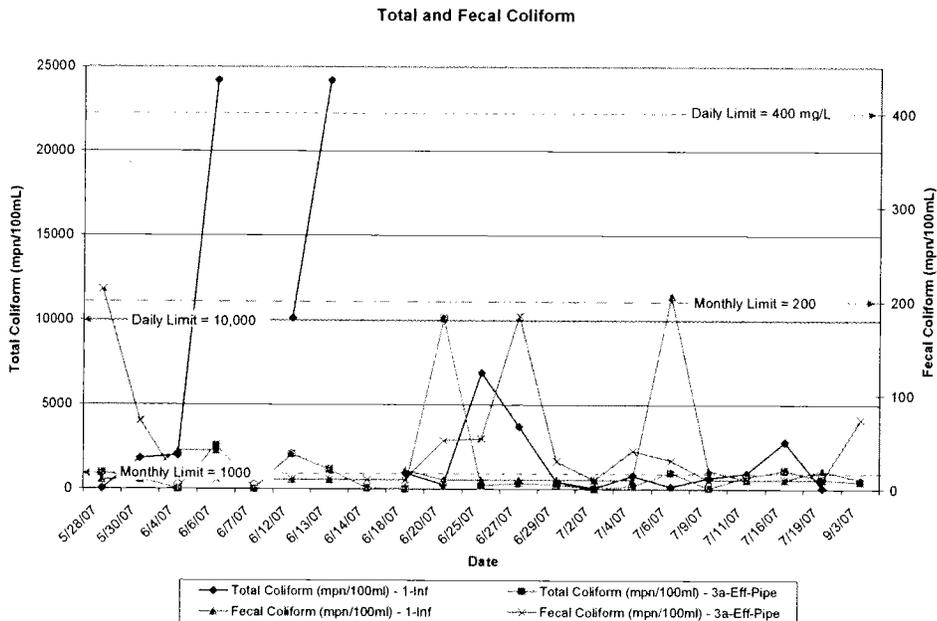


Figure 3 - Total and Fecal Coliform



1.2.3 Dissolved Oxygen

Figure 4 shows that influent DO was consistently between 5 and 8 mg/L, averaging about 6.5 mg/L, except for a single zero-DO reading. The effluent DO was more variable, averaging about 1 mg/L below the influent DO, except for several low values occurring mainly late May through early July. Correlation between DO and TSS was investigated to check if the low DO might be associated with high TSS or vice versa (see Figures 5a and 5b). There does not appear to be any correlation between DO and TSS. It should be mentioned that the DO measurements were originally intended to be in-situ readings, but the values actually recorded and reported were laboratory measurements taken from composite samples.

Figure 4 - Dissolved Oxygen

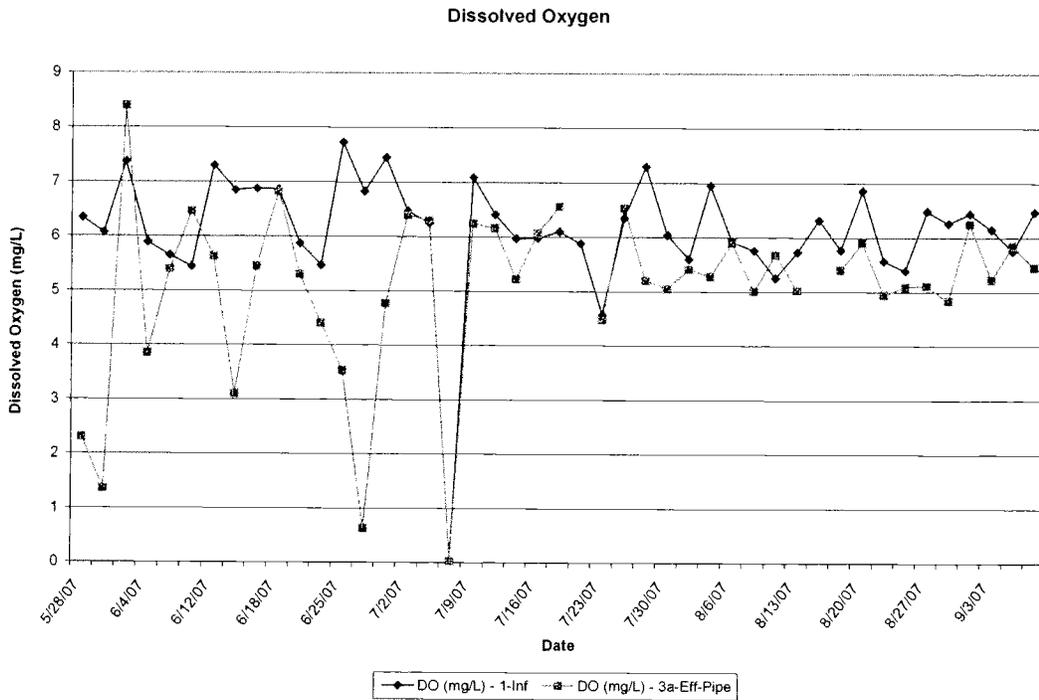


Figure 5a - DO and TSS

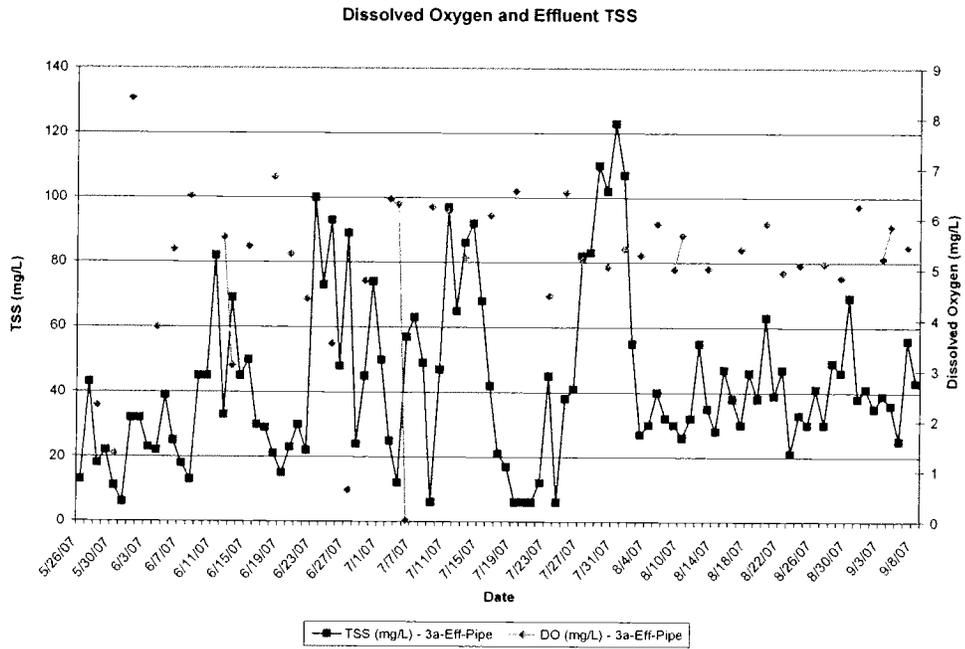
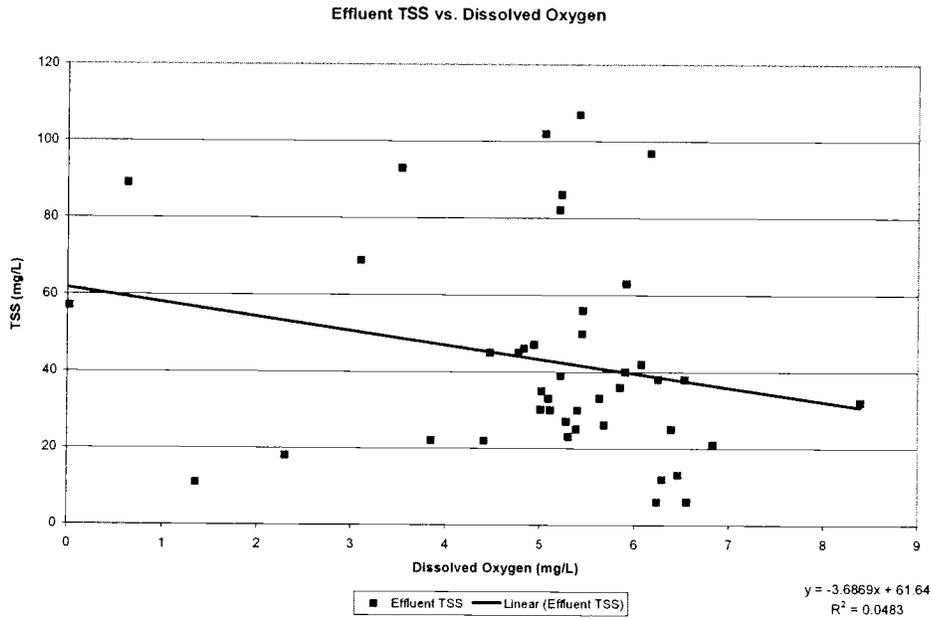


Figure 5b - TSS v/s DO



1.2.4 Total Suspended Solids

Figure 6 shows that effluent TSS concentrations at times exceeded compliance limits during the sampling performed as part of this study. However, the magnitude of the exceedances was lower than some in the past. Figure 7 shows influent and effluent TSS concentrations during the sampling period along with a 30-day moving average. Both the influent and effluent had some samples that exceeded the maximum daily compliance limit of 75 mg/L. The 30-day moving average for effluent TSS also exceeded the monthly average compliance limit of 50 mg/L by 3 mg/L or less at various times. The 30-day moving average data should be interpreted with care. While it may appear from the plots that the moving average for effluent TSS was consistently higher than influent TSS, much of this data is influenced by a short period in late June when effluent TSS significantly exceeded the influent TSS.

Figure 6 - Historical and Recent Effluent TSS

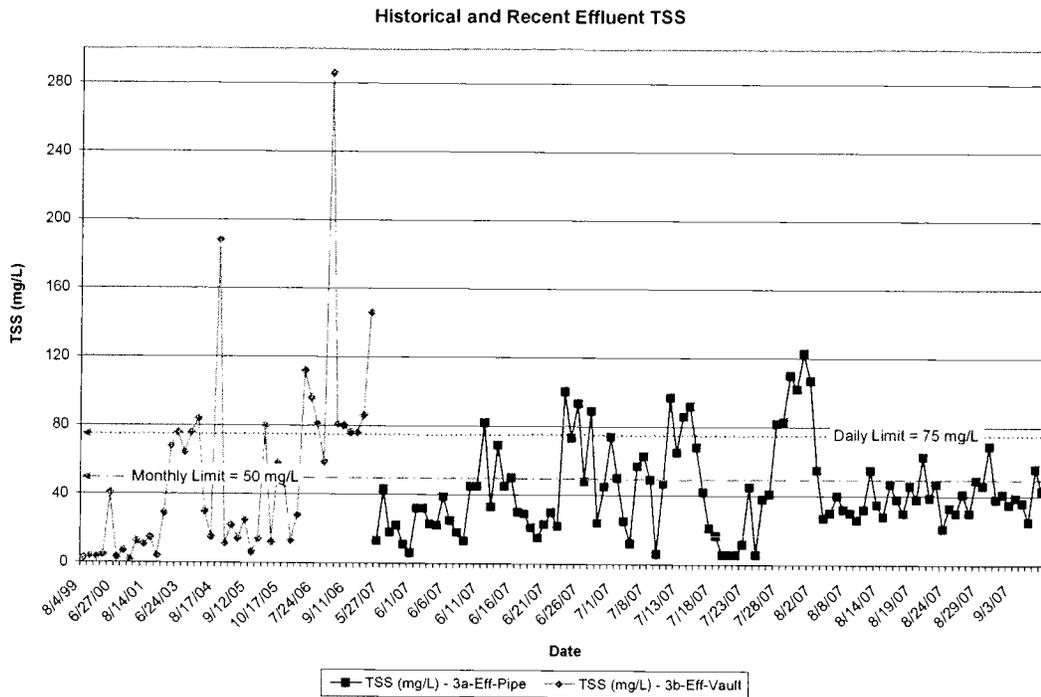
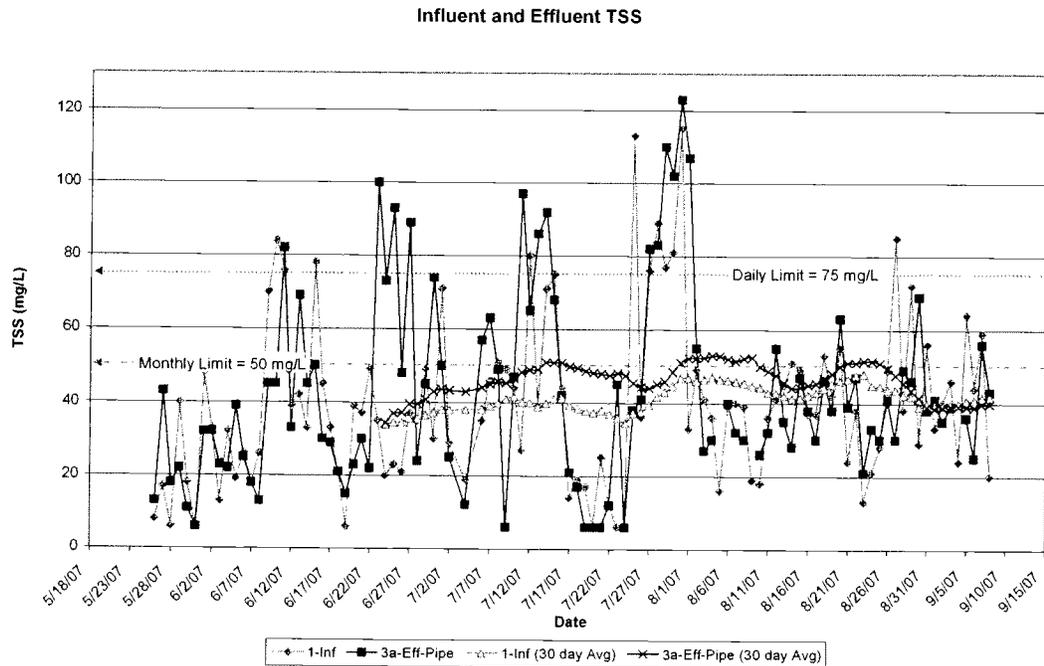


Figure 7 – Influent and Effluent TSS



Of the parameters tested under this Monitoring Plan, TSS appears to be the only parameter that presents a potential compliance issue. The remainder of this report therefore focuses on effluent TSS and identification of possible sources of effluent TSS. The analysis presented below examines TSS in the context of correlations and/or relationships with other parameters and variables, with the intent to determine the potential sources of effluent TSS values that may cause permit exceedances.

1.2.4.1 Effluent TSS and Temperature

Figures 8a and 8b show effluent TSS in relation to water temperature. There does not appear to be a significant correlation between the two parameters. A linear trend line for the graph of effluent TSS versus temperature yields a low R² value.

Figure 8a – Effluent TSS and Temperature

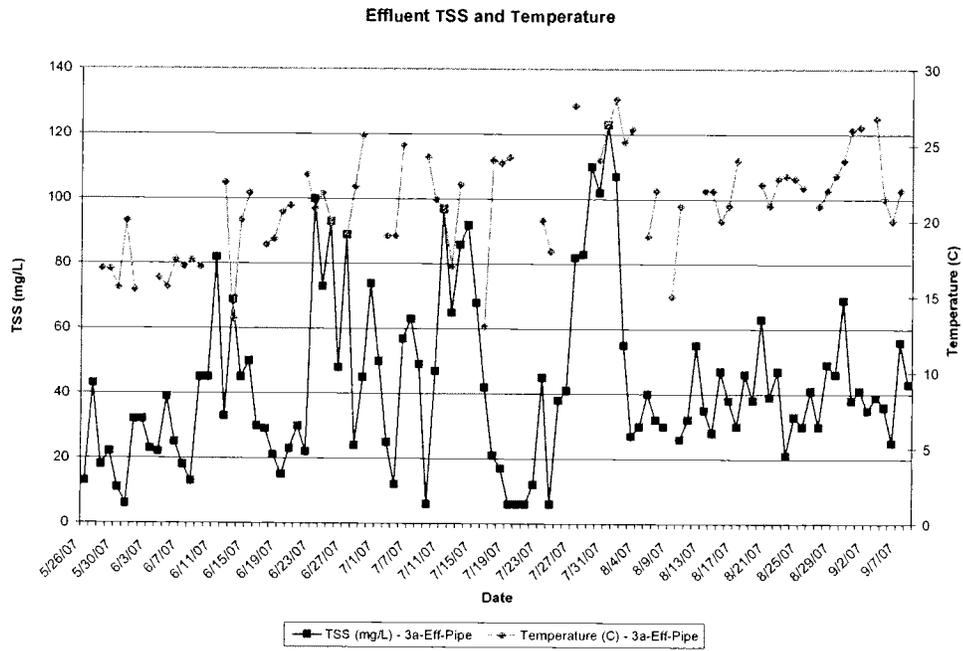
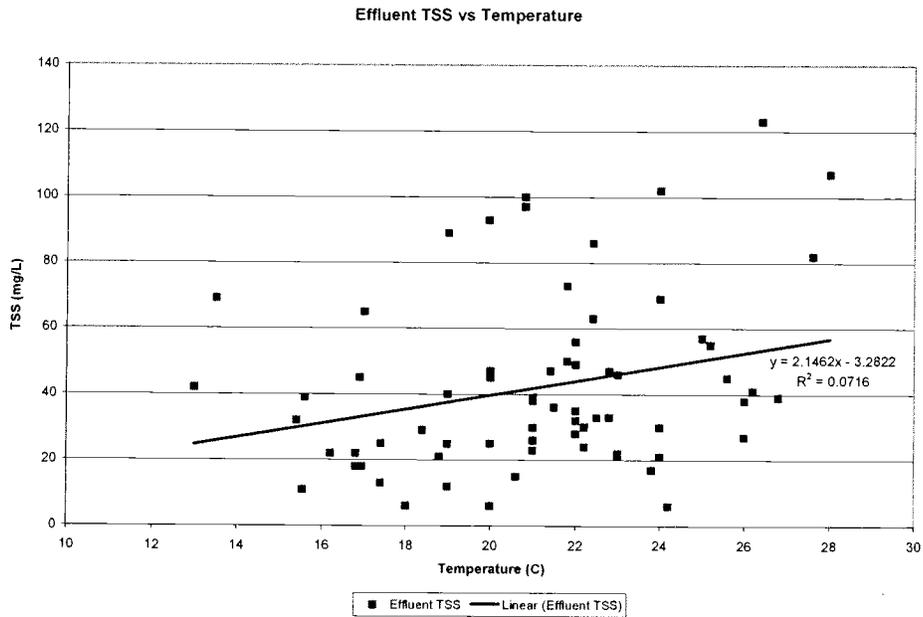


Figure 8b – Effluent TSS v/s Temperature



1.2.4.2 Effluent TSS and Number of Swimmers

Potential contribution swimmers in the Lagoon to effluent TSS investigated. The timeline graph of effluent TSS and the number of swimmers (Figure 9a) shows some correlation between the two parameters, but a scatter plot (Figure 9b) suggests that this correlation is a weak one (low R^2 value of 0.16).

The daily average number of swimmers in Figures 9a and 9b were calculated from hourly swimmer counts between 10:00 am and 5:00 pm each day. Figure 10 shows a bar chart of the hourly swimmer count.

Figure 9a - Effluent TSS and Number of Swimmers

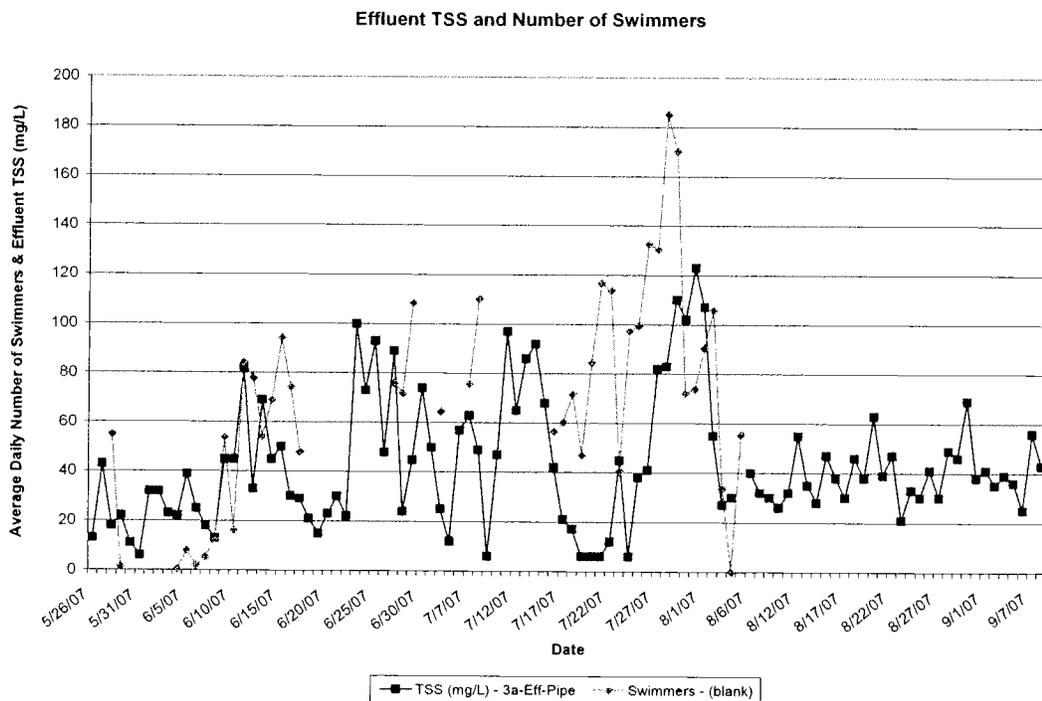


Figure 9b - Effluent TSS v/s Number of Swimmers

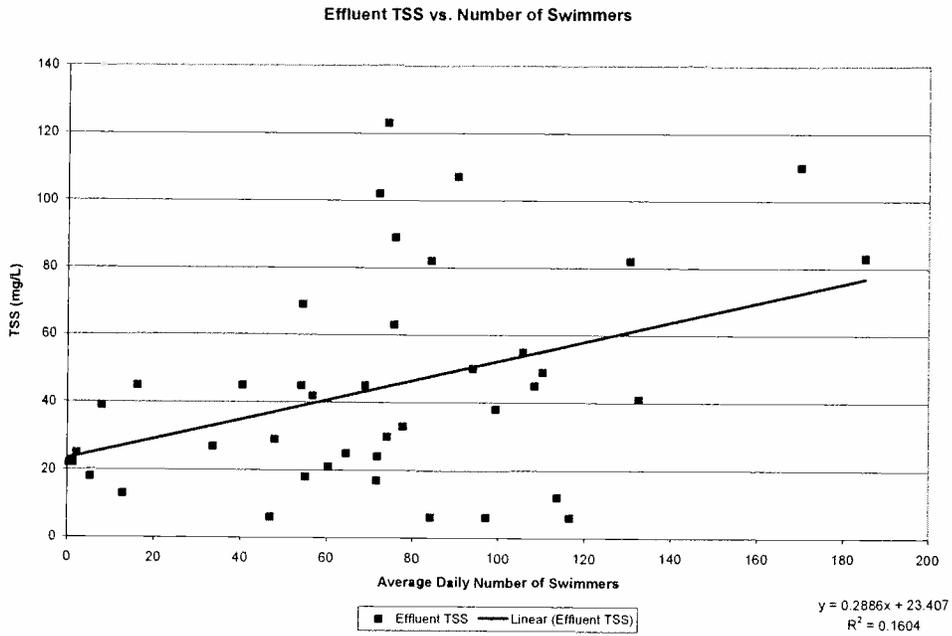
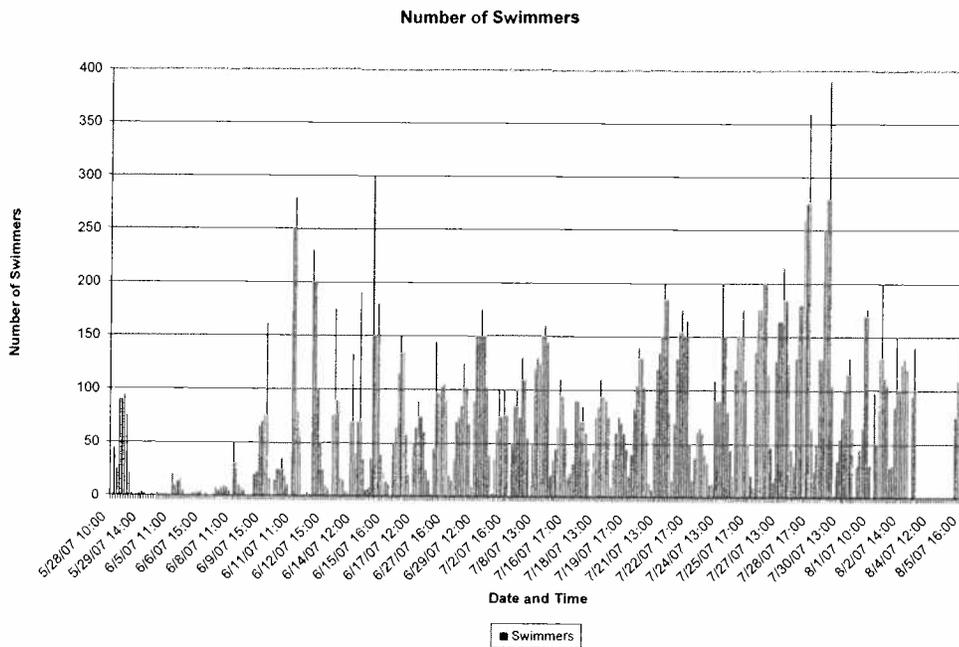


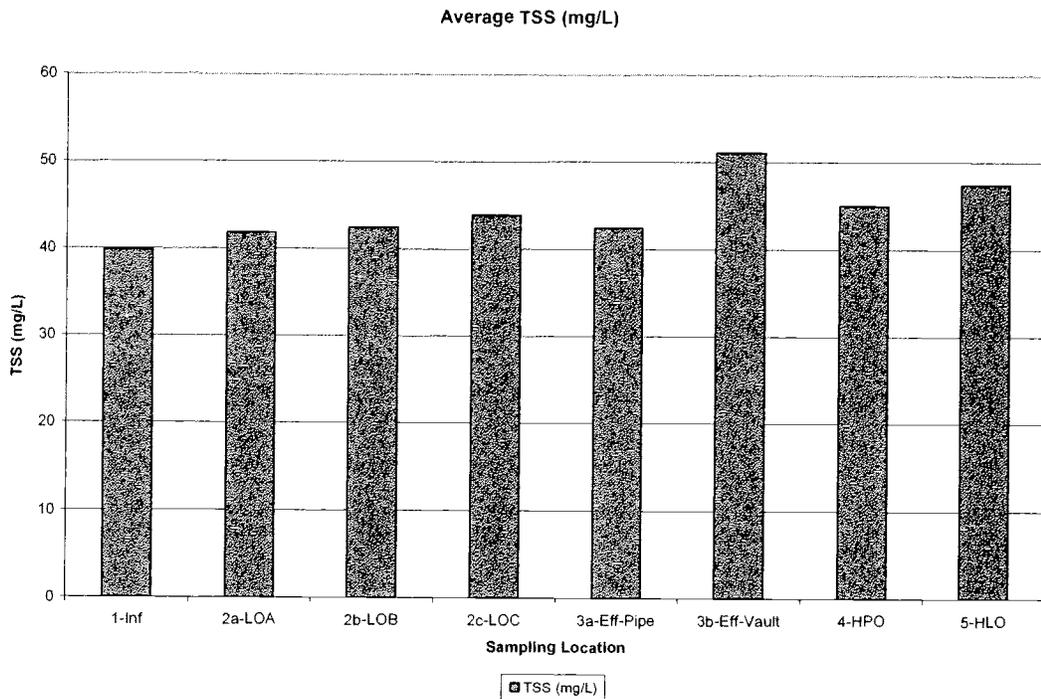
Figure 10 - Hourly Swimmer Count



1.2.4.3 Effluent TSS and Influent TSS

Figure 7 shows that effluent TSS values were generally close to influent TSS values and the peaks and valleys were approximately matched. The graph shows that effluent TSS is at various times higher and lower than the influent TSS, with the two averages appearing about equal. This is confirmed by Figure 11, which shows a bar chart of the average TSS values at all sample locations during the sampling period. The average effluent TSS was 42.4 mg/L, only about 6.6 percent higher than the average influent TSS of 39.8 mg/L. Location 3b-Eff-Vault in this graph represents historical average effluent TSS prior to this study. Samples within the lagoon were approximately equal to or slightly higher than the effluent samples. Samples in the harbor showed the highest average TSS but the averages were still below 50 mg/L.

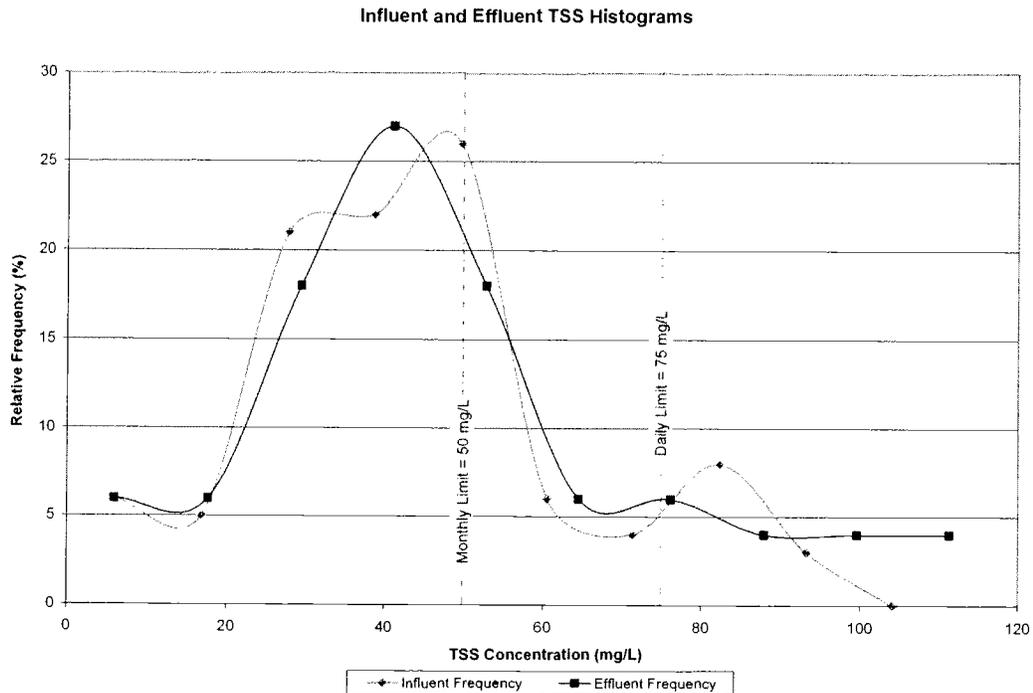
Figure 11 - Average TSS at All Locations



An attempt was made to demonstrate high effluent-to-influent TSS correlation using a scatter plot and a regression trend line. The regression, however, did not show a high correlation because of the unpredictable and variable hydraulic and mixing conditions in the lagoon, which create a variable lag between the influent and effluent TSS values. To demonstrate a higher level of influent-effluent TSS similarity beyond mere closeness of averages, histograms of influent and effluent TSS were plotted (Figure 12). The histograms show that the relative frequency distributions of influent and effluent TSS data show very similar shapes, with similar modes and areas under the curve. This provides further confirmation that influent and effluent data have

similar characteristics. This analysis strongly indicates that influent TSS is the most likely source of effluent TSS.

Figure 12 – Influent and Effluent TSS Histograms



1.2.4.4 TSS and AES Power Plant Operation

Since influent appeared to be the most likely source of effluent TSS, potential factors that might affect influent TSS were investigated. Because the lagoon influent is drawn from the Discharge 002 outfall pipe for the AES Power Plant on Harbor Drive, power plant operation was investigated as a potential factor.

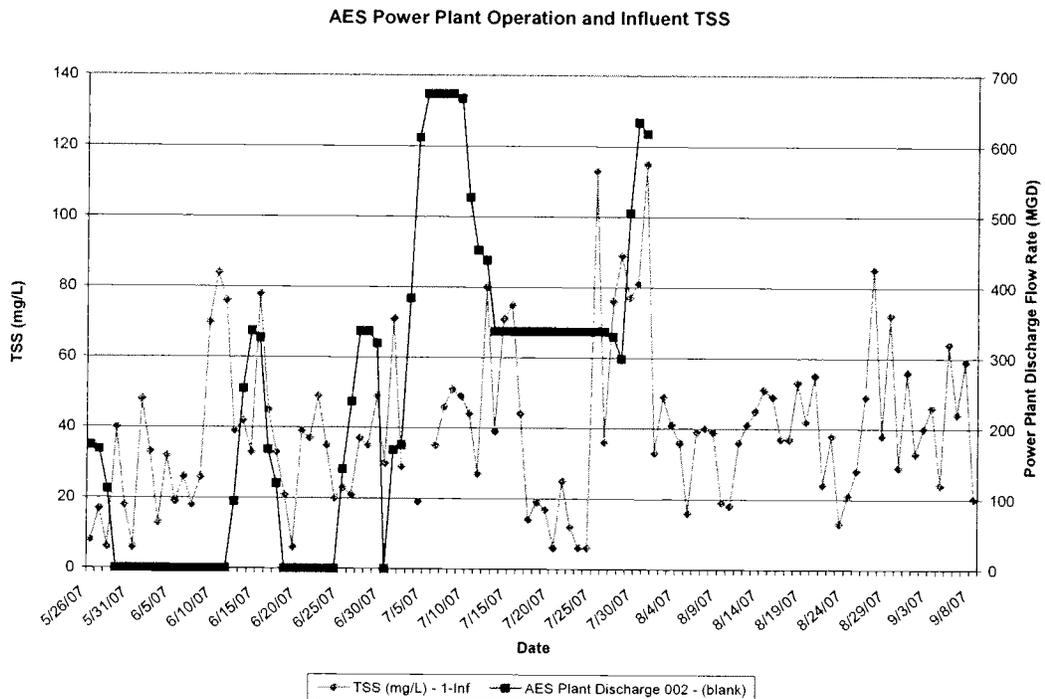
Operation of the AES Power Plant may be expected to potentially affect lagoon influent water quality in one or more of the following ways:

- Increase water temperature. Temperature effects are addressed in a previous section.
- Direction of flow. The power plant is a “peak-demand” generation facility and as such operates intermittently. When the plant is in operation, water flows from the ocean to the power plant via the intake pipe and from the plant to the ocean via the outfall pipe. Thus the Lagoon influent flow is the power plant intake as modified by power plant processes. When the plant is not in operation, Lagoon influent flow is tidal backwater from the discharge end of the power plant outfall, or some mixture of this and previously present power

plant effluent. The power plant also periodically reverses flow direction such that ocean water is temporarily drawn via the outfall pipe and discharged via the intake pipe.

To determine potential impact of power plant operation on Lagoon influent TSS, plant discharge flow data was obtained. Daily discharge volumes for the power plant were obtained from reports submitted by the plant to the Regional Water Quality Control Board. Figure 13 shows the discharge flow rate from the plant and influent TSS. A non-zero flow indicates that the power plant was in operation. The graph shows no discernible pattern or correlation between power plant operation and Lagoon influent TSS.

Figure 13 - AES Power Plant Operation and Influent TSS



1.2.5 VSS and TOC

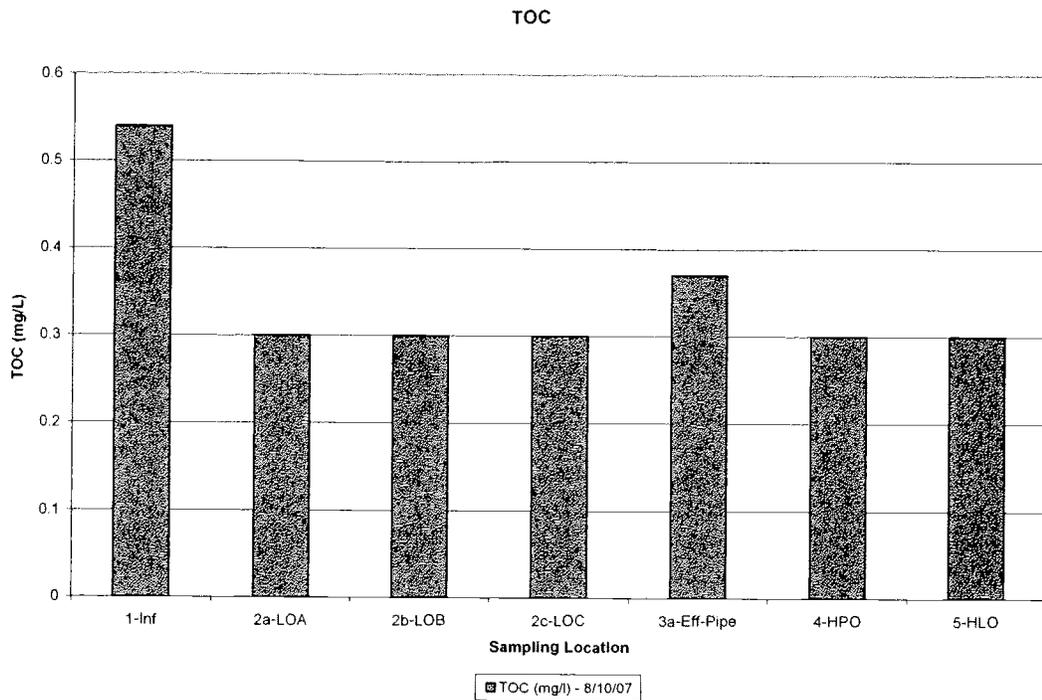
In an attempt to determine the nature and composition of the solids contributing to influent and influent TSS and get an indication of the organic fraction that could potentially provide precursors for biological growth, the Monitoring Plan was modified to include sampling for VSS and TOC at all locations.

VSS was analyzed beginning July 17, 2007. All VSS samples were at or below the detection limit of 2 mg/L. This indicates that most of the measured TSS was inert and/or inorganic. This is consistent with the low BOD and COD measurements. Since

all samples were below detection limit, sampling for VSS was discontinued after August 26, 2007.

TOC was measured once on August 10, 2007 at all sampling locations. TOC measurements were low at all locations as shown in Figure 14. This shows low organic content and low potential for biological growth, and is also consistent with low BOD, COD, and VSS values.

Figure 14 - TOC at All Locations



1.2.6 SEM-EDX

Because the data strongly indicates influent as a likely source of effluent TSS, various analytical methods were considered that might provide a "fingerprint" of the components of TSS in the influent and effluent for comparison. Methods considered included Fourier Transform Infrared (FTIR) scan, scanning electron microscopy with energy-dispersive x-ray spectrometry (SEM-EDX), particle size distribution, silt density index, and colloidal fraction. Of these, FTIR or SEM-EDX was deemed to have the most potential to provide a meaningful "fingerprint". FTIR analysis proved impractical because of the high mineral content of the solids matrix. SEM-EDX analysis detected very little organic content in the influent but more in the effluent. Petroleum oil was detected both in the influent and effluent, along with the elements Si, O, Al, Na, Cl, K, Ca, S, Mg, and Fe. Ti was found only in the effluent. Although this analysis is not a conclusive "fingerprint" identification because of many variables

involved, the large number of common elements and common presence of petroleum oil indicate significant commonality between influent and effluent.

1.3 Possible Sources Other than Lagoon Influent

The Monitoring Plan Implementation Results described above make a very strong case for Lagoon influent as the most likely source of effluent TSS. However other possible sources were also considered and evaluated. Some of these other sources and potential contributing factors have been discussed above as part of the Monitoring Plan Implementation Results section. Additional sources were identified and discussed in a workshop conducted with City personnel on July 24, 2007. These additional possible sources along with their potential contribution to effluent TSS are discussed below.

1.3.1 Algae or Plankton Formation

Algae or plankton formation were considered as possible sources of TSS. However, very low TOC and VSS concentrations indicate low organic content in the effluent and low availability of precursors for biological growth. Therefore, the potential contribution of algae or plankton formation to TSS was not considered significant.

1.3.2 Scum Layer at Lagoon Start-up

City staff has indicated that a brown foamy scum is generated at Lagoon start-up following idle periods and could indicate biological growth in the sand and could be a potential contributor to effluent TSS. The workshop group discussed the possibility of developing a protocol to sample sand and/or sediment at the bottom of and/or in the vicinity of the lagoon, extracting biological or organic solids from such samples, and "fingerprinting" such solids for comparison with effluent solids. Based on the limited success of the attempts to fingerprint influent and effluent solids, this option was not pursued further.

1.3.3 Sand Leveling

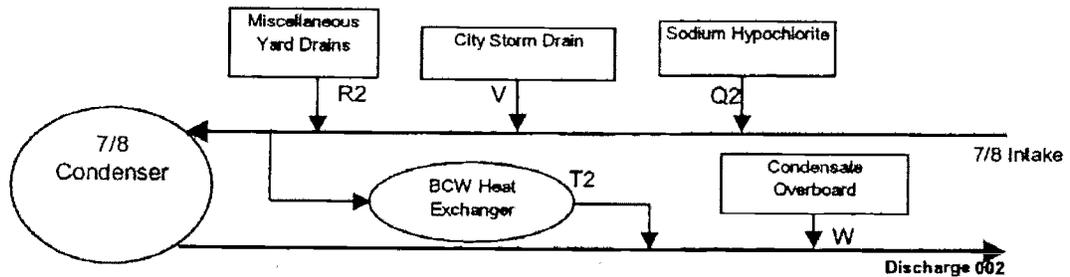
City staff also indicated that the sand is dragged for leveling about twice each season and at each Lagoon startup. This is typically done over the entire sandy area at the beginning of the season (including the lagoon area before it is filled). During the season this is only done on the dry sandy area around the lagoon. In 2007, this was done at the beginning of the summer season and once just after the 4th of July. The possibility of testing the dry sand for solids that may be transported into the Lagoon through such activity was discussed. This possibility was not pursued further because of "fingerprinting" limitations discussed above and because the probability of occurrence was considered low.

1.3.4 Power Plant Process

Because the data indicate influent to be the likely source of effluent TSS, the processes within the AES power plant were considered as a possible source of effluent TSS. A

flow schematic of the of the power plant contributions to its Discharge 002 (which serves as the intake for the Lagoon Influent Pump) is shown in Figure 15 below.

Figure 15 - AES Power Plant Discharge 002 Flow Schematic



The figure indicates that other than heating of the ocean water drawn via the intake pipe, power plant contributions include addition of sodium hypochlorite for control of biological growth, a contribution from the City storm drain, miscellaneous yard drains, and “condensate overboard”, which is a periodic discharge containing mainly steam condensate slightly contaminated with seawater. Both the storm drain and the yard drains could be potential TSS contributors. However, because the average TSS concentrations in harbor sea water samples were found to be higher than TSS in the Lagoon influent samples, TSS contributions from the power plant were not considered very likely.

Power plant contributions and potential mitigation measures may be further investigated during the next phase of this project that will evaluate potential treatment and/or mitigation measures. However, power plant operations may be beyond the City’s control.

1.3.5 Other Sources

Other potential effluent TSS sources considered included disintegration of objects stuck in drains, sand in lagoon effluent pipes, and back mixing of seawater in the effluent vault.

Tide data obtained from the National Oceanographic and Aerospace Administration (NOAA) was analyzed and correlated with effluent TSS. No correlation was observed, likely because of the modified effluent sampling location used in this study - in the combined effluent pipe instead of the vault.

The other sources were considered improbable and not evaluated further.

1.4 Conclusions

Based on the data and the analysis presented above, the following conclusions may be drawn:

1. Recent sampling and monitoring shows that TSS is the only parameter of concern with respect to permit limit exceedance.
2. The influent appears to be the most likely source of TSS in the effluent. The approximately 6.5 percent difference between influent and effluent TSS is within the margin of error of the analytical procedure and is therefore not significant.
3. Attempts to compare “fingerprints” of influent and effluent solids were not conclusive because of several sampling and analytical challenges but indicated several commonalities between influent and effluent solids composition. While such fingerprinting could provide further evidence in support of the TSS source, it is not essential to identifying the likely source.
4. Possible sources of the small increase in TSS from influent to effluent include swimmer activity and possibly biological growth.

Appendix A – Monitoring Plan

Seaside Lagoon Summer 2007 Monitoring Plan

Background and Objective

This Monitoring Plan (the Plan) is prepared as part of a comprehensive effort undertaken by the City of Redondo Beach to evaluate options to bring the Seaside Lagoon Effluent Quality back into compliance with the applicable NPDES permit, consistent with the terms of Time Schedule Order (TSO) No. R4-2007-0024 dated April 26, 2007 issued by the California Regional Water Quality Control Board (RWQCB) - Los Angeles Region.

The ultimate objective of the City's efforts is to reestablish permit compliance. The objectives of the Monitoring Plan are to verify the occurrence and severity of current noncompliance episodes and to determine potential mode(s) and location(s) for entry of BOD and/or TSS into the lagoon system or generation within the system. To achieve this objective, the Plan is designed to characterize the influent, in-lagoon, and effluent water quality through sampling and laboratory analyses of selected parameters over the Summer 2007 season. In addition to water quality characterization, relevant ancillary data such as weather, tides, power plant status (operating or not), and number of visitors/swimmers to the lagoon will also be compiled.

Sampling and Laboratory Analysis

Sampling and analysis for routine compliance monitoring and reporting are currently performed by Michelson Laboratories, Commerce, California under contract with the City. This section describes special sampling, separate from the routine sampling, designed specifically to investigate potential sources or causes of recent and/or current non-compliance episodes. It is anticipated that the special sampling and analysis will also be performed by Michelson Laboratories under separate contract, given their familiarity and experience with the system.

The sampling and laboratory analysis tasks are the major focus of this Monitoring Plan and are summarized in a matrix format in Table 1. The matrix provides an at-a-glance summary of sampling locations, the type of samples to be collected (e.g. grab, composite, etc.), the sampling frequency, the parameters to be measured for each sample, and the analytical methods to be used for each parameter. Additional sampling and analysis details are described below.

Table 1 – Seaside Lagoon Sampling Matrix

Parameter	Analytical Method	1. Lagoon Influent Pump Discharge	2A. In Lagoon near Overflow Structure "A"	2B. In Lagoon near Overflow Structure "B"	2C. In Lagoon near Overflow Structure "C"	3. Lagoon Effluent Box ¹	4. Harbor - near Power Plant Outfall ²	5. Harbor - near Lagoon Outfall ²	Sampling Period (weeks)	Total Number of Samples
BOD ₅ (mg/L)	SM 5210 B	Comp 1D				Comp 1D	Grab 3W	Grab 3W	14	202
TSS (mg/L)	EPA 160.2	Comp 1D	Grab 3W	Grab 3W	Grab 3W	Comp 1D	Grab 3W	Grab 3W	14	328
COD (mg/L)	SM 5220 C/D or Hach 8000 if acceptable to RWQCB	Comp 3W				Comp 3W			14	84
Turbidity (NTU)	EPA 180.1	Comp 2W				Comp 2W			14	56
Fecal Coliform (CFU/100 mL)	SM 9221 & 9223	Comp 2W				Comp 2W			14	56
Chlorine Residual (mg/L)	SM 4500-Cl E		Grab 3W	Grab 3W	Grab 3W	Comp 3W			14	168
Temperature (°C) ³	EPA 170.1	In-situ 1D				In-situ 1D	In-situ 3W	In-situ 3W	14	202
Dissolved Oxygen (mg/L) ³	EPA 360.1	In-situ 3W				In-situ 3W			14	84
pH (SU)	EPA 150.1	Comp 2W	Grab 2W	Grab 2W	Grab 2W	Comp 2W	Grab 3W	Grab 3W	14	146

Notes:

- ¹ Actual sample to be collected from within 20-inch pipe 2 -3 feet upstream of box
- ² Harbor water will be sampled at two locations over a single week
- ³ Temperature and DO should be in-situ field measurements
 nD: n times per day
 nW: n times per week
 Comp: Daily composite collected over the period of lagoon operation

Locations

A total of seven (7) sampling locations have been identified for this Plan. These locations are listed below. The sampling frequencies and parameters measured will vary at each location as shown in Table 1.

1. Lagoon Influent Pump Discharge. This sample is intended to represent the lagoon influent water quality and will be collected from a valve located on the pump discharge piping at the pump station on Harbor Drive. Michelson Laboratories has indicated that a valve from which samples can be drawn already exists in the discharge piping and has been used to collect samples in the past. All samples at this location (except temperature and DO field measurements) will be composite samples. A composite sampler will be placed at this pump station for the duration of the monitoring period. Because it is difficult to connect the sampler intake directly to the pressurized discharge piping of the lagoon influent pump, the sampling valve will be set to a partially open position to allow continuous discharge of a small flow. This flow will be collected in a small container which will serve as intake for the sampler. To ensure that the sample collected by the sampler is always fresh, the discharge flow rate from the sampling valve and the size of the intake container should be selected such that the container is continuously overflowing and the detention time in the container is no more than 60 seconds. The overflow from this container should be routed to the closest sanitary drain.

The sampler discharge will be directed into a separate sample container placed on ice in an insulated box. The ice in the box should be replaced daily and should be adequate to maintain a sample temperature no higher than 4°C for 24 hours.

2. A, B, and C. In Lagoon near Overflow Structures A, B, and C. These samples are intended to represent the water quality within the lagoon and should therefore be collected near the overflow structures but upstream of the overflow weir and upstream of the sodium bisulfite addition point.
3. Lagoon Effluent Box. This sample is intended to represent the quality of the combined lagoon effluent and should therefore be collected directly from the effluent box. A composite sampler and iced sample container will be placed at this location also, similar to the influent pump station sampler. A separate inlet container is not necessary at this location since the sampler can draw directly from the effluent box. As a security measure, both the sampler and the sample container should be locked, placed inside the security fence, and chained to the fence posts.

Discussions with Michelson Laboratories have indicated that the bottom of the effluent box may be at an elevation such that water from the harbor may periodically back up into the box depending on the tide and wave action. This presents the risk that lagoon effluent samples collected from the effluent box may be contaminated with harbor water under certain conditions. In general, this risk is not expected to be significant during periods when the lagoon is in operation

because of the positive effluent flow from the lagoon to the harbor. This risk may be further mitigated to some extent by collecting the effluent sample 2 to 3 feet upstream of the box, from within the 20-inch effluent pipe. Michelson Laboratories has indicated that they will configure the suction line of the composite sampler accordingly. To the extent possible, CDM will use harbor water quality data together with tidal information to identify conditions that represent a high risk of contamination.

4. Harbor near Power Plant Outfall. This sample is intended to provide a general indication of background harbor water quality in the vicinity of the end of the power plant outfall pipe. This location is significant because during periods of low power plant effluent flow and/or high tide, water from the harbor can flow back into the outfall pipe and can actually be pumped to the lagoon by the lagoon influent pump. Samples at this location will be collected over a single one-week period close to the beginning of the summer season. A City-provided boat will be used to access this location. The City has indicated that the discharge location can be visually identified from the upwelling of the discharge when the power plant is in operation. The samples will be collected as close to the depth of discharge as possible using a sample pump with a suction line of appropriate length.
5. Harbor near Lagoon Outfall. This sample is intended to provide a general indication of background harbor water quality in the vicinity of the end of the lagoon outfall. This location is significant because during periods of high tide, water from the harbor can back up into the lagoon effluent box and potentially contaminate lagoon effluent samples taken from this box. Samples at this location will be collected over a single one-week period close to the beginning of the summer season. This location is accessible without the use of a boat. The samples will be collected as close to the depth of discharge as possible using a sample pump with a suction line of appropriate length.

Depending on initial results, sampling of the sediment and/or sand at the bottom of the lagoon may be added to the sampling plan. This is currently not included in the sampling matrix in Table 1 because this is not anticipated to be a likely scenario. Details of sediment/sand sampling and analysis will be determined if and when it is deemed necessary.

Sample Type

The types of sample(s) to be collected at each location are indicated in Table 1. The various types are as described below.

Composite

Composite samplers will be placed at the Lagoon Influent Pump Station and the Lagoon Effluent Box. Flow weighted sampling is not necessary because the flow rate is designed to be constant at 3,200 gallons per minute (gpm). The samplers will be programmed to collect equal volumes at regular pre-defined intervals during the lagoon's operating hours. No samples will be taken when the lagoon influent pumps are shut down.

Grab

Grab samples representing instantaneous conditions will be taken at some locations as shown in Table 1. An attempt will be made to collect the grab samples at about the same time each sampling day.

In-situ

Temperature and DO will be monitored with instantaneous field measurements at the sampling locations (in-situ).

Sampling Frequency

Sampling frequencies for each combination of location and analytical parameter are listed in Table 1 as daily (1D or once per day) or "n" times per week (nW). For 3W, recommended sampling days are Tuesday, Thursday, and Saturday of each week. For 2W, recommended sampling days are Tuesday and Saturday of each week.

Parameters and Analytical Methods

Table 1 lists the analytical methods to be used for laboratory analysis of each listed parameter. The listed analytical methods are as described in 40 CFR Section 136 as required by the RWQCB in Monitoring and Reporting Program No. 8034, which is Attachment T to the City's current NPDES Permit No. CA 0064297.

Monitoring Plan Implementation and Schedule

Michelson Laboratories will be responsible for implementation of the Plan, including provision of all labor, materials, and analytical and laboratory facilities and equipment. The City will provide a boat and authorized operator for harbor sampling and will also arrange for access to all sampling locations. CDM will be available to help resolve any issues that might arise and will be responsible for ongoing data compilation, evaluation, and development of any mid-course corrections.

The sampling will begin on Saturday, May 26, 2007, and will end on Monday, September 3, 2007, both days inclusive. This represents a period of approximately 14 weeks. Harbor sampling is recommended for the week beginning Monday, June 11, 2007.

Ancillary Data

In addition to sampling for water quality, relevant ancillary data that may help identify the source or cause of non-compliance will be collected for correlation and comparative evaluation with the water quality data. The ancillary data to be collected is described below. This data will be collected and compiled by CDM with assistance from the City as appropriate, unless otherwise indicated below.

Weather

Daily minimum and maximum temperature and precipitation data will be obtained from the weather station closest to the lagoon and compiled for evaluation of possible correlation with water quality data.

Tides

Daily high and low tide times and water elevations will be obtained as available from National Oceanographic and Atmospheric Administration (NOAA) records or other sources.

Power Plant Operating Status

The operational status of the power plant (operating or not operating) will be recorded each day. The presence of emissions from the power plant stack can serve as a general indicator that the plant is operating. Michelson Laboratories will therefore record the presence or absence of emissions during the daily sampling rounds. The City will contact the power plant to confirm stack emissions as a reliable indicator of plant operation or to obtain operational status by alternate means.

Number of Lagoon Visitors

The number of daily visitors to the lagoon is recorded by the City and will be provided to CDM. In addition, the City will instruct the lifeguard(s) at the lagoon to record the approximate number of actual swimmers in the water three (3) times each day per the following template:

Date	Time	Age	0 to 25	25 to 50	50 to 75	75 to 100
May 26	10 AM	10 or Below				
		Above 10				
	2 PM	10 or Below				
		Above 10				
	6 PM	10 or Below				
		Above 10				

EXHIBIT “15”

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

TIME SCHEDULE ORDER NO. R4-2008-0002

REQUIRING CITY OF REDONDO BEACH
TO COMPLY WITH THE REQUIREMENTS PRESCRIBED IN
ORDER NO. R4-2005-0016
(NPDES PERMIT NO. CA0064297)

The California Regional Water Quality Control Board, Los Angeles Region, (hereinafter Regional Board), finds:

1. City of Redondo Beach (hereinafter City or Discharger), discharges wastewater under Waste Discharge Requirements (WDRs) contained in Order No. R4-2005-0016 adopted by the Regional Board on March 3, 2005, which serves as the National Pollutant Discharge Elimination System (NPDES) permit (CA0064297) for the facility known as Seaside Lagoon.
2. Seaside Lagoon is located at 200 Portfino Way, Redondo Beach, California, and is owned and operated by the City. Seaside Lagoon is a city park and consists of a 1.4 million gallon man-made saltwater lagoon, artificial beaches, children's play area, snack bar facilities, and other recreational areas. The park is open to the public for swimming from Memorial Day to Labor Day each year.

Water for the Lagoon comes from a nearby steam generating plant (AES Redondo Beach, L.L.C., Power Plant) where the seawater is used to cool turbines. The Power Plant is located at 1100 Harbor Drive, Redondo Beach. When operated at design capacity, the AES Power Plant discharges up to 898 million gallons per day (mgd) of once-through cooling water to King Harbor. This discharge is regulated under separate WDRs contained in Board Order No. 00-085. Approximately 2.3 mgd of the once through cooling water, is directed to the Seaside Lagoon. The City is using only a small portion (0.26 %) of the cooling water from the Power Plant for recreational beneficial use.

As stated earlier, water for the lagoon comes from the outfall of the AES Redondo Beach LLC Power Plant. The Power Plant takes in water for the ocean outside the jetty that forms the King Harbor and discharges it at a point within King Harbor. The AES Power Plant has been designed as a "Peaking Facility" and therefore, does not operate every day. When the Power Plant is operating the location of the water source to the lagoon is the ocean, outside of the harbor. When the Power Plant is not operating water that is pumped to the lagoon comes in through the Power Plant outlet from within the Harbor.

To maintain the water level in the Seaside Lagoon, the City discharges roughly 3,200 gpm (approximately 2.3 mgd) of dechlorinated saltwater to King Harbor, at the shoreline (Latitude 33° 50' 38" N and Longitude 118° 23' 47" W) embankment through Discharge Serial 001.

3. NPDES Order No. R4-2005-0016 prescribes effluent limits for total suspended solids (TSS) (50 mg/L for monthly average and 75 mg/L daily maximum) and biochemical oxygen demand (BOD) (20 mg/L for monthly average and 30 mg/L for daily maximum). Data collected during the NPDES permit monitoring for the discharge in 2006 had concentrations of TSS up to 250 mg/L and BOD up to 100 mg/L. These concentrations exceeded the discharge limits.
4. The City could not meet the prescribed effluent limits for TSS, and BOD. A Time Schedule Order (TSO) with interim effluent limits for TSS and BOD was requested by the City. The Regional Water Board issued TSO No. R4-2007-0024 on April 26, 2007, which included Interim limits effective from May 1, 2007, to January 31, 2008, for the following constituents:

Constituents	Units	Discharge Limitation	
		Daily Maximum	Monthly Average
Total suspended solids	mg/L	250	200
Biochemical Oxygen Demand	mg/L	100	100

The Discharger was required to conduct a study that included: 1) the characterization of the discharge; 2) the identification of potential sources; 3) the investigation of possible corrective operational changes; 4) the evaluation of alternate treatment technology; and 5) the implementation of the chosen operational changes and/or treatment technology to comply with the final limits for TSS and BOD.

During the year 2007, the Permittee was in compliance with the interim effluent limitations prescribed in the TSO for TSS and BOD. However, there were four effluent violations reported in September 2007 for total coliform, enterococcus and residual chlorine. The September 2007 discharge event was during the off-season. Interim requirements for these constituents have not been included in this TSO.

5. In accordance with the TSO requirement, the City of Redondo Beach submitted the Source Identification Report (SIR) dated October 1, 2007. The primary objective of the source identification study was to determine the cause of the elevated TSS and BOD concentrations that were detected in 2006. As part of the study, an extensive Monitoring Plan was developed and implemented between May 28, 2007, and September 7, 2007. The Monitoring Plan examined not only the condition of the effluent but also the influent, interior lagoon, and harbor water quality. Samples were taken at a total of seven locations. The general findings of the study were:
 - a. The elevated BOD concentrations previously detected, did not appear during the study period. The concentrations found in the effluent were at or below the detection limit of 2 mg/l.

- b. The elevated concentrations of TSS detected in 2006, were also detected in samples collected during the study period, although the levels were somewhat lower than in the past. However, it was also found that similar concentrations of TSS existed in the influent and harbor water.
6. The City reviewed the operational data of the AES Redondo Beach Power Plant (Power Plant) from January 2004 through September 2007. This time frame covered four operational seasons of the lagoon. During that period, 78% of the time the Seaside Lagoon was drawing water outside of the harbor (Power Plant was in operation) and 22% of the time it was drawing water directly from inside of the harbor. The SIR identified high TSS concentrations in both sources. There is an average 6.5 percent increase between influent and effluent TSS concentrations.
7. The current permit, Order No. R4-2005-0016, includes the monthly average and daily maximum effluent limits for TSS of 50 and 75 mg/L respectively. The City cannot consistently meet the prescribed effluent limits.
8. The City has requested interim effluent limitations for TSS based on the SIR data obtained in 2007.
9. This Time Schedule Order (TSO) does not modify any of the other Discharger's final water quality-based effluent limitations.
10. The Regional Board may reopen this TSO at its discretion or at the request of the Discharger, if warranted.
11. This enforcement action is being taken for the protection of the environment and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21100, et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to the California Water Code Section 13300, City of Redondo Beach as an operator of Seaside Lagoon shall:

1. Comply with the following Interim effluent limits from February 1, 2008, to February 28, 2010:

Constituents	Units	Discharge Limitation	
		Daily Maximum	Monthly Average
Total suspended solids	mg/L	120	60

Discharges after February 28, 2010, must comply with the final effluent limits in Order R4-2005-0016.

2. Submit to the Executive Officer by July 31, 2008, a workplan to determine the source of the TSS, treat the discharge to meet the final effluent limits, divert the discharge, or eliminate the discharge from Seaside Lagoon. The workplan shall contain the following components:
 - a. A time schedule that begins on February 1, 2008, and ends on February 28, 2010.
 - b. Milestones every six months including documentation of complete analysis and/or decisions regarding future discharges.
 - c. Schedule for required upgrade or termination of discharge.
3. Submit semiannual reports of plan commitments to meet the final effluent limits, divert the discharge, or eliminate the discharge as well as any changes to the workplan.
4. The City shall also monitor, submit the monitoring results to the Regional Water Board and comply with all the requirements of Order Numbers R4-2005-0016 and R4-2008-0002 for any discharge that occurs in the off-season.
5. If the City fails to comply with any provisions of this Order, the Executive Officer may issue an Administrative Civil Liability Complaint pursuant to California Water Code Section 13323. The Regional Board may also refer the case to the Attorney General for injunction and civil monetary remedies, pursuant to California Water Code sections 13331 and 13385.
6. The interim limits in TSO Order No. R4-2008-0002 for TSS are in effect from February 1, 2008, to February 28, 2010. Discharges after February 28, 2010, must comply with the final effluent limits in Order No. R4-2005-0016. All other provisions of NPDES Order No. R4-2005-0016, not in conflict with this Order, are in full force and effect.

I, Tracy J. Egoscue, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on January 31, 2008.

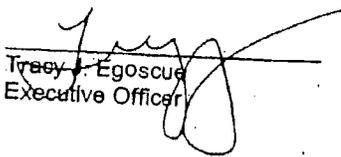

Tracy J. Egoscue
Executive Officer

EXHIBIT “16”



California Regional Water Quality Control Board

Los Angeles Region



Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

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>

SEP 17 2008
Arnold Schwarzenegger
Governor

September 15, 2008

Mr. Mike Shay
City Engineer
Engineering Department
City of Redondo Beach
415 Diamond Street
Redondo Beach, CA 90277

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7003 3110 0003 3258 3205

SETTLEMENT OFFER NO. R4-2008-0058-M: OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF THE NPDES PERMIT FOR CITY OF REDONDO BEACH, SEASIDE LAGOON, 200 PORTFINO WAY, REDONDO BEACH, CA. (ORDER NOS. 99-057 AND R4-2005-0016, NPDES PERMIT NO. CA0064297, CI NO. 8034)

Dear Mr. Shay:

This letter is to notify City of Redondo Beach, (hereinafter "Permittee" or "you") of alleged violations of the California Water Code identified in the State Water Resources Control Board's water quality data system and to allow the Permittee to participate in the Los Angeles Regional Water Quality Control Board's (Regional Board) Expedited Payment Program for Effluent or Reporting Violations (Expedited Payment Program) to address liability that may be assessed pursuant to California Water Code sections 13385 and 13385.1.

NOTICE OF VIOLATION:

Based on information in the California Integrated Water Quality System (CIWQS) as of September 5, 2008, the Regional Board alleges that the Permittee has violated the effluent limitations, reporting violations, or California Water Code provisions identified in the Notice of Violation (NOV) attached as Exhibit "A." The Permittee will have the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY:

Subdivisions (h) and (i) of California Water Code section 13385 require the assessment of a mandatory minimum penalty of \$3,000 for specified serious and chronic effluent limit violations. The Permittee is subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs, plus ten dollars (\$10) for each gallon discharged but not cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by the Regional Board beginning with the date that the violations first occurred¹. The formal enforcement

¹Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. 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.) Further, the Permittee has not been substantially prejudiced by the passage of time between the date(s) that the Permittee reported the violations identified on Exhibit A and the date of this letter. The Permittee was aware of the violations at the time it reported them to the Regional Board. Regional Board staff's limited enforcement resources and competing enforcement priorities provide a rational explanation for the delay. In fact, the delay has actually benefited the Permittee because it extended the time before payment of the mandatory minimum penalties is due. For these reasons, any delay is not unreasonable.

California Environmental Protection Agency



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

Mr. Mike Shay
City of Redondo Beach

- 2 -

September 15, 2008

action that the Regional Board uses to assess such liability is an administrative civil liability complaint, although the Regional Board may instead refer such matters to the Attorney General's Office 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. In addition, the Superior Court may assess up to twenty-five dollars (\$25) per gallon discharged but not cleaned up in excess of 1,000 gallons.

OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM:

The Permittee can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached NOV by participating in the Regional Board's Expedited Payment Program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of these violations, the Regional Board makes this Conditional Offer. The Permittee may accept this offer, waive the Permittee's right to a hearing, and pay the mandatory minimum penalty of \$147,000 for the violations described in the NOV. If the Permittee elects to do so, subject to the conditions below, the Regional Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in the NOV. Accordingly, the Regional Board will forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the NOV.

The Expedited Payment Program does not address liability for any violation that is not specifically identified in the NOV.

PERMITTEE'S OPTIONS FOR RESPONSE TO OFFER:

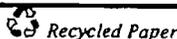
If you accept this offer, please complete and return the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed) Order" (Acceptance and Waiver) on or before October 15, 2008.

If the Permittee chooses to contest any of the violations alleged in the NOV, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date specified above. The Regional Board staff will evaluate the contested violation and take one of two actions:

- 1) The Regional Board staff will determine that the violation is not supported, expunge the alleged violation from the CIWQS database, take no further action against the Permittee for the alleged violation, and notify the Permittee of that determination. The Permittee will be given thirty (30) days from the date of receipt of the Regional Board staff determination to complete and return the Acceptance and Waiver for the remainder of the violations; or
- 2) The Regional Board staff will determine that the alleged violation is meritorious, and will notify the Permittee of that determination. The Permittee will be given thirty (30) days from the date of receipt of the Regional Board staff determination to complete and return the Acceptance and Waiver.

If the Permittee chooses not to make a payment in response to the Regional Board staff's determination, the Permittee should expect to be contacted regarding formal enforcement action that will be initiated with regard to the contested violations. In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor that can be considered in assessing the liability amount.

California Environmental Protection Agency



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

Mr. Mike Shay
City of Redondo Beach

- 3 -

September 15, 2008

CONDITIONS FOR REGIONAL BOARD ACCEPTANCE OF RESOLUTION:

Federal regulations require the Regional Board to publish and allow the public thirty (30) days to comment on any settlement of an enforcement action addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the Permittee's Acceptance and Waiver, the Regional Board staff will publish a notice of the proposed resolution of the violations.

If no comments are received within the 30-day comment period, and unless there are new material facts that become available to the Regional Board, the Regional Board Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385.

If, however, significant comments are received in opposition to the settlement, this Offer may be withdrawn. In that case, the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the violations will be addressed in a liability assessment proceeding. At the liability assessment hearing the Permittee will be free to make arguments as to any of the alleged violations, and the Permittee's agreement to accept this conditional offer will not in any way be binding or used as evidence against the Permittee. The Permittee will be provided with further information on the liability assessment proceeding.

In the event the Acceptance and Waiver is executed by the Regional Board Executive Officer, full payment of the assessed amount shall be due within ten (10) calendar days after the Permittee's receipt of the notice of the Regional Board Executive Officer's execution. The \$147,000 liability shall be paid by cashiers or certified check to the "State Water Pollution Cleanup and Abatement Account". Failure to pay the full penalty within the required time period may subject the Permittee to further liability.

Should you have any questions about this Conditional Offer or Notice of Violation, please contact Enforcement Unit staff Mr. Russ Colby at (213) 620-6373 regarding this matter.

Sincerely,



Deborah J. Smith
Chief Deputy Executive Officer

Enclosures: Exhibit "A" - Notice of Violation
Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed) Order

cc: Taryn Stokell, Office of Enforcement, State Water Resources Control Board

California Environmental Protection Agency

 Recycled Paper

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

Settlement Offer No. R4-2008-0058-M
CI No. 8034, NPDES Permit No. CA0064297

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING; (proposed) ORDER**

City of Redondo Beach
SETTLEMENT OFFER NO. R4-2008-0058-M
CI No. 8034, NPDES Permit No. CA0064297

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Los Angeles Regional Water Quality Control Board (Regional Board), City of Redondo Beach (Permittee) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Regional Board to dispute the allegations of violations described in the Notice of Violation (NOV), which is attached hereto as Exhibit "A" and incorporated herein by reference.

The Permittee agrees that the NOV shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Regional Board to assert jurisdiction over the alleged violations through its Executive Officer. The Permittee agrees to pay the penalties required by California Water Code section 13385, in the sum of \$147,000 (Expedited Payment Amount), which shall be deemed payment in full of any civil liability pursuant to the Water Code sections 13385 and 13385.1 that otherwise might be assessed for the violations described in the NOV. The Permittee understands that this Acceptance and Waiver waives the Permittee's right to contest the allegations in the NOV and the amount of civil liability for such violations.

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the NOV.

Upon execution by the Permittee, the completed Acceptance and Waiver shall be returned to:

Russ Colby
Enforcement Unit
Expedited Payment Program
Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, California 90013

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional 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 Regional Board Executive Officer, will be published as required by law for public comment.

If no comments are received within the notice period that cause the Regional Board Executive Officer to question the Expedited Payment Amount, the Regional Board Executive Officer will execute the Acceptance and Waiver.

The Permittee understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Board to resolve the violations set forth in the NOV may be withdrawn. In that circumstance, the Permittee will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee will be treated as a settlement communication and will not be used as evidence in that hearing.

Settlement Offer No. R4-2008-0058-M
CI No. 8034, NPDES Permit No. CA0064297

The Permittee further understands that once the Acceptance and Waiver is executed by the Regional Board Executive Officer, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. The Permittee shall pay the full Expedited Payment Amount of \$147,000 by a certified check or cashier's check payable to the "State Water Pollution Cleanup and Abatement Account". The payment must be submitted to the Regional Board no later than ten (10) calendar days after the date the Permittee receives written notice that the Regional Board Executive Officer has executed this Acceptance and Waiver.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Acceptance and Waiver.

(Name of Permittee)

By: _____
(Signed Name)

(Date)

(Printed or typed name)

(Title)

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

Date: _____

By: _____

Tracy J. Egoscue
Executive Officer

City of Redondo Beach
Seaside Lagoon
CI 8034

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
06/20/2002	Jun-02	30-Day Average	Enterococcus	156	24	MPN/100 ml	NA	NA	Chronic	(i)(1)	\$0
05/23/2003	May-03	Daily Maximum	Total Residual Chlorine	1,800	8	µg/L	2	22,400	Serious	(h)(1)	\$3,000
05/23/2003	May-03	Monthly Average	TSS	76	50	mg/L	1	52	Serious	(h)(1)	\$3,000
05/28/2003	May-03	Daily Maximum	Total Residual Chlorine	840	8	µg/L	2	10,400	Serious	(h)(1)	\$3,000
05/31/2003	May-03	Monthly Average	Total Residual Chlorine	840	2	µg/L	2	41,900	Serious	(h)(1)	\$3,000
06/03/2003	Jun-03	Daily Maximum	Total Residual Chlorine	140	8	µg/L	2	1,650	Serious	(h)(1)	\$3,000
06/24/2003	Jun-03	Monthly Average	TSS	64	50	mg/L	1	28	Chronic	(i)(1)	\$3,000
06/30/2003	Jun-03	30-Day Average*	Enterococcus	38	24	MPN/100 ml	NA	NA	Chronic	(i)(1)	\$3,000
07/10/2003	Jul-03	Monthly Average	TSS	76	50	mg/L	1	52	Serious	(h)(1)	\$3,000
07/29/2003	Jul-03	30-Day Average*	Enterococcus	35	24	MPN/100 ml	NA	NA	Chronic	(i)(1)	\$3,000
08/20/2003	Aug-03	Monthly Average	TSS	84	50	mg/L	1	68	Serious	(h)(1)	\$3,000
08/27/2003	Aug-03	30-Day Average*	Enterococcus	26	24	MPN/100 ml	NA	NA	Chronic	(i)(1)	\$3,000
08/17/2004	Aug-04	Daily Maximum	TSS	188	150	mg/L	1	25	Chronic	(i)(1)	\$0
08/17/2004	Aug-04	Monthly Average	TSS	188	50	mg/L	1	276	Serious	(h)(1)	\$3,000
08/17/2004	Aug-04	Monthly Average	BOD ₃ , 20°C	23.6	20	mg/L	1	18	Chronic	(i)(1)	\$0
09/01/2004	Sep-04	Daily Maximum	BOD ₃ , 20°C	525	30	mg/L	1	1,650	Serious	(h)(1)	\$3,000
09/01/2004	Sep-04	Monthly Average	BOD ₃ , 20°C	525	20	mg/L	1	2,525	Serious	(h)(1)	\$3,000
08/15/2005	Aug-05	Daily Maximum	BOD ₃ , 20°C	75	30	mg/L	1	150	Serious	(h)(1)	\$3,000
08/15/2005	Aug-05	Monthly Average	BOD ₃ , 20°C	75	20	mg/L	1	275	Serious	(h)(1)	\$3,000
09/26/2005	Sep-05	Daily Maximum	TSS	80	75	mg/L	1	7	Chronic	(i)(1)	\$0
10/03/2005	Oct-05	Daily Maximum	BOD ₃ , 20°C	40	30	mg/L	1	33	Chronic	(i)(1)	\$3,000
10/03/2005	Oct-05	Instantaneous	pH	5.95	6.5 - 8.5	pH Units	NA	NA	Chronic	(i)(1)	\$3,000
10/03/2005	Oct-05	30-Day Rolling Average*	Total Coliform	1,646	1,000	MPN/100 ml	NA	NA	Chronic	(i)(1)	\$3,000
10/10/2005	Oct-05	30-Day Rolling Average*	Total Coliform	2,190	1,000	MPN/100 ml	NA	NA	Chronic	(i)(1)	\$3,000
10/17/2005	Oct-05	30-Day Rolling Average*	Total Coliform	2,005	1,000	MPN/100 ml	NA	NA	Chronic	(i)(1)	\$3,000
10/24/2005	Oct-05	30-Day Rolling Average*	Total Coliform	2,164	1,000	MPN/100 ml	NA	NA	Chronic	(i)(1)	\$3,000
10/31/2005	Oct-05	30-Day Rolling Average*	Total Coliform	1,430	1,000	MPN/100 ml	NA	NA	Chronic	(i)(1)	\$3,000

EXHIBIT "A" - NOTICE OF VIOLATION
 City of Redondo Beach
 Seaside Lagoon
 CI 8034

June 2002 - October 2007

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
06/05/2006	Jun-06	Daily Maximum	TSS	112	75	mg/L	1	49	Serious	(h)(1)	\$3,000
06/05/2006	Jun-06	Monthly Average	TSS	112	50	mg/L	1	124	Serious	(h)(1)	\$3,000
07/18/2006	Jul-06	Daily Maximum	TSS	96	75	mg/L	1	28	Chronic	(i)(1)	\$0
07/24/2006	Jul-06	Daily Maximum	TSS	81	75	mg/L	1	8	Chronic	(i)(1)	\$3,000
07/31/2006	Jul-06	Monthly Average	TSS	79	50	mg/L	1	58	Serious	(h)(1)	\$3,000
08/07/2006	Aug-06	Daily Maximum	TSS	286	75	mg/L	1	281	Serious	(h)(1)	\$3,000
08/28/2006	Aug-06	Daily Maximum	TSS	81	75	mg/L	1	8	Chronic	(i)(1)	\$3,000
08/28/2006	Aug-06	Daily Maximum	BOD ₅ , 20°C	76	30	mg/L	1	152	Serious	(h)(1)	\$3,000
08/28/2006	Aug-06	Monthly Average	BOD ₅ , 20°C	76	20	mg/L	1	278	Serious	(h)(1)	\$3,000
08/31/2006	Aug-06	Monthly Average	TSS	184	50	mg/L	1	268	Serious	(h)(1)	\$3,000
9/11/2006	Sep-06	Daily Maximum	TSS	76	75	mg/L	1	1	Chronic	(i)(1)	\$3,000
9/11/2006	Sep-06	Daily Maximum	BOD ₅ , 20°C	71.9	30	mg/L	1	140	Serious	(h)(1)	\$3,000
9/25/2006	Sep-06	Daily Maximum	Total Residual Chlorine	1,000	8	µg/L	2	12,400	Serious	(h)(1)	\$3,000
9/25/2006	Sep-06	Daily Maximum	TSS	76	75	mg/L	1	1	Chronic	(i)(1)	\$3,000
9/25/2006	Sep-06	Daily Maximum	BOD ₅ , 20°C	72.1	30	mg/L	1	140	Serious	(h)(1)	\$3,000
9/30/2006	Sep-06	Monthly Average	TSS	76	50	mg/L	1	52	Serious	(h)(1)	\$3,000
9/30/2006	Sep-06	Monthly Average	BOD ₅ , 20°C	72	20	mg/L	1	260	Serious	(h)(1)	\$3,000
10/2/2006	Oct-06	Daily Maximum	TSS	86	75	mg/L	1	15	Chronic	(i)(1)	\$3,000
10/2/2006	Oct-06	Daily Maximum	BOD ₅ , 20°C	92.4	30	mg/L	1	208	Serious	(h)(1)	\$3,000
10/9/2006	Oct-06	Daily Maximum	Oil & Grease	318	15	mg/L	1	2,020	Serious	(h)(1)	\$3,000
10/9/2006	Oct-06	Daily Maximum	TSS	146	75	mg/L	1	95	Serious	(h)(1)	\$3,000
10/9/2006	Oct-06	Daily Maximum	BOD ₅ , 20°C	97.7	30	mg/L	1	226	Serious	(h)(1)	\$3,000
10/31/2006	Oct-06	Monthly Average *	TSS	116	50	mg/L	1	132	Serious	(h)(1)	\$3,000
10/31/2006	Oct-06	Monthly Average *	BOD ₅ , 20°C	95.1	20	mg/L	1	376	Serious	(h)(1)	\$3,000
9/24/2007	Sep-07	Daily Maximum	Total Residual Chlorine	710	8	µg/L	2	8,775	Serious	(h)(1)	\$3,000
10/6/2007	Oct-07	Daily Maximum	Total Residual Chlorine	2,100	8	µg/L	2	26,150	Serious	(h)(1)	\$3,000
10/6/2007	Oct-07	Monthly Average	Total Residual Chlorine	2,100	2	µg/L	2	104,900	Serious	(h)(1)	\$3,000
										Total	\$147,000

EXHIBIT “17”



California Regional Water Quality Control Board Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 Environmental Leadership Award from Keep California Beautiful
320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 · Internet Address: <http://www.swrch.ca.gov/rwqcb4>

Arnold Schwarzenegger
Governor

ENFORCEMENT & STORMWATER SECTION

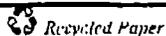
FACSIMILE TRANSMITTAL SHEET

TO: Mr. Michael W. Webb	FROM: Russ Colby
COMPANY: City of Redondo Beach, City Attorney	DATE: 02/17/2010
FAX NUMBER: 310-372-0167	TOTAL NO. OF PAGES INCLUDING COVER: 16
PHONE NUMBER:	SENDER'S TELEPHONE NUMBER: 213 620-6373
RE: Complaint No. R4-2008-0058-M	SENDER'S FAX NUMBER: 213-576-1323

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

MESSAGE:

California Environmental Protection Agency



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California Regional Water Quality Control Board

Los Angeles Region



Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

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

February 16, 2010

Mr. Michael W. Webb
City Attorney
City of Redondo Beach
Redondo Beach, California 90277-0639

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7008 1830 0004 3360 5620

COMPLAINT NO. R4-2008-0058-M FOR MANDATORY MINIMUM PENALTY AGAINST CITY OF REDONDO BEACH, SEASIDE LAGOON, 200 PORTIFINO WAY, REDONDO BEACH, CA (ORDER NOS. 99-057 AND R4-2005-0016, NPDES PERMIT NO. CA0064297, CI NO. 8034)

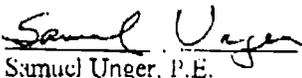
Dear Mr. Webb:

Enclosed is Complaint No. R4-2008-0058-M for Mandatory Minimum Penalty in the amount of \$150,000 against City of Redondo Beach (hereinafter Permittee) for violating waste discharge requirements contained in Regional Board Order Nos. 99-057, and R4-2005-0016. 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. R4-2008-0058-M and return it to the Regional Board by 5:00 pm on March 18, 2010. If we do not receive the waiver and full payment of the mandatory minimum penalty by March 18, 2010, this matter will be heard before the Regional Board or Hearing Panel. The Notice of Public Hearing 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. Russ Colby at (213) 620-6373.

Sincerely,

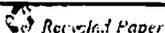

Samuel Unger, P.E.

Assistant Executive Officer

Enclosures: Complaint No. R4-2008-0058-M
Exhibit "A"
Notice of Public Hearing

cc: Ms. Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board
Ms. Tracy Egoscue, Los Angeles Regional Water Quality Control Board
Mr. Michael Levy, Office of Chief Counsel, State Water Resources Control Board
Mr. Reed Sato, Office of Enforcement, State Water Resources Control Board

California Environmental Protection Agency



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**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:)	Complaint No. R4-2008-0058-M
)	Mandatory Minimum Penalty for
)	Violation of California Water Code § 13376
City of Redondo Beach)	and
Seaside Lagoon)	Order Nos. 99-057 & R4-2005-0016
Redondo Beach, California)	(NPDES No. CA0064297)

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) § 13385 subdivisions (h) and (i) is issued to the City of Redondo Beach (hereinafter Permittee) based on a finding of violations of waste discharge requirements prescribed in Order Nos. 99-057 & R4-2005-0016 (NPDES No. CA0064297, CI No. 8034).

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

1. The Permittee owns and operates the Seaside Lagoon (hereinafter facility) located at 200 Portofino Way, Redondo Beach, California. The facility is a 1.4 million gallon man-made saltwater lagoon which provides recreational services to the public. Water is supplied from a cooling water discharge outfall owned and operated by AES Redondo Beach, LLC Power Plant and chlorinated prior to entering the lagoon. To maintain the water level in the lagoon, the Permittee discharges up to 2.3 million gallons per day (MGD) of de-chlorinated wastewater to King Harbor at the shoreline embankment through Discharge Serial No. 001 (Latitude 33°50'38", Longitude 118°23'47"). The wastewater is susceptible to containing coliform and enterococcus bacteria, biochemical oxygen demanding substances (BOD₅), total residual chlorine (TRC), total suspended solids (TSS), oil and grease (O&G), 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.). The wastewater flows to King Harbor, a navigable water of the United States.
2. On June 30, 1999, the Regional Board adopted Order No. 99-057, which prescribed waste discharge requirements to the Permittee for the discharge of treated wastes from the facility. Order No. 99-057 became effective on July 6, 1999.
3. On March 3, 2005, the Regional Board adopted Order No. R4-2005-0016 prescribing waste discharge requirements to the Permittee for the discharge of treated wastes from the facility. Order No. 99-057 was rescinded upon adoption of Order No. R4-2005-0016, except for enforcement purposes.
4. Because the Permittee could not comply with the final effluent limitations set forth in Order No. R4-2005-0016 for TSS and BOD₅, the Permittee requested that the Regional Board adopt a Time Schedule Order (TSO). The Regional Board adopted TSO No. R4-2007-0024, on April 26, 2007,

February 16, 2010

City of Redondo Beach
Complaint No. R4-2008-0058-M

Page 2

prescribing higher interim limits for TSS and BOD₅ discharges effective from May 1, 2007 to January 31, 2008.

5. In accordance with TSO No. R4-2007-0024, the Permittee submitted a Source Identification Report (SIR) dated October 1, 2007. Elevated BOD₅ concentrations previously detected did not appear during the study period, however, based on the SIR data, the Permittee requested additional time to achieve full compliance with the final TSS limitation.
6. On January 31, 2008, the Regional Board adopted TSO No. R4-2008-0002 prescribing an interim effluent limit for TSS effective from February 1, 2008 to February 28, 2010.
7. Order No. 99-057 (Part 2 page 5) includes the following effluent limitations for BOD₅, enterococcus, TRC, and TSS :

Constituent	Unit of Measure	Discharge Limitations	
		Daily Maximum	Monthly Average
BOD ₅	mg/L	30	20
TRC	µg/L	8	2
TSS	mg/l.	150	50
Enterococcus	MPN/100 mL	(a) 30-day geometric mean ≤ 24 MPN/100 mL, (b) 6-month geometric mean ≤ 12 MPN/100 mL.	

µg/L = micrograms/liter, mg/l. = milligrams/liter, MPN = most probable number

8. Order No. R4-2005-0016 (Parts 1.B.1 and 4, pages 7 and 9) include the following effluent limitations for BOD₅, coliform, O&G, TRC, TSS, and pH:

Constituent	Unit of Measure	Discharge Limitations	
		Daily Maximum	Monthly Average
BOD ₅	mg/l.	30	20
O&G	mg/l.	15	10
TRC	µg/L	8	2
TSS	mg/L	75	50
pH	S.U.	(a) Instantaneous Minimum = 6.5 (b) Instantaneous Maximum = 8.5	
Total Coliform	MPN/100 mL	(a) Daily Maximum ≤ 10,000 MPN/100 mL, (b) 30-day period ≤ 1,000 MPN/100 mL.	

mg/l. = milligram/liter, µg/l. = micrograms/liter, MPN/100 mL = Most Probable Number/ 100 milliliters, S.U. = Standard Units

9. Fifty-four (54) violations of Order Nos. 99-057, and R4-2005-0016 were noted in the Permittee's self-monitoring reports during the period June 2002 through October 2007. Out of the fifty-four (54) violations, forty-nine (49) are subject to mandatory minimum penalties. These violations

City of Redondo Beach
Complaint No. R4-2008-0058-M

Page 3

include effluent limit exceedances for BOD₅, coliform, enterococcus, O&G, TRC, TSS, and pH. The violations are identified in Exhibit "A" attached hereto and incorporated herein by reference.

10. On September 15, 2008, the Chief Deputy Executive Officer of the Regional Board issued the Permittee Offer to Participate in Expedited Payment Program (EPP) No. R4-2008-0058-M, which included a Notice of Violation notifying the Permittee of the fifty-four (54) effluent limit violations from the 3rd Quarter 2002 through the 4th Quarter 2007 subject to mandatory minimum penalties in the amount of \$147,000.
11. Subsequent to issuance of the EPP, one (1) additional effluent limit violation of Order No. R4-2005-0016 was reported by the Permittee in its self-monitoring report for the month of July 2008. This additional violation is subject to a mandatory minimum penalty and is identified in Exhibit "A" attached hereto and incorporated by reference.
12. Any discharge containing pollutants violating the effluent limitations set in the waste discharge requirements is prohibited by CWC § 13376.
13. Among the provisions in the Permittee's waste discharge requirements are the requirements to implement a discharge monitoring program and to prepare and submit monthly NPDES self-monitoring reports to the Regional Board pursuant to the authority of CWC § 13383.
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. The maximum amount of discretionary administrative civil liability assessable pursuant to CWC § 13385(c) for each day of violation 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.

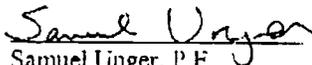
YOU ARE HEREBY GIVEN NOTICE THAT:

17. The Assistant Executive Officer proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$150,000 for the violations which occurred during the June 2002 through July 2008 monitoring periods cited in Exhibit "A". 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 March 18, 2010. If the hearing is waived, a check in the amount of \$150,000 (payable to the State Water Pollution Cleanup and Abatement Account) must be received by the Regional Board by 5:00 pm on March 18, 2010.

City of Redondo Beach
Complaint No. R4-2008-0058-M

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19. If the Regional Board does not receive a waiver and full payment of the recommended penalty by **March 18, 2010**, the Complaint will be heard before the Regional Board or 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 Water 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 US 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.
Assistant Executive Officer
Los Angeles Regional Water Quality Control Board

February 16, 2010

City of Redondo Beach
Complaint No. R4-2008-0058-M

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WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2008-0058-M

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

I am duly authorized to represent the City of Redondo Beach (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. R4-2008-0058-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."

- (OPTION 1: 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 **\$150,000** by check that references "ACL Complaint No. R4-2008-0058-M" made payable to the "*Cleanup and Abatement Account*". Payment must be received by the Regional Water Board by **March 18, 2010** 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 Chief Deputy 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.

City of Redondo Beach
Complaint No. R4-2008-0058-M

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

(Print Name and Title)

(Signature)

(Date)

June 2002 - July 2008

EXHIBIT "A"
 City of Redondo Beach
 Seaside Lagoon
 CI 8034

ACLCL No. R4-2008-0058-M

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
06/20/2002	Jun-02	30-Day Geometric Mean*	Enterococcus	156	24	MPN/100 ml	NA	NA	Chronic	(X)(1)	\$0
05/23/2003	May-03	Daily Maximum	TRC	1,800	8	µg/L	2	22,400	Serious	(b)(1)	\$3,000
05/23/2003	May-03	Monthly Average	TSS	76	50	mg/L	1	52	Serious	(b)(1)	\$3,000
05/28/2003	May-03	Daily Maximum	TRC	840	8	µg/L	2	10,400	Serious	(b)(1)	\$3,000
05/31/2003	May-03	Monthly Average	TRC	840	2	µg/L	2	41,900	Serious	(b)(1)	\$3,000
06/03/2003	Jun-03	Daily Maximum	TRC	140	8	µg/L	2	1,650	Serious	(b)(1)	\$3,000
06/24/2003	Jun-03	Monthly Average	TSS	64	50	mg/L	1	28	Chronic	(b)(1)	\$3,000
06/30/2003	Jun-03	30-Day Geometric Mean*	Enterococcus	38	24	MPN/100 ml	NA	NA	Chronic	(b)(1)	\$3,000
07/10/2003	Jul-03	Monthly Average	TSS	76	50	mg/L	1	52	Serious	(b)(1)	\$3,000
07/29/2003	Jul-03	30-Day Geometric Mean*	Enterococcus	35	24	MPN/100 ml	NA	NA	Chronic	(b)(1)	\$3,000
08/20/2003	Aug-03	Monthly Average	TSS	84	50	mg/L	1	68	Serious	(b)(1)	\$3,000
08/27/2003	Aug-03	30-Day Geometric Mean*	Enterococcus	26	24	MPN/100 ml	NA	NA	Chronic	(b)(1)	\$3,000
08/17/2004	Aug-04	Daily Maximum	TSS	188	150	mg/L	1	25	Chronic	(b)(1)	\$0
08/17/2004	Aug-04	Monthly Average	TSS	188	50	mg/L	1	276	Serious	(b)(1)	\$3,000
08/17/2004	Aug-04	Monthly Average	BOD ₅	73.6	20	mg/L	1	18	Chronic	(b)(1)	\$0
09/01/2004	Sep-04	Daily Maximum	BOD ₅	52.5	30	mg/L	1	1,650	Serious	(b)(1)	\$3,000
09/01/2004	Sep-04	Monthly Average	BOD ₅	52.5	20	mg/L	1	2,525	Serious	(b)(1)	\$3,000
08/15/2005	Aug-05	Daily Maximum	BOD ₅	75	30	mg/L	1	150	Serious	(b)(1)	\$3,000
08/15/2005	Aug-05	Monthly Average	BOD ₅	75	20	mg/L	1	275	Serious	(b)(1)	\$3,000
09/26/2005	Sep-05	Daily Maximum	TSS	80	75	mg/L	1	7	Chronic	(b)(1)	\$0
10/03/2005	Oct-05	Daily Maximum	BOD ₅	40	30	mg/L	1	33	Chronic	(b)(1)	\$3,000
10/03/2005	Oct-05	Instantaneous	pH	5.95	6.5 - 8.5	pH Units	NA	NA	Chronic	(b)(1)	\$3,000
10/03/2005	Oct-05	30-Day Rolling Average*	Total Coliform	1,646	1,000	MPN/100 ml	NA	NA	Chronic	(b)(1)	\$3,000
10/10/2005	Oct-05	30-Day Rolling Average*	Total Coliform	2,190	1,000	MPN/100 ml	NA	NA	Chronic	(b)(1)	\$3,000
10/17/2005	Oct-05	30-Day Rolling Average*	Total Coliform	2,005	1,000	MPN/100 ml	NA	NA	Chronic	(b)(1)	\$3,000
10/24/2005	Oct-05	30-Day Rolling Average*	Total Coliform	2,164	1,000	MPN/100 ml	NA	NA	Chronic	(b)(1)	\$3,000
10/31/2005	Oct-05	30-Day Rolling Average*	Total Coliform	1,430	1,000	MPN/100 ml	NA	NA	Chronic	(b)(1)	\$3,000

June 2002 - July 2008

EXHIBIT "A"
City of Redondo Beach
Seaside Lagoon
CI 8034

ALCL No. R4-2008-0058-M

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/ Chronic	Water Code Section 13385	Penalty
06/05/2006	Jun-06	Daily Maximum	TSS	112	75	mg/L	1	49	Serious	(b)(1)	\$3,000
06/05/2006	Jun-06	Monthly Average	TSS	117	50	mg/L	1	124	Serious	(b)(1)	\$3,000
07/18/2006	Jul-06	Daily Maximum	TSS	96	75	mg/L	1	28	Chronic	(1)(1)	50
07/24/2006	Jul-06	Daily Maximum	TSS	81	75	mg/L	1	8	Chronic	(1)(1)	\$3,000
07/31/2006	Jul-06	Monthly Average	TSS	79	50	mg/L	1	58	Serious	(b)(1)	\$3,000
08/07/2006	Aug-06	Daily Maximum	TSS	286	75	mg/L	1	281	Serious	(b)(1)	\$3,000
08/28/2006	Aug-06	Daily Maximum	TSS	81	75	mg/L	1	8	Chronic	(1)(1)	\$3,000
08/28/2006	Aug-06	Daily Maximum	BOD ₅	76	30	mg/L	1	152	Serious	(b)(1)	\$3,000
08/28/2006	Aug-06	Monthly Average	BOD ₅	76	20	mg/L	1	278	Serious	(b)(1)	\$3,000
08/31/2006	Aug-06	Monthly Average	TSS	184	50	mg/L	1	268	Serious	(b)(1)	\$3,000
09/11/2006	Sep-06	Daily Maximum	TSS	76	75	mg/L	1	1	Chronic	(1)(1)	\$3,000
09/11/2006	Sep-06	Daily Maximum	BOD ₅	71.9	30	mg/L	1	140	Serious	(b)(1)	\$3,000
09/25/2006	Sep-06	Daily Maximum	TRC	1,000	8	µg/L	2	12,100	Serious	(b)(1)	\$3,000
09/25/2006	Sep-06	Daily Maximum	TSS	76	75	mg/L	1	1	Chronic	(1)(1)	\$3,000
09/25/2006	Sep-06	Daily Maximum	BOD ₅	72.1	30	mg/L	1	140	Serious	(b)(1)	\$3,000
09/30/2006	Sep-06	Monthly Average	TSS	76	50	mg/L	1	52	Serious	(b)(1)	\$3,000
09/30/2006	Sep-06	Monthly Average	BOD ₅	72	20	mg/L	1	260	Serious	(b)(1)	\$3,000
10/22/2006	Oct-06	Daily Maximum	TSS	86	75	mg/L	1	15	Chronic	(1)(1)	\$3,000
10/22/2006	Oct-06	Daily Maximum	BOD ₅	92.4	30	mg/L	1	208	Serious	(b)(1)	\$3,000
10/29/2006	Oct-06	Daily Maximum	O&G	318	15	mg/L	1	3,020	Serious	(b)(1)	\$3,000
10/29/2006	Oct-06	Daily Maximum	TSS	146	75	mg/L	1	95	Serious	(b)(1)	\$3,000
10/29/2006	Oct-06	Daily Maximum	BOD ₅	97.7	30	mg/L	1	226	Serious	(b)(1)	\$3,000
10/31/2006	Oct-06	Monthly Average *	TSS	116	50	mg/L	1	132	Serious	(b)(1)	\$3,000
10/31/2006	Oct-06	Monthly Average *	BOD ₅	95.1	20	mg/L	1	376	Serious	(b)(1)	\$3,000
09/24/2007	Sep-07	Daily Maximum	TRC	710	8	µg/L	2	8,775	Serious	(b)(1)	\$3,000
10/06/2007	Oct-07	Daily Maximum	TRC	2,100	8	µg/L	2	26,150	Serious	(b)(1)	\$3,000
10/06/2007	Oct-07	Monthly Average	TRC	2,100	2	µg/L	2	104,900	Serious	(b)(1)	\$3,000
7/28/2008	Jul-08	Daily Maximum	TRC	2,000	8	µg/L	2	24,900	Serious	(b)(1)	\$3,000
Total										\$150,000	

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

ACLC R4-2008-0058-M

NOTICE OF PUBLIC HEARING

TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND PROPOSE RECOMMENDATIONS

Table with 3 columns: DISCHARGER (City of Redondo Beach), DISCHARGE LOCATION (Seaside Lagoon, 200 Portofino Way), RECEIVING WATERS (King Harbor)

Administrative Civil Liability Complaint ("ACLC") No. R4-2008-0058-M alleges that the City of Redondo Beach violated Order Nos. 99-057 and R4-2005-0016 by failing to comply with the effluent limits during the period June 2002 through July 2008. During this time, seventeen (17) effluent limit violations of Order No. 99-057 and thirty-eight (38) effluent limit violations of Order No. R4-2006-0053 were noted in the Permittee's self-monitoring reports. Out of the fifty-five effluent limit violations, fifty (50) are subject to mandatory minimum penalties. As stated in the ACLC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$150,000 be assessed against the City of Redondo Beach for the violations.

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three 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 ACLC.

This notice sets forth procedures to be used by hearing panels of the Regional Board and outlines the process to be used at this hearing.

I. HEARING DATE AND LOCATION

- Date: May 17, 2010
Time: 10:00 A.M.
Place: 320 W. 4th Street
Los Angeles, CA 90013
• Room location TBD

II. AVAILABILITY OF DOCUMENTS

The ACLC, related documents, proposed order, comments received, and other information about 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 copies of the documents may be made by calling the Los Angeles Regional Board at (213) 576-6600.

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. However, the entire file might not be available 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 Prosecution Team during business hours, not later than **April 27, 2010**. 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. City of Redondo Beach
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 no later than **April 5, 2010**. The request shall 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 party

or 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 the 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 Russ Colby, Environmental Scientist. Mayumi Okamoto, 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. Okamoto 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:

Russ Colby
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-6369
rcolby@waterboards.ca.gov

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

A. Submittals By Parties.

Not later than **March 26, 2010**, 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 City of Redondo Beach is required to submit:

- 1) Any additional documents or evidence the Party wants the Hearing Panel to consider,
- 2) A summary of any testimony the Party intends to present, and
- 3) 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 no later than 5:00pm on **April 19, 2010**. 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 **May 6, 2010**.

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 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 no later than **March 18, 2010**. If possible, please submit written comments in Word format electronically to mmerino@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 witness, 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 not later than **April 19, 2010** 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. 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 Executive Officer Tracy Egoscue, and a Legal Advisor, Michael Levy, Senior Staff Counsel for the Regional Board. While Ms. Egoscue exercises general oversight over the staff's enforcement activities, neither she nor Mr. Levy 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 no later than April 19, 2010 to the Legal Advisor to the Hearing Panel:

Michael Levy
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 341-5193
mlevy@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 April 19, 2010 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. APPLICABILITY OF NOTICE

The Executive Officer has directed the use of this standard notice in an order dated March 5, 2008. If you have any questions about this Notice of Public Hearing, please contact as appropriate, the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Panel as described above.

Date: February 16, 2010

EXHIBIT “18”

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MICHAEL W. WEBB, SBN 133414
City Attorney for the
City of Redondo Beach
415 Diamond Street
Redondo Beach, CA
90277-0639

Phone: (310) 318-0655
Fax: (310) 372-0167

Attorney for THE CITY
OF REDONDO BEACH

STATE OF CALIFORNIA
REGIONAL WATER RESOURCES CONTROL BOARD
LOS ANGELES REGION

In the Matter of)
ADMINISTRATIVE CIVIL LIABILITY)
COMPLAINT R4-2008-0058-M ISSUED)
TO THE CITY OF REDONDO BEACH BY)
CALIFORNIA REGIONAL WATER)
QUALITY BOARD, LOS ANGELES)
REGION, REGARDING SEASIDE)
LAGOON)

**BRIEF IN OPPOSITION TO
ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO. R4-2008-0058-M**

CC COPY

1 I.

2 INTRODUCTION

3 The City of Redondo Beach (the "City") respectfully submits this brief in opposition to
4 Administrative Civil Liability Complaint R4-2008-0058-M¹ issued by the California Regional
5 Water Quality Control Board, Los Angeles Region ("the Regional Board") on February 16, 2010.
6 The City respectfully contends the Complaint is based on flawed legal conclusions, data, and
7 calculations. Therefore, the City hereby requests the Regional Board review the Complaint in
8 light of the City's arguments raised herein, and further requests the Regional Board make findings
9 that the alleged violations noted in the Complaint are unsupported, that the City is not liable for
10 alleged violations addressed herein, and that such alleged violations should be expunged from the
11 California Integrated Water Quality System ("CIWQS") database.

12 II.

13 RELEVANT FACTS AND PROCEDURAL HISTORY

14 A. **City's Operation of Seaside Lagoon**

15 Seaside Lagoon is a salt water recreational facility located just behind King Harbor in
16 Redondo Beach, California. The Lagoon is located on property owned by the State of California,
17 administered in trust by the City of Redondo Beach. Water for Seaside Lagoon comes from the
18 ocean, taken from a depth of about fifty feet. The water first travels to the nearby AES Redondo
19 Power Plant ("AES") where AES uses the water to cool the steam-generation turbines. The water
20 then travels underground in large pipes to Seaside Lagoon.²

21 Upon reaching Seaside Lagoon, the water is chlorinated. Prior to the water leaving
22 Seaside Lagoon, it is dechlorinated. This is the only "processing" the City does of the water used
23 by Seaside Lagoon. Seaside Lagoon normally contains approximately 1.5 million gallons of water
24 and has a flow through rate of approximately 3,200 gallons per minute. The flow through occurs
25

26
27 ¹ The "Complaint," attached as Exhibit "1."

28 ² A map indicating Seaside Lagoon's inflow and outflow is attached as Exhibit "2."

1 approximately 100 days out of the year, and twelve hours or less in any such day.³ Seaside
2 Lagoon provides a safe and enclosed salt water recreation for approximately 150,000 people
3 annually, approximately 80% of whom are not residents of the City.

4 **B. Regulatory Matters Regarding Seaside Lagoon**

5 The City has an National Pollution Discharge Elimination System ("NPDES") Permit (No.
6 CA0064297) addressing water discharge quality and operations at the Seaside Lagoon.
7 Specifically, Seaside Lagoon discharges water into King Harbor, another historic part of the City's
8 waterfront amenities. The City applied for and received its NPDES Permit in 1999,⁴ which was
9 subsequently renewed in 2005.⁵ The City's NPDES Permit expired February 10, 2010, but a
10 request for renewal was made to the Regional Board in August of 2009.⁶ Because it seems the
11 City has not been able to comply with the effluent limitations set by the Regional Board, even
12 after ongoing and costly attempts to comply, the City has no choice but to consider permanently
13 closing Seaside Lagoon rather than continually risk substantial and uncertain enforcement actions
14 by the Regional Board.

15 Pursuant to the monitoring and reporting program, which is an integral part of the City's
16 NPDES Permit, the City performs regular monitoring of the water discharged from Seaside
17 Lagoon into King Harbor. Under the NPDES Permit as revised in 2005,⁷ reports regarding the
18

19 ³ For reasons unknown to the City, the Power Point presentation represented in the Regional
20 Board's "Preliminary Hearing Binder" (the "Binder") indicates without clear explanation that the "Potential
21 Maximum Civil Liability" the City could face regarding Seaside Lagoon is \$21.2 Billion, supposedly based
22 in part on discharge of 4.6 Million Gallons a Day ("MGD"). (Trial Binder at p. 6, paginated as p. 5).
23 Seaside Lagoon's output is, on a day there is outflow, approximately 2.304 MGD. This nearly 2.3 million
24 gallon discrepancy (which has a corollary monetary discrepancy of approximately \$11.29 billion) is just one
25 of the reasons why the City believes the potential liability estimate is grossly flawed.

23 ⁴ NPDES Order No. 99-057, attached as Exhibit "3."

24 ⁵ NPDES Order No. R4-2005-0016, attached as Exhibit "4."

25 ⁶ Attached as Exhibit "5."

26 ⁷ See Attachment "T," Monitoring and Reporting Program No. 8034, attached to Exhibit "4."

27

Reporting Period	Report Due
Start of Operation – June 30	August 1
July 1 – July 31	September 1

28

1 results of the monthly monitoring are provided to the Regional Board thirty or forty-five days after
2 the sampling occurs, depending on if the sampling was done during the "season" (basically
3 summer) or not. Monthly reports created by the City prior to the 2005 revision were provided to
4 the Regional Board in basically the same manner.⁸

5 Since the City's NPDES Permit was issued in 1999, the Regional Board has alleged City
6 violated the water quality requirements of its NPDES Permit on multiple occasions. On May 4,
7 2001, the Regional Board issued an NOV to the City for seventeen violations that allegedly
8 occurred during the years 2000 and 2001. All of the alleged violations concerned exceedances of
9 the effluent limitation for residual chlorine.⁹ On March 29, 2002, the Regional Board filed an
10 Administrative Civil Liability ("ACL") complaint (the "2002 ACL Complaint") pursuant to
11 California Water Code section 13385(h), seeking \$51,000 in ACL.¹⁰ City waived a hearing and
12 paid the Regional Board \$45,000 in ACL and \$6,000 for a Supplemental Environmental Project
13 ("SEP").

14 After settling the ACL Complaint of March 29, 2002, the City continued to provide
15 monitoring reports to the Regional Board pursuant to the City's NPDES permit. Some of those
16 reports included monitoring results that arguably indicated the presence of certain regulated
17 constituents¹¹ above the effluent limitations set by the Regional Board, which concerned the City.
18 Though the Regional Board did not issue any ACL Complaint regarding the alleged violations in
19 the seven years after the ACL Complaint of March 29, 2002, the City recognized that there was a

20
21 August 1 – End of Operation October 1

22 Annual Summary Report October 1 of each year[.]
23 Monitoring reports for off-season discharges shall be submitted 45 days after sampling.

24 ⁸ See Exhibit "3" at T-1.

25 ⁹ Based on ACL Complaint No. R4-2004-0159 (attached hereto as Exhibit "6"), and the
26 allegations therein, however, it appears the water originating at AES does contain chlorine prior to reaching
27 Seaside Lagoon.

28 ¹⁰ Complaint No. R4-2002-0014, attached as Exhibit "7."

¹¹ Biochemical Oxygen Demand ("BOD"), Total Suspended Solids ("TSS"), Chlorine, pH,
Coliform, Enterococcus, and (once) oil & gas are the constituents which have allegedly been found in levels
exceeding the effluent limitations found in City's permit.

1 problem that needed to be addressed.

2 Accordingly, in 2007, the City requested a Time Scheduling Order (“TSO”) with interim
3 effluent levels that the City could meet, based on data collected in 2006. The purpose of the TSO
4 with the elevated effluent limitations was to allow the City enough time to study the cause of the
5 apparent exceedances, and enough time to attempt to resolve any problem found, without
6 penalizing the City for what would have been classified as exceedances under the effluent levels
7 in the City’s then-current NPDES Permit. The Regional Board issued TSO No. R4-2007-0024¹²
8 in response to the City’s request. That TSO provided that, from May 1, 2007, through January 31,
9 2008, the City’s TSS and BOD limitations would be raised as follows: the City’s TSS maximum
10 was raised from 75/50 (daily/monthly) mg/L to 250/200 mg/L, and City’s BOD maximum was
11 raised from 30/20 mg/L to 100/100 mg/L. During this period, the City complied with the effluent
12 limitations for TSS and BOD.

13 City engaged in serious study of the apparent exceedances during 2007, and prepared a
14 detailed report for the Regional Board regarding the same.¹³ In contrast to the elevated BOD
15 levels detected in 2006, the City’s sampling in 2007 failed to indicate problematic BOD
16 concentrations.¹⁴ Ergo, the sampling in 2007 did not shed any light on the cause of the elevated
17 BOD data gathered in 2006.

18 TSS, however, was present in sampling conducted in 2007, and the City’s report noted the
19 levels of TSS found at Seaside Lagoon during 2007 were generally the same as were present in
20 King Harbor.¹⁵ Based on this fact, the report concluded the “most likely” source of the TSS
21 problems at Seaside Lagoon was influent water (i.e., ocean water) commingling with the water in
22 Seaside Lagoon.¹⁶ That is, the location at which Seaside Lagoon’s TSS sampling was (and is)
23

24 ¹² TSO No. R4-2007-0024, attached as Exhibit “8.”

25 ¹³ Source Identification Report, dated October 1, 2007, attached as Exhibit “9.”

26 ¹⁴ See *id.* at 8, ¶ 1.2.1.

27 ¹⁵ See TSO No. R4-2008-0002, attached as Exhibit “10.”

28 ¹⁶ See Exhibit “9” at 5-6, 17-18.

1 being performed did not include just Seaside Lagoon's effluence (i.e., its discharge, what is
2 regulated under the NPDES Permit), but also influent ocean waters (which had elevated
3 concentrations of TSS). Based on the report's findings regarding TSS, the City requested a
4 second TSO regarding TSS. The Regional Board granted a second TSO on January 31, 2008,
5 which set the TSS effluent limitation (for February 1, 2008, through February 28, 2010) at 120/60
6 mg/L.¹⁷ The City has not had an exceedance of the TSS effluent limitation since the 120/60 mg/L
7 standard was put in place.

8 The City has contemplated simply shutting down Seaside Lagoon many times because of
9 issues related to effluent limitation compliance. Because the Regional Board had in the recent
10 past worked with City by granting TSOs as opposed to issuing ACL complaints, the City believed
11 the Regional Board was going to work with the City to allow Seaside Lagoon to stay open while
12 the City made the necessary adjustments (e.g., transitioning to a non-discharging operation). In
13 fact, the City relied on the Regional Board's failure to address stale effluent limitations concerns;
14 had the Regional Board indicated any interest in pursuing apparent violations that were years old,
15 the City likely would not have given much consideration to Seaside Lagoon's ongoing existence,
16 and simply shut Seaside Lagoon down permanently. This is particularly true because Seaside
17 Lagoon is an operation that costs the City money and is operated primarily for the benefit of
18 people in the region who live outside of Redondo Beach.

19 It was with some surprise, then, when the City received the Regional Board's Offer on
20 September 17, 2008.¹⁸ The Offer alleges violations of Water Code Section 13385(h)-(i), which
21 allegedly make the City liable for \$147,000 in mandatory penalties.¹⁹ Previously, the Regional
22 Board waited slightly less than two years to raise alleged violations in an NOV (the May 4, 2001,
23 NOV addressed alleged violations occurring between July 1999 and August 2000). The 2002
24 ACL Complaint that was issued regarding the majority of those violations (it omitted any alleged

25 ¹⁷ *Id.*

26 ¹⁸ A copy of the Offer is attached hereto as Exhibit "11."

27 ¹⁹ Any reference herein to subsection (h) or (i) refers to Water Code section 13385 unless
28 otherwise noted.

1 violation occurring in 1999) was issued on March 29, 2002, again less than two years after the first
2 alleged violation at issue therein.

3 As stated in the Offer, many of the alleged violations are over five years old; those same
4 violations were over six years old on February 16, 2010, when the Regional Board issued the
5 Complaint. In addition to the forty-nine violations alleged in the Offer, the Complaint includes
6 one additional violation (of the Total Residual Chlorine limit) that allegedly occurred July 28,
7 2008. (Exhibit "1" at Exhibit "A" attached thereto).

8 The Offer basically argues the delay at issue was reasonable because economic factors do
9 not make Seaside Lagoon a priority enforcement target, and that the delay was actually beneficial
10 to the City.²⁰ Further, the Complaint does not even attempt to explain the delay, it only
11 mechanically reiterates case law that indicates "[t]here are no statutes of limitations that apply to
12 administrative proceedings."²¹ Regardless of the Regional Board's explanation, the amount the
13 City could have potentially saved by having this matter raised in a severely belated fashion is far
14 outweighed by the expenditures the City would have avoided regarding the ongoing operation of
15 Seaside Lagoon but for the Regional Board's lethargy.

16 Moreover, a review of the testing protocol shows that a majority of the violations are based
17 on a sampling protocol that the City's outside experts contend, and even the Regional Board staff
18 now recognizes, does not provide accurate data. Finally, the daily effluent limitation was
19 mistakenly, improperly and arbitrarily set in 2005 and can not be equitably enforced. It is upon
20 the forgoing basis that the City raises its factual, legal and equitable arguments²² contending the
21 Regional Board should make findings that the violations alleged in the Complaint are
22 unsupported, and that the Regional Board should therefore vacate the alleged violations (and the
23

24 ²⁰ Exhibit "11" at 1 n.1.

25 ²¹ Exhibit "1" at 4.

26 ²² The City incorporates herein the arguments made in its October 15, 2008, Petition Requesting
27 Review of Settlement Offer, attached hereto (save exhibits, which will be provided upon request) as Exhibit
28 "12." For the purpose of brevity, the City does not expressly address herein every argument raised in
Exhibit "12," it being understood that failure to explicitly raise such arguments herein does not operate as a
waiver regarding those arguments.

1 implicitly the Complaint) and have them expunged from the CIWQS database.

2 **III.**

3 **ARGUMENT**

4 **A. THE REGIONAL BOARD HAS NOT MET DUE PROCESS REQUIREMENTS IN**
5 **THIS MATTER**

6 The City of Redondo Beach has an absolute right to due process. This right is guaranteed
7 by both the federal and state constitutions. *See* U.S. Const. Amend. XIV (“nor shall any State
8 deprive any person of life, liberty, or property, without due process of law”); Cal. Const. Art. I, §
9 7(a) (“A person may not be deprived of life, liberty, or property without due process of law . . .”).

10 ““Due process is flexible and calls for such procedural protections as the particular situation
11 demands.’ [Citation.] Accordingly, resolution of the issue whether the administrative procedures
12 provided . . . are constitutionally sufficient requires analysis of the governmental and private
13 interests that are affected.” *Machado v. State Water Res. Control Bd.*, 90 Cal. App. 4th 720, 725
14 (2001). “[I]dentification of the specific dictates of due process generally requires consideration of
15 three distinct factors.” *Id.* Those factors are:

- 16 [1]) the private interest that will be affected by the official action;
17 [2]) the risk of an erroneous deprivation of such interest through the procedures
18 used, and the probable value, if any, of additional or substitute procedural
19 safeguards; and
[3]) the Government’s interest, including the function involved and the fiscal and
administrative burdens that the additional or substitute procedural requirement
would entail.

20 *Id.* at 725-26 (quoting *Mathews v. Eldridge* 424 U.S. 319, 334-335 (1976)). There are at least
21 two issues that have arisen during the course of this matter that indicate the Regional Board has
22 not fulfilled its due process duties.

23 **1. The Regional Board Has Not Made the Prosecution File for This Matter**
24 **Available to the City as of April 18, 2010**

25 The California Supreme Court has held that to comport with the standards of due process,
26 “(a) hearing requires that the party be apprised of the evidence against him so that he may have an
27 opportunity to refute, test, and explain it, and the requirement of a hearing necessarily
28 contemplates a decision in light of the evidence there introduced.” *English v. City of Long Beach*,

1 35 Cal. 2d 155, 159 (1950) (citing *La Prade v. Dep't of Water & Power*, 27 Cal.2d 47, 52(1945);
2 *Universal Cons. Oil Co. v. Byram*, 25 Cal.2d 353 (1944)).

3 The Notice of Public Hearing regarding the hearing for this matter states that, as of
4 February 16, 2010, “[t]he ACLC, related documents, proposed order, comments received, and
5 other information about the subject of the ACLC *are available for inspection* between the hours of
6 8:00 a.m. and 5:00 p.m”²³ (Exhibit “1” at page 2 of the attachment to the Complaint entitled
7 “Notice of Public Hearing”) (italics added). But the documents were not available on February
8 16, 2010, nor were they available at a reasonable time thereafter.

9 On March 29, 2010, the City received the Binder from the Regional Board’s Prosecution
10 team. Within five days of receiving the Binder, the City had evaluated it. Next, the City
11 attempted to contact the Regional Board to schedule a review of the Prosecution File. Because the
12 City could not compare the Prosecution File to the Binder until after receipt and review of the
13 Binder, reviewing the prosecution file before March 26, 2010, would have been premature and,
14 eventually, duplicative.

15 Specifically, the City called, emailed, and faxed the Regional Board on a relatively
16 consistent basis from April 1 through April 15, 2010, trying to set up a review of the Prosecution
17 File. (*See* Declaration of Justus J. Britt, attached hereto as Exhibit “13”). On April 6, 2010, the
18 City was told that the Regional Board had not compiled the Prosecution File, and that the City
19 would have to fax a request to the Regional board to initiate that process (which the City did that
20 day). (*Id.* at 2, ¶¶ 5-6). The City persisted with multiple follow up communications, and was
21 finally told (on Thursday, April 15, 2010, at 1:54 p.m.) that the Prosecution File was compiled and
22 ready for review. (*Id.* at 2, ¶ 12). The City was also informed at that time the staff member that
23 was going to facilitate the review would be leaving the office at 3:45 p.m. that day, and the
24 Regional Board would be closed on April 16, 2010. (*Id.* at 2-3, ¶ 12). Thus, practically speaking,
25 the Regional Board informed the City that the first time the City would be allowed to see the
26 Prosecution File was at 9:00 a.m. on **Monday, April 19, 2010**. The deadline set for submitting
27

28 ²³ These documents are collectively referred to as the “Prosecution File” herein.

1 this brief itself is 5:00 p.m. **later that same day** on Monday, April 19, 2010.

2 The Notice of Public Hearing clearly states that “the entire file [i.e., the Prosecution File]
3 will become a part of the administrative record of this proceeding.” (Exhibit “1” at page 2 of the
4 attachment to the Complaint entitled “Notice of Public Hearing”). And yet, the Regional Board
5 effectively prevented the City from reviewing the Prosecution File. Failing to provide access to
6 the Prosecution File in a timely manner has prevented the City from having a true and meaningful
7 chance to rebut evidence. Because the City has a right to rebut evidence pursuant to Government
8 Code section 11425.10(a)(1), the Regional Board’s failure to allow review violates the City’s
9 rights under section 11425.10(a)(1) and its other due process rights that ensure fair hearing.

10 **2. The Regional Board’s Hearing Procedures Do Not Include Cross-Examination**

11 Code of Regulations title 23, section 648.5 indicates that an adjudicative proceeding before
12 the Regional Board should include “[c]ross-examination of parties’ witnesses by other parties[.]”
13 Cal. Code Regs. tit. 23, § 648.5(a)(6). The “Hearing Procedures” outline for this matter, however,
14 *fails to include the right to cross-examination.* (Exhibit “1” at page 4 of the attachment to the
15 Complaint entitled “Notice of Public Hearing”). Somewhat strangely, the paragraph following
16 Hearing Procedures states the “Hearing Panel does not generally require the cross examination of
17 witness” as if that was a burden, not a statutory right. (*Id.*).

18 Government Code section 11513 expressly states that each party to an administrative
19 adjudication “shall have [the right] to cross-examine opposing witnesses on any matter relevant to
20 the issues.” Section 11513 is expressly applicable to an adjudicative proceeding before the
21 Regional Board. Cal. Code Regs. tit 23, § 648(b). “While administrative bodies are not expected
22 to observe meticulously all of the rules of evidence applicable to a court trial, common sense and
23 fair play dictate certain basic requirements for the conduct of any hearing at which facts are to be
24 determined . . . [C]ross-examination within reasonable limits must be allowed.” *Desert Turf*
25 *Club v. Bd. of Supervisors*, 141 Cal. App. 2d 446, 455 (1956). This is particularly true in this case
26 where the RWQCB has the burden to show that its more than three year delay (almost seven years
27 for some of the alleged violations) was reasonable and yet has offered only perfunctory statements
28 regarding “limited enforcement resources and competing priorities.” The City’s right to cross-

1 examination provides the best opportunity to challenge the factual basis of those statements.

2 **3. Application of the *Mathews* Factors**

3 Rather than applying the *Mathews* factors individually to each of the two due process
4 issues discussed above, brevity will be served by addressing them together. The first *Mathews*
5 factor turns on if there is a private interest that will be affected by the official action. *Mathews*,
6 424 U.S. at 334-335. That interest is the same for both issues: official action by the Regional
7 Board will, via the imposition of ACL, have a direct impact on what is obviously an important
8 “private interest:” the City’s finances and ability to meets its obligations. *Machado* implicitly
9 suggests that “civil penalties” that “affect the fundamental nature of [one’s] business” tends to
10 weigh in favor of finding a due process violation occurred. *See Machado*, 90 Cal. App. 4th at 725.

11 The second *Mathews* factor has two elements: 1) what is at risk if the alleged impropriety
12 is not addressed, and 2) the “probable value . . . of additional or substitute procedural
13 safeguards[.]” *Mathews*, 424 U.S. at 334-335. As to the risk at issue, the City obviously risks the
14 unfair imposition of ACL, and, accordingly, the loss of money. It is clear that the probable value
15 of procedural safeguards is high: providing notice of the evidence against the City and the ability
16 to cross-examine are fundamental to the City’s ability to receive a fair hearing. The due process
17 violations that have occurred in this case can be avoided in the future simply by following the law
18 and the Regional Board’s own written policies. Thus, the second *Mathews* factor weighs heavily
19 in favor of finding due process requirements have not been met here.

20 Finally, the third *Mathews* factor looks at the government’s interest in the function at issue
21 and any the “fiscal and administrative burdens that the additional or substitute procedural
22 requirement would entail.” *Id.* To address the due process concerns raised herein in the future,
23 the Regional Board will need only to actually follow its existing policies. There is no justification
24 for failing to provide access to the Prosecution File. The Regional Board’s written policies clearly
25 assume that point to be true. Additionally, there is no stated justification for failing to follow the
26 relevant regulatory provisions for allowing cross-examination. The costs involved in taking the
27 proposed actions are minimal.

28

1 At this point the only effective remedy for the due process violations committed by
2 Regional Board staff is dismissal of the Complaint in its entirety. California Water Code section
3 13323 (b) provides that the City has a right to a hearing within ninety days after being served with
4 a complaint. The City also has the right be apprised of the evidence against it so that it may have
5 an opportunity to refute, test, and explain it in order to have a fair hearing. The Regional Board
6 can not force the City to choose between these two rights. Yet by denying the City access to the
7 Prosecution File until the very same day that the City's written materials were due to the Regional
8 Board has put the City in that very position. A delay in the hearing will violate the City's right to
9 a speedy hearing within the ninety days set forth in section 13323(b). Yet, proceeding on the
10 current schedule will not provide a full and fair hearing to the City based on the Regional Board's
11 failure to follow the law and its own procedures for making the file available to the City. Thus,
12 dismissal of the Complaint in its entirety is now the only effective remedy for the due process
13 violations.

14 **B. THE DOCTRINE OF LACHES PRECLUDES LIABILITY FOR ALLEGED**
15 **VIOLATIONS OCCURRING MORE THAN THREE YEARS BEFORE FORMAL**
16 **ACTION IS TAKEN**

16 The Regional Board's Offer and Complaint cite to *City of Oakland v. Pub. Employees Ret.*
17 *Sys.* 95 Cal. App. 4th 29, 48 (2002) for the proposition "that there are no statutes of limitations
18 that apply to administrative proceedings to assess mandatory minimum penalties." (Exhibit "1" at
19 4, ¶ 21; Exhibit "11" at 1 n.1). While *City of Oakland* may stand for the foregoing proposition, it
20 definitely holds that in "some cases of delay, equity may bar an administrative proceeding, and
21 'the courts will apply notions of laches²⁴ borrowed from the civil law.'" *Id.* at 51 (citing *Brown v.*
22 *State Pers. Bd.*, 166 Cal. App. 3d 1151, 1158-59 (1995)). In fact, the Regional Board admits that
23 "[u]nder appropriate circumstances, the defense of laches may operate as bar to a claim by a public
24 administrative agency, if the requirements of unreasonable delay and resulting prejudice are met."
25 (Response to Request for Alleged Violation Review ["Response"], dated September 29, 2009, at
26

27 ²⁴ "The defense of laches has nothing to do with the merits of the cause against which it is
28 asserted." *Johnson v. City of Loma Linda*, 24 Cal. 4th 61, 77 (2000). "laches constitutes an affirmative
defense which does not reach to the merits of the cause . . ." *Id.* (citation omitted, italics in *Johnson*).

1, attached as Exhibit "14," and citing *Fountain Valley Reg'l Hosp. & Med. Ctr. v. Bonta*, 75 Cal. App. 4th 316, 323 (1999)).

An "administrative agency must diligently pursue the disciplinary action as if it were seeking equitable relief . . ." (*Brown*, 166 Cal. App. 3d at 1159); the Regional Board has failed to do so here. The forgoing being true, the Regional Board is barred from seeking ACL or other penalties regarding alleged effluent limitation violations for which formal enforcement action is not taken within a reasonable time. As shown below, a reasonable time is no more than three years.

1. **A "Borrowed" Statute of Limitations Can Establish What an Unreasonable Delay Is as a Matter of Law Regarding the Application of the Laches Doctrine**

"[T]he defense of laches may operate as a bar to a claim by a public administrative agency, ... if the requirements of unreasonable delay and resulting prejudice are met." *Robert F. Kennedy Medical Center v. Belshe*, 13 Cal. 4th 748, 760 (1996); accord *Fountain Valley*, 75 Cal. App. 4th at 323.

[T]he elements of unreasonable delay and resulting prejudice ... may be 'presumed' if there exists a statute of limitations which is sufficiently analogous to the facts of the case, and the period of such statute of limitations has been exceeded by the public administrative agency in making its claim. In [this] situation, the limitations period is 'borrowed' from the analogous statute, and the burden of proof shifts to the administrative agency.

Fountain Valley, 75 Cal. App. 4th at 323-24. "Whether or not such a borrowing should occur depends upon the strength of the analogy." *Brown*, 166 Cal. App. 3d at 1160. When the period of delay is longer than the "borrowed" statute of limitations, "unreasonable delay [can] be found as a matter of law." *Brown*, 166 Cal. App. 3d at 1159.

a. **"Borrowing" Code of Civil Procedure Section 338(i) Is Appropriate**

Here, there is not only a statute of limitations that is analogous to the facts of the case, there is a statute of limitations that applies to civil actions brought under the *same statute* wherein the Regional Board's authority to seek ACL is found: Water Code section 13385. The Regional Board admits that "[i]n this situation . . . there exists a statute of limitations governing an analogous action at law *which may be borrowed as the outer limit of reasonable delay for the*

1 *purpose of laches.* (Exhibit "14" at 1) (italics added).

2 Code of Civil Procedure section 338(i)²⁵ states there is a three year limitation on bringing:

3 [a]n action commenced under the Porter-Cologne Water Quality Control Act
4 (Division 7 (commencing with Section 13000) of the Water Code). the cause of
5 action in that case shall not be deemed to have accrued until the discovery by the
6 State Water Resources Control Board or a regional water quality control board of
7 the facts constituting grounds for commencing actions under their jurisdiction.

8 As the Regional Board plainly states in the Offer, "[t]he formal enforcement action that the
9 Regional Board uses to assess such liability is an [ACL] complaint, although the Regional Board
10 may instead refer such matters to the Attorney General's Office." The authority for the forgoing
11 proposition is located in Water Code section 13385(b)-(c) (part of the Porter-Cologne Water
12 Quality Control Act), a section within the scope of Code of Civil Procedure section 338(i)'s three-
13 year limitations period.

14 The text of subsections (b) (which authorizes the Attorney General to "petition the superior
15 court to impose liability"²⁶) and (c) (which applies to the imposition of ACL by the state or
16 regional boards) of Water Code section 13385 is basically the same except as to the amount of
17 liability and the party seeking it,²⁷ the analogy between the two subsections could not be more

17 ²⁵ Code of Civil Procedure section 338(a) provides a three-year limitation period for any "action
18 upon liability by statute, other than a penalty or forfeiture[.]" and is thus a more general subsection than
19 338(i). However, since Water Code section 13385(b) is a statutory basis under which civil actions seeking
20 liability may be brought, subsection (a), in addition to subsection(b), provides a analogous three-year
21 limitation period that may be "borrowed" regarding the imposition of ACL.

22 ²⁶ A petition is a form of "action" to which Code of Civil Procedure section 338 applies. See
23 *Howard Jarvis Taxpayers Ass'n v. City of La Habra*, 25 Cal. 4th 809, 821 (2001) (a "petition to enforce a
24 statutory liability must be brought within the same three-year period after accrual of the cause of action
25 [citation] as an action for damages or injunction on the same liability"); *Pacheco v. Clark*, 44 Cal. App. 2d
26 147, 151 (1941) (indicating section 338 applies to a petition). Thus, when a party "may petition the
27 superior court[.]" it means the party can file an action in the superior court, in the form of a petition. See *In*
28 *re S.A.*, 6 Cal. App. 3d 241, 244 n.2 (1970) (citing Welfare and Institution Code section 781, which states
that when a person petitions the superior court to permit inspection of records, the document used to make
that request is a petition).

25 ²⁷ Water Code section 13385(b)-(c) states:

(b) Civil liability may be imposed by the superior court in an amount not to exceed the
sum of both of the following:

(1) Twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not
cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an
additional liability not to exceed twenty-five dollars (\$25) multiplied by the number of

1 clear. In fact, it is plainly clear that the two subsections at issue are alternatives for redressing the
2 same violations.²⁸ Because there could be no stronger analogy, the three-year limitation period set
3 in Code of Civil Procedure section 338(i) may be properly “borrowed.” Thus, a delay can be
4 unreasonable as a matter of law, and prejudice can be presumed, regarding any alleged violations
5 occurring more than three years before the Regional Board issued a formal ACL Complaint.
6 therefore, the burden is on the Regional Board to show why its delay was reasonable.

7 **b. The Regional Board Cannot Meet Its Burden to Show Its Delay Was**
8 **Excusable or that the Delay Was Not Prejudicial**

9 Because the Regional Board failed to take formal action regarding certain alleged
10 violations within three years, pursuant to the “borrowing” rule, the Regional Board has the burden
11 of proof to show its delay was excusable *and* without prejudice. “To defeat a finding of laches
12 [an] agency... must ... (1) show that the delay involved in the case ... was excusable, and (2) rebut
13 the presumption that such delay resulted in prejudice to the opposing party.” *Fountain Valley*, 75
14 Cal. App. 4th at 324. Because the Regional Board’s delay was not excusable and did result in
15 prejudice to the City (e.g., tainted business judgments and increased potential liability for NPDES
16 Permit violations), the Regional Board will not be able avoid the application of the doctrine of

17
18 gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

19 the Attorney General, upon request of a regional board or the state board, shall petition
20 the superior court to impose the liability.

21 (c) Civil liability may be imposed administratively by the state board or a regional board
22 pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not
23 to exceed the sum of both of the following:

24 (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

25 (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is
26 not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an
27 additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by
28 which the volume discharged but not cleaned up exceeds 1,000 gallons.

28 ²⁸ I.e., the subsections at issue provide substantially parallel enforcement mechanisms for
violations that fall under Water Code section 13385(a). Water Code section 13385(a)(2) authorizes civil
liability for any violation of a “waste discharge requirement[.]” Implicitly, because Water Code section
13385(h)-(i) applies to violations of effluent limitations (which are put forth in the applicable waste
discharge requirements), any violation which triggers the applicability of subsections (h) or (i) of Water
Code section 13385 must also be a violation that makes subsection (a)(2) applicable.

1 laches.

2 (1) The Regional Board's Delay Was Not "Excusable"

3 As noted above, when the period of delay is longer than the "borrowed" statute of
4 limitations, "unreasonable delay [can] be found as a matter of law." *Brown*, 166 Cal. App. 3d at
5 1159. Here, because of the undeniable strength of the analogy between the Complaint and the
6 three-year statute of limitation provided in Code of Civil Procedure section 338(i), any reasonable
7 court would find the Regional Board's delay was inexcusable as a matter of law.

8 Regardless, the Regional Board's delay was also unreasonable as a matter of fact. The
9 Offer states: "Regional Board staff's limited enforcement resources and competing enforcement
10 priorities provide a rational explanation for the delay. In fact, the delay has actually benefitted
11 [City] because it extended the time before payment of the mandatory minimum penalties is due.
12 For these reasons, any delay is not unreasonable." The City must disagree with the Regional
13 Board's conclusion stated in the prior excerpt because: 1) the statement fails to present a sufficient
14 basis to excuse delay, and 2) the statement does not appear to be factually accurate.

15 (a) The Regular Press of Business Alone Does Not Justify an
16 Unreasonable Delay

17 The alleged violations herein are based on certain of the City's monitoring reports that
18 indicate effluent level exceedances have occurred at Seaside Lagoon. The City generally mails
19 copies of its monitoring reports within either thirty or forty-five days after sampling (upon which
20 the report is based) occurs (that is, on or before the date due under the NPDES Permit). Though
21 the City admits it is not aware of the Regional Board's specific protocols and requirements related
22 to preparing an ACL complaint regarding alleged NPDES violations (this is due in part to
23 Regional Board's failure to make the Prosecution File available in a timely fashion), the City is
24 informed that basically all of the "evidence" used in ACL complaints is the information found in
25 the monitoring reports, which are provided to the Regional Board within less than two months of
26 sampling.

27 For example, the Regional Board's ACL Complaint No. R4-2002-0014 (Exhibit "7"),
28 which alleges violations of the Water Code, is based solely on the City's self-monitoring reports.

1 Other than contacting the City's service provider regarding an apparent clerical error (certain
2 reports used the term "combined chlorine" where the data represented "total residual chlorine"), it
3 appears no investigation was done in preparation for issuing the ACL Complaint. Furthermore,
4 the ACL Complaint is only six pages long, much of which appears to be "boilerplate" when
5 compared to other ACL complaints recently issued by the Regional Board. Thus, it appears the
6 preparation and issuance of an ACL complaint requires minimal investigation, little (if any)
7 analysis, and only a small amount of document drafting.

8 In fact, the simplicity of NPDES violation enforcement is by design. the NPDES self-
9 monitoring system is intended "to keep enforcement actions simple and speedy: [¶] '[o]ne purpose
10 of the [monitoring] requirements is to avoid the necessity of lengthy fact finding, investigations,
11 and negotiations at the time of enforcement. Enforcement of violations ... should be based on
12 relatively narrow fact situations requiring a minimum of discretionary decision making or delay.'" *See City of Brentwood v. Cent. Valley Reg'l Water Control Bd.*, 123 Cal. App. 4th 714, 723 (2004)
13 (citations omitted) (all alterations in original, omission added). The reasonable time in which to
14 act on apparent effluent limitation as indicated by a self-monitoring report is out of design a brief
15 one and more than three years is beyond the pale of what is reasonable.

17 Simply put, short of catastrophic circumstances not present here, it should not take longer
18 than three years to take formal action regarding alleged effluent limitation violations. In another
19 equitable context, it has been held the being "busy" and the "[p]ressure of the of the legal
20 business" were not sufficient bases upon which a court would excuse a party's failure to comply
21 with statutory deadlines. *See Lyons v. Swope*, 154 Cal. App. 2d 598, 600 (1957) (holding relief
22 from a judgement, pursuant to Code of Civil Procedure section 473, was not proper because "[i]t
23 only appeare[d] appellant was busy with other legal work"). therefore, because taking formal
24 action regarding effluent limitation violations is not a particularly time consuming task, *even*
25 *considering* "limited enforcement resources," the Regional Board's delay of over three years in
26 this instance is unreasonable as a matter of fact.

1 (b) There Is No Evidence the Delay in Taking Formal Action
2 Was the Result of Limited Resources or Competing
3 Priorities

4 While it may be true the Regional Board's enforcement resources are limited, and that the
5 alleged violations at Seaside Lagoon are not an enforcement priority for the Regional Board,
6 neither would justify enforcement delays extending beyond three years. Therefore, City contests
7 what is suggested in the Offer and the Complaint, i.e., that a delay of three years or more in issuing
8 an ACL complaint is justified based on the two factors mentioned above. (See Exhibit "11" at 1
9 n.1; Exhibit "14" at 1-2). A recent ACL complaint issued to the City of Malibu shows that, even
10 with the restrictions the Regional Board works under, the Regional Board was able to address a
11 much more complicated matter within eight months of the alleged violation. (ACL Complaint No.
12 R4-2008-0041-R, attached as Exhibit "15").²⁹

13 The ACL complaint issued to City of Malibu ("Malibu ACL Complaint") concerned
14 alleged illegal discharges into the waters of the United States that occurred between January 25
15 and March 10, 2008. (*Id.* at 12-3, ¶¶ 11-17). The Malibu ACL Complaint states the City of
16 Malibu was responsible for improperly putting "spoil piles" (soil and other material that resulted
17 from the excavation portion of a construction project) into a stream bed. (*Id.*). The Regional
18 Board staff inspected the location where the spoil piles were on at least three occasions by March
19 21, 2008, and it appears the cause of the alleged violations had been completely addressed by
20 March 10, 2008 (by removing the spoil piles from the stream bed). (*Id.*). The Malibu ACL
21 Complaint also states that the alleged violations regarding the placement of the spoil piles could
22 result in ACL of up to \$1,125,000. (*Id.* at 4, 6). After a thorough explanation of how equitable
23 factors applied regarding the City of Malibu's alleged violations, the Malibu ACL Complaint
24 states the total recommended penalty is \$30,015. (*Id.* at 8).

25
26 ²⁹ The attached complaint is a revised version of the original (rescinded by R4-2008-0041-R),
27 which was issued on August 25, 2008, as noted on first page of the complaint. It is worth noting that the
28 Complaint (i.e., Exhibit "1"), the Malibu ACL Complaint, and hotel swimming pool complaint mentioned
above (R4-2008-0056-m) are all signed by Assistant Executive Officer Samuel Unger, and that Hugh
Marley is the contact for all three matters.

1 so it would remain open seasonally without interruption. Because the City made vast, non-
2 refundable expenditures based on the Regional Board's failure to act in a timely fashion, the delay
3 at issue was plainly prejudicial.

4 Furthermore, had the Regional Board taken action regarding the 2003 violations in a timely
5 manner (e.g., issued an ACL complaint by October 1, 2006), City would have been put "on notice"
6 that ACL could be a continuing cost of operating Seaside Lagoon, and the City could have made
7 the business judgement to close it down. Had the City closed Seaside Lagoon on October 1, 2006,
8 no further alleged violations would have occurred after that date. Accordingly, the Regional
9 Board's delay was instrumental in the City expending money it might not have but for the
10 Regional Board's inaction, and that inaction also lead to allegations of mandatory minimum
11 penalties the City could have avoided if the Regional Board had been more assiduous in this
12 matter.³¹ The Regional Board's delay was plainly prejudicial, making it impossible for the
13 Regional Board to overcome its burden on this issue.

14 3. Wells Fargo Bank v. Goldzband Does Not Apply Here
15 *Wells Fargo Bank v. Goldzband*, 53 Cal. App. 4th 592 (1997), which predates *Fountain*,
16 states that "laches cannot be raised against a governmental agency" "[w]here there is no showing
17 of manifest injustice to the party asserting laches, and where application of the doctrine would
18 nullify a policy adopted for the public protection . . ." *Wells Fargo*, 53 Cal. App. 4th at 628-629
19 (alteration in original, citation omitted). *Wells Fargo* does not, however, address a situation where
20 an administrative agency took enforcement action well after the expiration of a borrowed
21 limitation period. Neither *Wells Fargo*, nor any published case that cites to it, indicates that the
22 "manifest injustice" inquiry applies where a prima facie "presumed" laches defense has been
23 raised. In fact, the "manifest injustice" inquiry appears to normally only occur at the appellate
24 court level. See *Black's Law Dictionary* 974 (7th ed. 1999) (defining "manifest injustice" as "an
25 error in the trial court that is direct, obvious, and observable"). Nevertheless, the City will explain
26 why the Regional Board cannot meet the standard put forth in *Wells Fargo*.

27 _____
28

1 (a) Imposing ACL Regarding Violations Allegedly Occurring
2 Beyond the Borrowed Statute of Limitations Would Be
3 Manifestly Unjust

4 Civil action under Water Code section 13385 must be brought within three years of the
5 discovery “of facts constituting grounds for commencing action . . .” Civ. Proc. Code § 338(i).
6 Allowing the Regional Board to bring an ACL complaint that is *nearly identical* to a section
7 13385 action *at any time* (and not within three years of the alleged violation) plainly results in a
8 manifest injustice. For example, the Regional Board has alleged that, regarding alleged violations
9 occurring as far back as 2003, the City faces liability of *\$21.2 billion*. (Prosecution Trial Binder at
10 6, paginated as 5). If allowing an administrative agency to hold billions of dollars of potential
11 liability over a regulated public entity without temporal limitation does not result in manifest
12 injustice, than that term is effectively meaningless.

13 (b) Application of Laches Would Not Nullify a Policy Adopted
14 for the Public Protection

15 The Regional Board states that “the Legislature intended the mandatory penalty scheme in
16 Water Code section 13385 to {1}} ensure ‘swift and timely enforcement of waste discharge
17 requirements{, 2}} [to] assist in brining the state’s waters into compliance and [] {3}} ensure that
18 violators do not realize economic benefits from noncompliance. (Exhibit “14” at 2) (alterations in
19 exhibit save numerals in braces) (citations omitted). Not one of these objectives would be
20 perceptibly hindered by the application of laches here, and certainly such application would not,
21 and could not, nullify section 13385’s mandatory penalty scheme.

22 First, it is disingenuous for the Regional Board to claim that swift and timely enforcement
23 could (let alone would) be affected by the application of the doctrine of laches; the Regional Board
24 failed to take formal action penalties for nearly seven years as to some of the alleged violations at
25 issue. Indeed, had the Regional Board been more timely in its enforcement efforts, it is likely the
26 City would have closed Seaside Lagoon or renovated it so that it no longer had the potential to
27 impact the waters of the state. Simply put, swift and timely enforcement is no longer possible, a
28 fact that will not change if the doctrine of laches is applied in this matter.

1 Second, whether the doctrine of laches is applied will have little or no effect on bringing
2 the waters of the state into compliance. As the City has raised previously, Seaside Lagoon
3 discharges water into King Harbor, where levels of constituents are often *higher* than what is
4 found coming from Seaside Lagoon. (See Notice of Public Hearing dated February 23, 2010, at 2,
5 attached as Exhibit "16").

6 Third, Seaside Lagoon is a public recreation facility that consistently operates in the red.
7 To suggest the City has any intent or ability to "realize economic benefits from noncompliance" is
8 unreasonable. In truth, application of the doctrine of laches may actually result in further costs to
9 the City. That is, if laches is not applied and the City is faced with \$150,000 or more in penalties,
10 it is very possible that fact will directly lead to the permanent closure of the facility. If closure
11 occurs, the City will no longer be subsidizing this facility, and will enjoy a substantial savings.
12 Regardless, because there is no "economic benefit" that results from the application of the doctrine
13 of laches, this objective does not cut against the City.

14 The application of laches just does not nullify or significantly impair section 13385's
15 mandatory penalty scheme. It cannot be reasonably argued that the public policy behind that
16 section was aimed at allowing the delayed enforcement the Regional Board now seeks. The
17 failures related to the legislative objectives outlined by the Regional Board occurred long before
18 the Regional Board even issued the Compliant; they did not arise because the City raised a
19 particular affirmative defense. Furthermore, it is manifestly unjust to allow the Regional Board to
20 bring enforcement actions for potentially billions of dollars without a reasonable temporal
21 limitation. Accordingly, the Regional Board cannot prevent the application of the doctrine of
22 laches based on the "manifest injustice" standard raised in *Wells Fargo*.

23 **2. The Three-year Laches Period Is Calculated Based on the Date of the**
24 **Complaint: February 16, 2010**

25 Though the Regional Board has contacted the City about alleged violations in the past,
26 none of those contacts rise to the level of a "formal action" for the purposes of calculating the
27 relevant laches period. For example, the text of the Offer indicates it *is not* a formal action; the
28 Offer states "[t]he formal enforcement action that the Regional Board uses to assess . . . liability is

1 an administrative civil complaint” (Exhibit “10” at 1-2). Because the Offer is just an
2 element of an attempt at negotiation, and not a formal action, it does nothing to toll the
3 “borrowed” statute of limitations. *See 65 Butterfield v. Chicago Title Ins. Co.*, 70 Cal. App. 4th
4 1047, 1063 (1999) (negotiation does not toll a limitation period). Thus, via the doctrine of laches,
5 the Regional Board should not take enforcement action regarding any alleged violations occurring
6 more than three years before February 16, 2010 (i.e., before February 16, 2007).

7 Based on the foregoing, the Regional Board should make findings that the alleged
8 violations noted in the Complaint occurring prior to February 16, 2007, are not subject to penalty,
9 hold that the Complaint is vacated as to those alleged violations, and further hold that those
10 alleged violations shall be expunged from the CIWQS database.

11 **C. MOST OF THE VIOLATIONS ARE BASED ON SAMPLING PROTOCOL THAT**
12 **THE REGIONAL BOARD NOW RECOGNIZES DOES NOT PROVIDE**
13 **ACCURATE DATA**

14 In 2007, the City retained the services of Camp Dresser & Mc Kee Inc (“CDM”) to
15 perform a Source Identification Report (i.e., Exhibit “9”). That report concluded the data taken
16 per the City’s NPDES permit had been “based on samples taken from the effluent vault and had a
17 higher probability of being influenced by tidal backwater from the Lagoon outfall and material
18 floating on the surface of the water.” CDM further concluded that “during periods of low power
19 plant effluent flow and/or high tide, water from the harbor can flow back into the outfall pipe and
20 can be pumped as influent to the Lagoon by the Lagoon Influent Pump.”

21 The Regional Board staff now recognizes this problem with the previous protocol.
22 Recently, the Regional Board informed the City that Seaside Lagoon’s sample collection location
23 is “tidally influence[d,]” and that “grab samples collected during high tide may not be
24 representative of the effluent. (See Tentative Order No. R4-2010-XXXX at 7, attached as Exhibit
25 “17”). The Tentative order states “[s]ampling should be conducted when there is a discharge and
26 during low tide conditions based on data provided by the National Oceanic and Atmospheric
27 Administration’s (NOAA), Station No. 9410840 (Santa Monica, CA). . . .” (*Id.*).

28 As the attached “Sampling Time Summary” prepared by the City and NOAA Tide
Predictions from Santa Monica Station No. 9410840 (Exhibit “18”) demonstrate, it is clear the

1 vast majority of samples on which these alleged violations in the Complaint are based were not
2 taken during low tide conditions. In fact, the majority of the violations were taken closer to High
3 Tide than Low Tide for the respective days.

4 The Regional Board has the burden of proof regarding each and every alleged violation of
5 effluent limitations. See *State of California v. City and County of San Francisco*, 94 Cal.App.3d
6 522(1977). Although self-monitoring reports have been referred to as “admissions” in the context
7 of effluent limitation violations (see *City of Brentwood*, 123 Cal.App.4th at 725), a report
8 indicating a violation has occurred is not, per se, a violation of either subsection (h) or (i). See
9 Water Code §13385(h)-(i) (penalty only applicable based on violation(s), not simply the reporting
10 information that would seem to indicate a violation occurred). It must be remembered that even
11 though self-monitoring greatly reduces the investigatory burden on the Regional Board,
12 determining if an effluent limitation violation is not a mere ministerial task, but a matter of
13 “discretionary decision making.” See *City of Brentwood*, 123 Cal. App. 4th at 723.

14 In this case, the vast majority of alleged violations of effluent limitations were taken under
15 the vary circumstances that CMD states, and the Regional Board admits, may not be representative
16 of the effluent. Thus, the Regional Board has not met its burden of proof as to these violations.

17 **D. THE DAILY EFFLUENT LIMITATION FOR TSS WAS MISTAKENLY,**
18 **IMPROPERLY AND ARBITRARILY SET IN 2005 AND CAN NOT BE**
19 **EQUITABLY ENFORCED**

20 As noted in the “Fact Sheet”³² created regarding City’s application to renew Seaside
21 Lagoon’s NPDES Permit in 2005, the applicable daily effluent limitation for TSS was 150 mg/L
22 under Seaside Lagoon’s original permit. The Fact Sheet, which include’s RWQCB’s tentative
23 determinations, shows RWQCB intended to set the daily TSS effluent limitation in Seaside
24 Lagoon’s renewed NPDES Permit based solely on the existing permit limitation.³³ In fact the
25 explicit Rationale given by the RWQCB for the TSS Daily Maximum was that it was the “Existing
26 permit limitation”. The City relied on this representation. In fact, however, the 2005 NPDES

27 ³² Attached hereto as Exhibit “19.”

28 ³³ See Exhibit “19” at pgs. F-13 to f-14.

1 Permit daily TSS effluent limitation of 75 mg/L, was one-half the level it should have been set at
2 pursuant to the original permit limit of 150mg/L.

3 In the current complaint, there were eight instances in 2006 and one in 2005 when the 75
4 mg/L daily limitation for TSS appears to have been exceeded, none of which would have been an
5 exceedance had the proper 150 mg/L limitation been in place. That is there were a total of nine
6 TSS samples that indicated a TSS level of more than 75 mg/L but less than 150 mg/L (in fact two
7 of the alleged violations were for a reported value of 76). It is unfair for RWQCB to seek
8 mandatory penalties pursuant to a limitation if the one basis for that particular limitation's
9 adoption is patently not true (i.e., the level adopted was simply not the same as was stated in the
10 prior permit).

11 The Regional Board staff response to this issue has been that "(i)t was the City's burden to
12 file a timely petition with the State Water Resources Control Board (State Board) when the Order
13 was issued." This type of response has unfortunately and unfairly been consistent throughout this
14 process. The Regional Board's position appears to be regardless of whether a problem is 1)
15 created by the City 2) outside of the City's control [TSS exceedances caused by the lagoon
16 influent] or 3) a mistake by the Regional Board (mistake in setting TSS Daily maximum) it is the
17 City's responsibility to find and correct the problem. The Regional Board's statement that the
18 City should have noticed and appealed the mistaken TSS limit in the 2005 Order is particularly
19 galling because **the Prosecution Team makes the same error regarding the applicable TSS**
20 **Levels under Order No. R4-2005-0016 in its Hearing Panel binder.** The Power Point
21 presentation included in the Binder (slide #6 on page 3) states the daily maximum for TSS is 150
22 mg/L under Order No. R4-2005-0016.

23 If an effluent limitation is set in an arbitrary manner, it is subject to being invalidated. *See*
24 *Indus. Liasion Comm. of Niagra Falls Chamber of Commerce v. Flacke*, 125 Misc. 2d 641, 648
25 (N.Y. 1984). This absolutely the situation in the present case, as the Regional Board provided no
26 basis for its selection of the 75 mg/L limitation, and because the regional Board stated in 2005 that
27 it intended to base the TSS effluent limitation in the renewed permit on the previously adopted
28 limitation (i.e., 150 mg/L). There is just no evidence supporting the Regional Board's decision to

1 impose the 75mg/L daily effluent limitation for TSS. It is City's position that the Regional Board
2 may only enforce the 150 mg/L effluent limitation as to daily TSS monitoring done pursuant to the
3 renewed NPDES Permit (and not subject to a higher level as stated in a TSO) Therefore, as to the
4 nine alleged TSS effluent limitation violations at issue (and the corollary \$27,000 in penalties), the
5 Regional Board should find those alleged violations are not supported.

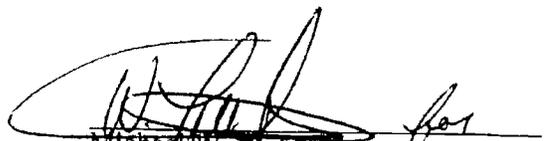
6 IV.

7 CONCLUSION

8 The City fully recognizes and appreciates the Regional Board's role in protecting the
9 waters of the United States, and that the Regional Board is bound by certain procedures and
10 statutory mandates it must follow. As outlined above, however, City has provided a thorough
11 legal defense for all of the alleged violations of Water Code section 13385. Furthermore, based on
12 the apparent problems related to sampling protocol, backflow issues, and source water
13 contamination, it is questionable if the alleged violations were ever appropriately directed at City.

14 Therefore, City respectfully requests the Regional Board: 1) find the fifty-five violations
15 specifically addressed herein are not supported, 2) withdraw the Complaint as to those alleged
16 violations (and vacate the NOV element of the Offer accordingly), and 3) expunge those alleged
17 violations from the CIWQS database.

18 Dated: April 19, 2010

19 
20 Michael W. Webb,
21 Attorney for the City of Redondo Beach