



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

March 25, 2013

Gregory D. Korduner
City Manager
City of Los Alamitos
3191 Katella Avenue
Los Alamitos, CA 90720

ADMINISTRATIVE CIVIL LIABILITY ("ACL") COMPLAINT, CITY OF LOS ALAMITOS, ACL COMPLAINT NO. R8-2013-0009

Dear Mr. Korduner:

Enclosed is a certified copy of Administrative Civil Liability Complaint No. R8-2013-0009 (hereinafter "Complaint"). The Complaint alleges that the City of Los Alamitos has violated Regional Board Order No. R8-2009-0030, NPDES Permit No. CAS618030 (Permit). The Complaint proposes that administrative civil liability in the amount of twenty-one thousand eight hundred ten dollars (\$21,810) be imposed as authorized by California Water Code, pursuant to §13385(c). In addition to the Complaint, we are enclosing a Waiver Form. Additionally, a Fact Sheet describing the Complaint process is available at:

http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml

The Fact Sheet describes the Complaint process and explains what you can expect and your obligations as the process proceeds. If you prefer, you may obtain a hard copy of the Fact Sheet by contacting Adam Fischer at (951) 320-6363.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on May 3, 2013. The staff report regarding this Complaint and the meeting agenda will be mailed to you not less than 10 days prior to the hearing.

It is the understanding of Regional Board staff that pursuant to California Water Code Section 13323, the City of Los Alamitos has chosen to waive its right to a hearing. Should the City waive its right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If the City chooses to waive its right to a hearing, please sign and submit the enclosed Waiver Form with a check for twenty-one thousand eight hundred ten dollars (\$21,810) made payable to the State Water Pollution Cleanup and Abatement Account. The Waiver Form, the check,

CAROLE H. BESWICK, CHAIR | KURT V. BERCHTOLD, EXECUTIVE OFFICER

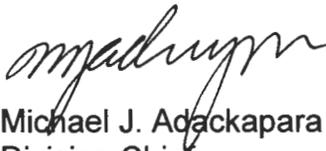
3737 Main St., Suite 500, Riverside, CA 92501 | www.waterboards.ca.gov/santaana

and any other correspondence regarding this Complaint should be sent to the Regional Board office in the enclosed pre-printed envelope.

If the City of Los Alamitos does not wish to waive its right to a hearing, please contact Adam Fischer at afischer@waterboards.ca.gov or at (951) 320-6363 as soon as possible.

If you have any questions about the Complaint or the enclosed documents, please contact Adam Fischer at (951) 320-6363 (email at adam.fischer@waterboards.ca.gov), Mark Smythe at (951) 782-4998 (email at mark.smythe@waterboards.ca.gov) or me at (951) 782-3238 (email at michael.adackapara@waterboards.ca.gov). All legal questions should be directed to James Ralph at (916) 322-3227 (james.ralph@waterboards.ca.gov), Office of Enforcement.

Sincerely,



Michael J. Adackapara
Division Chief
Regional Board Prosecution Team

Enclosures: Complaint No. R8-2013-0009
Waiver Form
Pre-printed envelope

cc: Board Members
Executive Officer (Regional Board Advisory Team)
State Water Resources Control Board, Office of Chief Counsel – David Rice
(Regional Board Advisory Team Attorney)
State Water Resources Control Board, Division of Water Quality – Diana Messina
State Water Resources Control Board, Office of Enforcement – James Ralph
(Regional Board Prosecution Team Attorney)
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Ken Greenberg
Orange County, Public Works – Richard Boon
City of Los Alamitos – Steve Mendoza
City of Los Alamitos – Steve Skolnik

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the Matter of:

**City of Los Alamitos
3191 Katella Avenue
Los Alamitos, CA 90720**

Attn: Gregory Korduner

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**COMPLAINT NO. R8-2013-0009
for
ADMINISTRATIVE CIVIL LIABILITY**

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Los Alamitos (hereinafter the Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), may impose administrative civil liability under California Water Code (hereinafter "CWC") §13385(c).
2. A hearing concerning this Complaint will be held before the Regional Board within ninety (90) days of the date of issuance of this Complaint, unless, pursuant to CWC §13323, the Discharger waives its right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Board's regular meeting on May 3, 2013 at Irvine Ranch Water District, 15600 Sand Canyon Avenue, Irvine, CA 92618. The Discharger or its designated representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. An agenda for the meeting and the staff report relating to this item will be mailed to you not less than 10 days prior to the hearing date.
3. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.
4. The Discharger is alleged to have violated the following section of Regional Board Order No. R8-2009-0030, NPDES Permit No. CAS618030:
 - A) Provision II.B.7 of Regional Board Order No. R8-2009-0030 which requires that the co-permittees submit all required reports to the principal permittee in a timely manner.

- B) Provision XXI.4. of Regional Board Order No. R8-2009-0030 which requires that the co-permittees shall comply with Monitoring and Reporting Program No. R8-2009-0030.

5. THIS COMPLAINT IS BASED ON THE FOLLOWING FACTS:

- A) Regional Board Order No. R8-2009-0030 constitutes waste discharge requirements which implement National Pollutant Discharge Elimination System (NPDES) Permit No. CAS618030. The waste discharge requirements are for discharges of pollutants in urban storm water runoff into municipal separate storm sewer systems ("MS4"). These MS4s are operated by the County of Orange, Orange County Flood Control District, and the incorporated cities of Orange County within the Santa Ana Region, including the City of Los Alamitos. Regional Board Order No. R8-2009-0030 was adopted by the Board on May 22, 2009.
- B) Provision II.B.7 of Regional Board Order No. R8-2009-0030 requires that the permittees submit all required reports to the principal permittee in a timely manner.
- C) Provision XXI.4. of Regional Board Order No. R8-2009-0030 requires that the permittees comply with the Monitoring and Reporting Program No. R8-2009-0030 ("MRP").
- D) Section IV.2. of the MRP requires the permittees to submit an Annual Progress Report no later than November 15th of each year. The Annual Progress Report is to be comprised, in part, of information provided by each permittee, including the City of Los Alamitos.
- E) Section IV.3. of the MRP requires permittees to submit all required information/materials needed to comply with the MS4 Permit to the principal permittee in a timely manner. This would necessarily occur prior to November 15th of each year. The information needed would include information only known to the City of Los Alamitos, such as records of inspections completed by City staff of industrial and commercial facilities as required by Regional Board Order No. R8-2009-0030.
- F) The Annual Progress Report is traditionally submitted as a collection of individual reports, identified as "Program Effectiveness Assessments", prepared by each permittee; these reports are accompanied by an overall "Unified Report" prepared by the principal permittee, the County of Orange.
- G) On November 15, 2012, Regional Board staff received the Annual Progress Report from the principal permittee. The Annual Progress Report was incomplete and was missing the City of Los Alamitos' report and the water quality monitoring results and analyses portion of the Unified Report. The County of Orange acknowledged the

missing water quality information in the cover letter provided with the Annual Progress Report and in an electronic message to Regional Board staff sent on November 14, 2012¹. No similar acknowledgment was provided by the City of Los Alamitos regarding non-submittal of its annual report.

- H) Regional Board staff initially attempted to contact staff of the City of Los Alamitos to discuss their missing report on November 30, 2012 but was unsuccessful. On December 4, 2012, Regional Board was able to contact City staff who confirmed that the report had not yet been prepared but was expected to be finished sometime in January or February 2013.
 - I) On December 6, 2012, Regional Board staff sent a Notice of Noncompliance to the City of Los Alamitos which, in part, informed the City of the violation; notified them of the potential for the imposition of administrative civil liability; and requested that the report be submitted as soon as possible.
 - J) Regional Board staff received the report on December 24, 2012. Presuming that November 15, 2012 is the latest possible date that the report could have been submitted to the principal permittee, the report was received 38 days late.
6. The Discharger violated Provisions II.B.7 and XXI.4. of Regional Board Order No. R8-2009-0030 by failing to provide its contributing report to the Annual Progress Report according to Sections IV.2. and IV.3. of Monitoring and Reporting Program No. R8-2009-0030. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.
 7. Pursuant to CWC §13385(c), the Regional Board may impose civil liability administratively for the above violations on a daily basis at a maximum of ten thousand dollars (\$10,000) for each day in which the violation occurs in accordance with CWC §13385(c)(1).
 8. Pursuant to Section 13385(c), the total maximum assessment for which the Discharger is civilly liable is \$380,000 [\$10,000 for each day since November 15, 2012, the latest date in which providing the report to the principal permittee would be considered timely].
 9. CWC §13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. Consideration of these factors is addressed in the following table.

¹ On December 7, 2012, County of Orange staff made the water quality monitoring results and analyses electronically available to Regional Board staff.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	This Complaint has been prepared in recognition that the violation is a reporting violation that can be largely remedied by the Discharger's submittal of their reports to the principal permittee with no impact to water quality. However, the Discharger's delay or non-submittal of the reports represents an unfair advantage over the co-permittees and may serve to mask other violations and/or delay additional enforcement action. The Annual Progress report is the only report available for the Regional Board to assess the permittees' compliance with the Permit.
B. Culpability	The permittees' traditional approach to preparing the Annual Progress report involves each permittee preparing a discrete report regarding actions taken to implement its respective storm water programs. With the exception of the Unified Report, each permittee's report is its sole responsibility. Without the annual report from each co-permittee, the Unified Report submitted by the principal permittee remains incomplete. Once Regional Board staff contacted City staff about the missing report, City staff were cooperative and had the report compiled and submitted in 20 days.
C. Economic Benefit or Savings	The Discharger has realized economic benefit through the diversion resources to other priorities and has avoided opportunity costs of not addressing those other priorities. The economic benefit can be estimated as the opportunity cost of the diverted resources plus the benefit related to postponing the costs of preparing the Discharger's report. Based on a rough estimation of staff costs of preparing the reports, Regional Board staff has concluded that the economic benefits are substantially less than the proposed civil liability amount ² .
D. Prior History of Violations	On or about September 29, 2011, City staff notified Regional Board staff that it anticipated being unable to submit its portion of the Annual Progress Report for the 2010-2011 reporting period. Regional Board staff informed City staff before-the-fact that this would be a violation of the Permit. While the City did not submit its report for the 2010-2011 reporting period until March 13, 2013, no written Notice of Violation was issued. It is likely that the lack of formal enforcement for the non-submittal of the 2010-2011 information contributed to the late submittal of the 2011-2012 information; consequently this prior violation will have only a minimal effect on the proposed liability.

² Assuming 20 hours of staff time needed to prepare and submit the report at a cost of \$150 per hour, Regional Board staff estimates the cost of preparing the report to be \$3,000. Avoided opportunity costs and the benefits of delayed expenditures would be a fraction of the cost of preparing the report.

E. Staff Costs	Regional Board staff spent approximately 20 hours investigating and responding to the alleged violations. The total cost for staff time is \$3,000 (20 hours @ \$150/hour). Justice may require the consideration of the amount of costs incurred by staff in investigating and enforcing against the alleged violations.
F. Ability to pay	According to the 2010 Census, the population of Los Alamitos was 11,449, which makes it one of the smallest cities covered by the Orange County MS4 permit. Past Administrative Civil Liability complaints against smaller cities have considered city size/revenue in calculating the final civil liability amount.

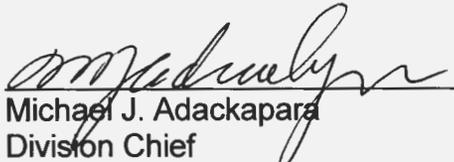
10. After consideration of the above factors, the Division Chief proposes that civil liability be imposed administratively on the Discharger based on each day following November 15, 2012 in which information necessary to the Annual Progress Report was not submitted to the principal permittee. The Division Chief regards November 15, 2012 as the last possible day in which the submittal of the information could be considered "timely", according to the language of Section IV.3. of the MRP. Including staff costs of \$3,000, the Division Chief proposes a total civil liability amount of \$21,810. Attachment A to this Complaint provides the details on the penalty calculations, including the application of the above factors. With regards to the late submittal of the 2010-2011 information, the Division Chief proposes no further enforcement action.

WAIVER OF HEARING

The Discharger may waive its right to a hearing. If the Discharger chooses to do so, please sign the attached waiver form and return it, together with a check for \$21,810 payable to the State Water Pollution Cleanup and Abatement Account, in the enclosed preprinted envelope. If you waive your right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this Complaint.

If you have any questions, please contact Adam Fischer at (951) 320-6363, Mark Smythe at (951) 782-4998, or me at (951) 782-3238. Legal questions should be directed to Cris Carrigan, Director, Office of Enforcement, at (916) 341-5889.

March 25, 2013
Date


Michael J. Adackapara
Division Chief
Regional Board Prosecution Team

Attachment A, ACL R8-2013-0009

Discharger Name/ID: *City of Los Alamitos*

Late 2011-2012 Report

		Violation 1					
Discharge Violations	Step 1	Potential Harm Factor					
		Physical, chemical, biological, thermal Susceptibility to cleanup					
		Total					0
	Step 2	Gallons	Per Gallon Factor				
			Gallons				
			Statutory Max per Gallon				
		Total	\$ -	\$ -	\$ -	\$ -	
	Days	Per Day Factor					
		Days					
		Statutory Max per Day					
		Total (It may be the Initial Amount)	\$ -	\$ -	\$ -	\$ -	
Non-Discharge Violations	Step 3	Days	Per Day Factor	0.1			
			Days (Modified by MDV)	38			
			Statutory Max per Day	\$ 10,000			
		Total	\$ 38,000.00	\$ -	\$ -	\$ -	
Initial Amount of the ACL			38,000	\$ -	\$ -	\$ -	
Additional Factors	Step 4	Culpability	1	\$ 38,000	\$ -	\$ -	\$ -
		Cleanup and Cooperation	0.75	\$ 28,500	\$ -	\$ -	\$ -
		History of Violations	1.1	\$ 31,350	\$ -	\$ -	\$ -
		Multiple Instances - Adjust number of violations if needed					
		Multiple Day Violations - Adjust number of days if needed					
Step 5	Total Base Liability Amount		31,350				
Step 6	Ability to Pay & to Continue in Business	1	31,350				
Step 7	Other Factors as Justice May Require	0.6	18,810				
	Staff Costs	\$ 3,000	21,810				
Step 8	Economic Benefit	\$ -	-				
Step 9	Minimum Liability Amount		-				
	Maximum Liability Amount		380,000				
Step 10	Final Liability Amount		21,810				

0.6 factor is to bring per capita cost in line with previous MS4 ACLs

Statutory Maximum
Proposed amount is
\$/Per Gal

\$380,000	
6%	of the maximum

11/16/2012
12/24/2012
38

Actual Penalty Assessed \$21,810

Days	MDV Modifier
1	
5	
10	
15	
20	
25	
30	
31-60	
61-90	
etc.	

0

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Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	<p>This Complaint has been prepared in recognition that the violation is a reporting violation that can be largely remedied by the Discharger's submittal of their reports to the principal permittee with no impact to water quality. However, the Discharger's delay or non-submittal of the reports represents an unfair advantage over the co-permittees and may serve to mask other violations and/or delay additional enforcement action. The Annual Progress report is the only report available for the Regional Board to assess the permittees' compliance with the Permit.</p>
B. Culpability	<p>The permittees' traditional approach to preparing the Annual Progress report involves each permittee preparing a discrete report regarding actions taken to implement its respective storm water programs. With the exception of the Unified Report, each permittee's report is its sole responsibility. Without the annual report from each co-permittee, the Unified Report submitted by the principal permittee remains incomplete. Once Regional Board staff contacted City staff about the missing report, City staff were cooperative and had the report compiled and submitted in 20 days.</p>
C. Economic Benefit or Savings	<p>The Discharger has realized economic benefit through the diversion resources to other priorities and has avoided opportunity costs of not addressing those other priorities. The economic benefit can be estimated as the opportunity cost of the diverted resources plus the benefit related to postponing the costs of preparing the Discharger's report. Based on a rough estimation of staff costs of preparing the reports, Regional Board staff has concluded that the economic benefits are substantially less than the proposed civil liability amount².</p>
D. Prior History of Violations	<p>On or about September 29, 2011, City staff notified Regional Board staff that it anticipated being unable to submit its portion of the Annual Progress Report for the 2010-2011 reporting period. Regional Board staff informed City staff before-the-fact that this would be a violation of the Permit. While the City did not submit its report for the 2010-2011 reporting period until March 13, 2013, no written Notice of Violation was issued. It is likely that the lack of formal enforcement for the non-submittal of the 2010-2011 information contributed to the late submittal of the 2011-2012 information; consequently this prior violation will have only a minimal effect on the proposed liability.</p>

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E. Staff Costs	Regional Board staff spent approximately 20 hours investigating and responding to the alleged violations. The total cost for staff time is \$3,000 (20 hours @ \$150/hour). Justice may require the consideration of the amount of costs incurred by staff in investigating and enforcing against the alleged violations.
F. Ability to pay	According to the 2010 Census, the population of Los Alamitos was 11,449, which makes it one of the smallest cities covered by the Orange County MS4 permit. Past Administrative Civil Liability complaints against smaller cities have considered city size/revenue in calculating the final civil liability amount.

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WAIVER OF HEARING

The Discharger may waive its right to a hearing. If the Discharger chooses to do so, please sign the attached waiver form and return it, together with a check for \$21,810 payable to the State Water Pollution Cleanup and Abatement Account, in the enclosed preprinted envelope. If you waive your right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this Complaint.

If you have any questions, please contact Adam Fischer at (951) 320-6363, Mark Smythe at (951) 782-4998, or me at (951) 782-3238. Legal questions should be directed to Cris Carrigan, Director, Office of Enforcement, at (916) 341-5889.

March 25, 2013
Date


Michael J. Adackapara
Division Chief
Regional Board Prosecution Team

Attachment A, ACL R8-2013-0009

Discharger Name/ID: City of Los Alamitos

Late 2011-2012 Report

			Violation 1			
Discharge Violations	Step 1	Potential Harm Factor				
		Physical, chemical, biological, thermal Susceptibility to cleanup Total				0
	Step 2	Gallons				
		Per Gallon Factor				
		Gallons				
		Statutory Max per Gallon Total	\$ -	\$ -	\$ -	\$ -
	Days					
	Per Day Factor					
	Days					
	Statutory Max per Day Total (It may be the Initial Amount)	\$ -	\$ -	\$ -	\$ -	
Non-Discharge Violations	Step 3	Days				
		Per Day Factor	0.1			
		Days (Modified by MDV)	38			
		Statutory Max per Day Total	\$ 10,000	\$ 38,000.00	\$ -	\$ -
Initial Amount of the ACL				38,000	\$ -	\$ -
Additional Factors	Step 4	Culpability	1	\$ 38,000	\$ -	\$ -
		Cleanup and Cooperation	0.75	\$ 28,500	\$ -	\$ -
		History of Violations	1.1	\$ 31,350	\$ -	\$ -
		Multiple Instances - Adjust number of violations if needed				
		Multiple Day Violations - Adjust number of days if needed				
Step 5	Total Base Liability Amount		31,350			
Step 6	Ability to Pay & to Continue in Business	1	31,350			
Step 7	Other Factors as Justice May Require	0.6	18,810			
	Staff Costs	\$ 3,000	21,810			
Step 8	Economic Benefit	\$ -	-			
Step 9	Minimum Liability Amount		-			
	Maximum Liability Amount		380,000			
Step 10	Final Liability Amount		21,810			

0.6 factor is to bring per capita cost in line with previous MS4 ACLs

Statutory Maximum Proposed amount is \$/Per Gal

\$380,000	of the maximum
6%	

11/16/2012
12/24/2012
38

Actual Penalty Assessed \$21,810

Days	MDV Modifier
1	
5	
10	
15	
20	
25	
30	
31-60	
61-90	
etc.	

0

Santa Ana Regional Water Quality Control Board

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the City of Los Alamitos (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2013-0009 (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 Discharger waives the hearing requirement and will pay the liability in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of twenty-one thousand, eight hundred ten dollars (\$21,810) by check that references "Complaint No. R8-2013-0009" made payable to the State Water Pollution Cleanup and Abatement Account. Payment must be received by the Regional Board office no later than April 8, 2013 or the Regional Board may adopt an Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Division Chief may withdraw the Complaint, return payment, and issue a new Complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

- OPTION 2**
(Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)

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

- OPTION 3**
(Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)

I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)