



Linda S. Adams
Secretary for
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State Water Resources Control Board



Arnold Schwarzenegger
Governor

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NOTICE OF HEARING

Mr. Charles Grace Wastewater Treatment Plant Operator Certification

The State Water Resources Control Board will hold a
Public Hearing on
The Petition of Mr. Charles Grace
For Review of Final Division Decision Downgrading Mr. Grace's Wastewater Treatment
Plant Operator Certification from Grade V to Grade II

The Public Hearing will commence on
February 7, 2011
at 9:00 a.m.
and
February 8, 2011 (if necessary)

in the
Byron Sher Hearing Room
Joe Serna Jr./Cal-EPA Headquarters Building
1001 I Street, Second Floor
Sacramento, CA

PURPOSE OF HEARING

The purpose of this hearing is for the State Water Resources Control Board (State Water Board) to receive evidence that will assist the State Water Board in determining whether the petition filed by Mr. Charles Grace (Petitioner) seeking review of a Division of Financial Assistance's (Division) Final Division Decision (FDD) dated December 10, 2009, should be granted. The FDD downgrades Petitioner's Wastewater Treatment Plant (WWTP) operator certificate from Grade V to Grade II. Pursuant to the FDD, Petitioner may apply for and receive an operator certificate at a higher certification level two years from the date the decision becomes final, if he passes the appropriate written examination and pays any and all applicable fees.

BACKGROUND

Petitioner holds a Grade V WWTP operator certificate. On January 12, 2009, the State Water Board's Office of Enforcement (OE) issued a letter proposing that Petitioner's Grade V WWTP operator certificate be downgraded to a Grade II operator certificate for a period of two years, after which he will be allowed to apply for reinstatement to a higher grade. The OE further proposed that Petitioner be required to pass the corresponding examination in order to be certified at a higher level.

California Environmental Protection Agency



The OE's proposal in its Letter of Proposed Disciplinary Action and its Letters of Recommendation dated March 24, 2009, and July 28, 2009, are based in part on the OE's determination that Petitioner violated California Code of Regulations, title 23, division 3, chapter 26, section 3670, et seq. (Operator Certification regulations), section 3710, subdivision (a)(7) by willfully or negligently allowing the violation of waste discharge requirements (WDRs) while operating the San Simeon WWTP. The OE based this determination on its conclusion that Petitioner: (1) failed to comply with standard operating procedures for treating effluent and controlling chlorine residual in the final effluent; (2) failed to comply with the Monitoring and Reporting Program (MRP) for Central Coast Regional Water Quality Control Board (Central Coast Water Board) Order No. R3-2002-0046 (National Pollutant Discharge Elimination Permit (NPDES) No. CA0047961) relating to sampling and reporting frequency; and (3) failed to comply with the MRP for Central Coast Water Board Order No. R3-2002-0046 (NPDES No. CA0047961) relating to coliform sampling location. The OE also determined that Petitioner violated Operator Certification regulations, section 3710, subdivision (a)(7) by willfully or negligently allowing the violation of WDRs while operating the Santa Paula WWTP. The OE based this determination on its conclusion that Petitioner: (1) failed to comply with standard operating procedures for treating effluent and controlling chlorine residual in the final effluent; and (2) failed to report the maximum daily values for chlorine residual.

On February 12, 2009, Petitioner appealed the OE's Letter of Proposed Disciplinary Action dated January 12, 2009, to the Deputy Director of the Division. After reviewing Petitioner's appeal with all of the supplementary documentation that he provided on April 24, 2009, and September 3, 2009, the OE's Letter of Proposed Disciplinary Action dated January 12, 2009, the OE's Letters of Recommendation dated March 24, 2009, and July 28, 2009, the Deputy Director issued an FDD dated December 10, 2009. In the FDD, the Deputy Director found that there is clear and convincing proof to a reasonable certainty that Petitioner violated Operator Certification regulations, section 3710, subdivision (a)(7) at the San Simeon WWTP by: (1) failing to comply with standard operating procedures for treating effluent and controlling chlorine residual in the final effluent; (2) failing to comply with the MRP for Central Coast Water Board Order No. R3-2002-0046 (NPDES No. CA0047961) relating to sampling and reporting frequency; and (3) failing to comply with the MRP for Central Coast Water Board Order No. R3-2002-0046 (NPDES No. CA0047961) relating to coliform sampling location. The Deputy Director also found that there is clear and convincing proof to a reasonable certainty that Petitioner violated Operator Certification regulations, section 3710, subdivision (a)(7) at the Santa Paula WWTP by: (1) failing to comply with standard operating procedures for treating effluent and controlling chlorine residual in the final effluent; and (2) failing to report the maximum daily values for chlorine residual. Finally, the Deputy Director found that the disciplinary action is not barred by the doctrine of laches.

The FDD downgrades Petitioner's WWTP operator certificate from Grade V to Grade II. Pursuant to the FDD, Petitioner may apply for and receive an operator certificate at a higher certification level two years from the date the decision becomes final, if he passes the appropriate written examination and pays any and all applicable fees.

On January 19, 2009, Petitioner filed a petition to the State Water Board. The petition requests that the FDD be vacated and set aside, or in the alternative, that the FDD be modified and/or that a lesser form of discipline (such as a letter of reprimand) be imposed. Unless the State

Water Board vacates and sets aside the FDD in its entirety, the petition also requests that the State Water Board hold a hearing, pursuant to section 3715, subdivision (b) and section 649.6 of title 23 of the California Code of Regulations, to accept evidence on all of the issues raised by the FDD and placed at issue by the petition. The Petitioner requests the opportunity to: (1) present oral argument on the petition; (2) compel the appearance of witnesses and examine and cross-examine such witnesses; and (3) present evidence obtained through the issuance of *subpoena duces tecum*. The Petitioner further requests an opportunity for further briefing during and oral argument at the conclusion of the evidentiary hearing.

KEY ISSUES

1. Did Petitioner perform, or allow or cause another to perform, any act that violated the following provisions of the Operator Certification regulations with respect to the San Simeon WWTP:

Section 3710, subdivision (a)(6) - Failing to use care or good judgment in the course of employment as an operator or failing to apply knowledge or ability in the performance of duties

Section 3710, subdivision (a)(7) - Willfully or negligently causing or violating or allowing the violation of appropriate waste discharge requirements as prescribed by article 4 of chapter 4 of division 7 of the Water Code, or the violation of section 402 of the Clean Water Act which contains the provisions of the National Pollutant Discharge Elimination System permit

By any of, but not limited to, the following:

- A. Failing to comply with standard operating procedures for treating effluent and controlling chlorine residual in the final effluent;
 - B. Failing to comply with the MRP for Central Coast Water Board Order No. R3-2002-0046 (NPDES No. CA0047961) relating to sampling and reporting frequency; or
 - C. Failing to comply with the MRP for Central Coast Water Board Order No. R3 2002-0046 (NPDES No. CA0047961) relating to coliform sampling location?
2. Did Petitioner perform, or allow or cause another to perform, any act that violated the following provisions of the Operator Certification regulations with respect to the Santa Paula WWTP:

Section 3710, subdivision (a)(6) - Failing to use care or good judgment in the course of employment as an operator or failing to apply knowledge or ability in the performance of duties

Section 3710, subdivision (a)(7) - Willfully or negligently causing or violating or allowing the violation of appropriate waste discharge requirements as prescribed by article 4 of chapter 4 of division 7 of the Water Code, or the

violation of section 402 of the Clean Water Act which contains the provisions of the National Pollutant Discharge Elimination System permit

By any, but not limited to, the following:

- A. Failing to comply with standard operating procedures for treating effluent and controlling chlorine residual in the final effluent; or
 - B. Failing to report the maximum daily values for chlorine residual?
3. If the State Water Board finds that Petitioner violated Operator Certification regulations, section 3710, subdivisions (a)(6) or (a)(7) at the San Simeon WWTP, Santa Paula WWTP, or both, should Petitioner's Grade V WWTP operator certificate be downgraded from Grade V to Grade II and Petitioner be permitted to apply for and receive an operator certificate at a higher certification level two years from the date the decision becomes final, if he passes the appropriate written examination and pays any and all applicable fees, or should the State Water Board direct the Division of Financial Assistance to take other appropriate action?
4. Does the doctrine of laches bar the State Water Board from taking a disciplinary action against Petitioner for any violations of the Operator Certification regulations?

HEARING OFFICER AND HEARING TEAM

State Water Board Member Frances Spivy-Weber will preside as the hearing officer over this proceeding. Other Board members may be present during the hearing. State Water Board staff hearing team members will include Julie M. Osborn, Staff Counsel; Robert Been, Water Resources Control Engineer; and Christine Gordon, Manager Office of Operator Certification. The hearing team will assist the hearing officer and other members of the State Water Board throughout this proceeding.

SEPARATION OF FUNCTIONS

A staff prosecutorial team will be a party in this hearing. State Water Board prosecutorial team members will include staff in the Office of Enforcement (OE), including but not limited to Mayumi Okamoto, Staff Counsel; David Boyers, Senior Staff Counsel; Reed Sato, Director of Office of Enforcement; Mark Bradley, Senior Water Resources Control Engineer; and Boris Trgovcich, Water Resources Control Engineer.

The prosecutorial team is separated from the hearing team and is prohibited from having *ex parte* communications with the hearing office, other members of the State Water Board, and members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding.

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THE EVIDENTIARY HEARING, you should carefully read the enclosure entitled "Wastewater Treatment Plant Operator Certification Enforcement Hearing Information." As stated in that enclosure, everyone wishing to present evidence at the hearing must submit a **notice of intent to appear**, which must be **received** by the State Water Board

no later than the deadline listed below. **If Mr. Charles Grace fails to submit a Notice of Intent to Appear by the deadline specified in this notice, Mr. Grace will have waived his opportunity for a hearing on this matter and the State Water Board will cancel the hearing.**

Within one week after the deadline for Notices of Intent to Appear, the State Water Board will mail out a list of those who have indicated a desire to participate in the hearing and a copy of all Notices of Intent to Appear that were timely received by the State Water Board. The list is provided in order to facilitate exchange of written testimony, exhibits, and witness qualifications in advance of the hearing. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. Copies of witnesses' proposed **testimony, exhibits, lists of exhibits, qualifications, and statement of service** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.

December 13, 2010	Deadline for receipt of Notice of Intent to Appear.
January 10, 2011	Deadline for receipt of and service of witnesses' proposed testimony, exhibits, lists of exhibits, qualifications, and statement of service.

SUBMITTALS TO THE WATER BOARD

Notices of Intent to Appear, written testimony, and other exhibits submitted to the State Water Board should be addressed as follows:

**Julie M. Osborn, Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812
Phone: (916) 341-5176
Fax: (916) 341-5199
Email: Josborn@waterboards.ca.gov
With Subject of "Charles Grace WWTP Operator Certification Hearing"**

IF YOU HAVE ANY QUESTIONS

During the pendency of this proceeding, and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants, including members of the prosecution team regarding substantive or controversial procedural matters within the scope of this proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters should be directed to Julie M. Osborn at (916) 341-5176, or by email to JOSborn@waterboards.ca.gov. (Gov. Code, § 11430.20, subd. (b).)

PARKING, ACCESSIBILITY, AND SECURITY

A map to the Joe Serna Jr./Cal-EPA Headquarters Building and parking information are available at <http://www.calepa.ca.gov/EPABldg/location.htm>. The Joe Serna Jr./Cal-EPA Headquarters Building is accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Headquarters Building are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881.

Due to enhanced security precautions at the Joe Serna Jr./Cal-EPA Headquarters Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in before being directed to the hearing.

November 9, 2010
Date


Jeanine Townsend
Clerk to the Board

cc: Interested Persons

Enclosures

Interested Party List

Mr. Charles Grace
1765 Berkshire Drive
Thousand Oaks, CA 91632

Mayumi Okamoto, Staff Counsel
David Boyers, Senior Staff Counsel
Office of Enforcement
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

John F. Cermak, Esq.
Sonja A. Inglin, Esq.
Baker & Hostetler LLP
12100 Wilshire Boulevard, 15th Floor
Los Angeles, CA 90025

WASTEWATER TREATMENT PLANT OPERATOR CERTIFICATION ENFORCEMENT HEARING INFORMATION

The following procedural requirements will apply and will be strictly enforced:

- 1. HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6, and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Resources Control Board (State Water Board) is available upon request or may be viewed at the State Water Board's web site at: http://www.waterboards.ca.gov/laws_regulations.

Unless otherwise determined by the hearing officer, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officer, parties may also be afforded the opportunity to present closing statements or submit briefs. The State Water Board encourages (but does not require) parties with common interests to work together to make the hearing process more efficient. The hearing officer reserves the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Parties must file any requests for exceptions to procedural requirements in writing with the State Water Board and must serve such requests on the other parties. To provide time for parties to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

- 2. SETTLEMENTS:** In operator certification enforcement hearings, a State Water Board, Office of Enforcement staff member or team prosecutes an alleged violation. In such enforcement cases, the prosecution and a party who is the subject of the proposed enforcement action may at their discretion engage in private settlement discussions, or may include any other persons in those discussions. Although other persons may be authorized to participate in the hearing as parties, such a designation does not constitute a ruling that those persons must be allowed to engage in any settlement discussions between the prosecution and the party against whom the agency action is directed. The consent of other parties is not required before the State Water Board, or the Executive Director under [State Water Board Resolution No. 2002-104](#), can approve a proposed settlement agreement between the prosecution and a party subject to a proposed enforcement action. However, all parties will be given the opportunity to comment on any settlement submitted to the State Water Board or the Executive Director for approval.
- 3. PARTIES:** The current parties to the hearing are Mr. Charles Grace and the State Water Board's Office of Enforcement.

Additional parties may be designated in accordance with the procedures for this hearing. Except as may be decided by specific rulings of the hearing officer, any person or entity who timely files a Notice of Intent to Appear indicating the desire to participate beyond presenting a policy statement shall be designated as a party. The hearing officer may impose limitations on a party's participation. (Gov. Code, § 11440.50, subd. (c).) Persons or entities who do not file a timely Notice of Intent to Appear may be designated as parties at

the discretion of the hearing officer, for good cause shown, and subject to appropriate limitations as determined by the hearing officer. Except as specifically provided in this notice or by ruling of the hearing officer, only parties will be allowed to present evidence.

- 4. INTERESTED PERSONS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not designated as parties. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may access hearing documents at the website listed in the hearing notice.

Policy statements are subject to the following provisions in addition to the requirements outlined in regulation. (Cal. Code Regs., tit. 23, § 648.1, subd. (d).)

- a. Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons are requested to file a Notice of Intent to Appear, indicating clearly an intent to make a policy statement only.
- b. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 7, for details regarding electronic submittal of policy statements.

- 5. NOTICE OF INTENT TO APPEAR:** Persons and entities who seek to participate as parties in this hearing must file either an electronic copy or a paper copy of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear in a timely manner may be interpreted by the State Water Board as intent not to appear. If the party requesting the hearing fails to file a timely Notice of Intent to Appear, this may be deemed a withdrawal of the request for hearing. Any faxed or emailed Notices of Intent to Appear must be followed by a mailed or delivered hard copy with an original signature.

Interested persons who will not be participating as parties, but instead presenting only non-evidentiary policy statements should also file a Notice of Intent to Appear.

The Notice of Intent to Appear must state the name and address of the participant. Except for interested persons who will not be participating as parties, the Notice of Intent to Appear must also include: (1) the name of each witness who will testify on the party's behalf; (2) a brief description of each witness' proposed testimony; and (3) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of his or her prior-submitted written testimony. (See section 6, below.) Parties who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear.¹ Parties who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other parties as soon as possible.

¹ A party is not required to present evidence as part of a case-in-chief. Parties not presenting evidence as part of a case-in-chief will be allowed to participate through opening statements, cross-examination, and rebuttal, and may also present closing statements or briefs, if the hearing officer allows these in the hearing.

Parties who are not willing to accept electronic service of hearing documents should check the appropriate box on the Notice of Intent to Appear. (See section 7, below.)

The State Water Board will mail a service list of parties to exchange information to each person who has submitted a Notice of Intent to Appear. The service list will indicate if any party is unwilling to accept electronic service. If there is any change in the hearing schedule, parties on the service list, and interested persons that have filed a Notice of Intent to Appear expressing their intent to present a policy statement only, will be informed of the change.

- 6. WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each party proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.² Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A party who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each party shall submit to the State Water Board either: seven paper copies of each of its exhibits; or four paper copies and one electronic copy of each of its exhibits. With its exhibits, each party must submit a completed Exhibit Identification Index. Each party shall also serve a copy of each exhibit and the exhibit index on every party on the service list. A statement of service with manner of service indicated shall be filed with each party's exhibits.

All submittals, including paper copies, and a statement of service must be **received by the State Water Board and served on the other parties no later than the deadline prescribed in the Hearing Notice**. The State Water Board may interpret failure to timely submit as a waiver of the opportunity to present a case-in-chief.

All hearing documents that are timely received will be posted on the hearings program webpage identified in the hearing notice.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
- b. The hearing officer has discretion to receive into evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A party offering an exhibit by reference shall advise the other parties and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the party relies, the nature of the contents, the purpose for which the exhibit will be used when offered in

² The hearing officer may make an exception to this rule if the witness is adverse to the party presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement.

evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.

- c. A party seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other parties prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a party waives the opportunity to obtain a copy of the exhibit, the party sponsoring the exhibit will not be required to provide a copy to the waiving party. Additionally, with the permission of the hearing officer, such exhibits may be submitted to the State Water Board solely in electronic form, using a file format readable by Microsoft Office 2003 software.
- d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
- e. Parties submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, parties may supply, for the hearing record, a reduced copy of a large format original if it is readable.

7. ELECTRONIC SUBMISSIONS: To expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing, participants are encouraged to submit hearing documents to the State Water Board in electronic form and parties are encouraged to agree to electronic service.

Any documents submitted or served electronically must be in Adobe Portable Document Format (PDF), except for Exhibit Identification Indexes, which may be in a format supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 11 megabytes in total size (incoming mail server attachment limitation) may be sent via electronic mail to: josborn@waterboards.ca.gov with a subject of "Charles Grace WWTP Operator Certification Hearing." Electronic submittals to the State Water Board of documents greater than 11 megabytes in total size should be submitted on a compact disk (CD). Each electronically submitted exhibit must be saved as a separate PDF file, with the name in lower case lettering.

Electronic service on parties shall be in the same file format as submittals to the State Water Board, and should be submitted to the parties at the e-mail addresses provided on the Notices of Intent to Appear. Parties who do not opt out of electronic service may request that specific documents be provided to them in paper copy or by mail on CD. Requests should be made to the party who submitted the document, not to the State Water Board. Parties who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received.

- 8. PRE-HEARING CONFERENCE:** At the hearing officer's discretion, a pre-hearing conference may be conducted before the proceeding to discuss the scope of the hearing, the status of any protests, and any other appropriate procedural issues.
- 9. ORDER OF PROCEEDING:** The hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officer, for good cause.

- a. **Policy Statements Within the Evidentiary Hearing:** Policy statements will be heard at the start of the hearing, before the presentation of cases-in-chief. Oral summaries of the policy statements will be limited to five minutes.
- b. **Presentation of Cases-In-Chief:** Each party who so indicates on a Notice of Intent to Appear may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement, oral testimony, introduction of exhibits, and cross-examination of the party's witnesses. The hearing officer may, at his or her discretion, allow redirect examination and recross examination. The hearing officer will decide whether to accept the party's exhibits into evidence upon a motion of the party after completion of the case-in-chief.
 - i. **Opening Statements:** At the beginning of a case-in-chief, the party or the party's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per party. A party may submit a written opening statement before the hearing or during the hearing, prior to their case-in-chief. Any policy-oriented statements by a party should be included in the opening statement.
 - ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to **20 minutes** to summarize or emphasize their written testimony on direct examination. Each party will be allowed up to **two hours total** to present all of its direct testimony.³
 - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officer will decide whether the party's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Ordinarily, only a party or the party's representative will be permitted to examine a witness, but the hearing officer may allow a party to designate a person technically qualified in the subject being considered to examine a witness.
 - iv. **Redirect and Recross Examination:** Redirect examination may be allowed at the discretion of the hearing officer. Any redirect examination and recross-examination permitted will be limited to the scope of the cross-

³ The hearing officer may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. The hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the party presenting the testimony and the hearing officer is satisfied that the party could not produce written direct testimony for the witness.

examination and the redirect examination, respectively. The hearing officer may establish time limits for any permitted redirect and recross examination.

- v. **Questions by State Water Board and Staff:** State Water Board members and the State Water Board's hearing team may ask questions at any time and may cross-examine any witness.
 - c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented by another party. Rebuttal testimony and exhibits need not be submitted prior to the hearing, although the hearing officer may require submittal of rebuttal testimony and exhibits before they are presented in order to improve hearing efficiency. Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
 - d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times, if appropriate, the hearing officer may allow oral closing statements or legal arguments or set a schedule for filing legal briefs or written closing statements. If the hearing officer authorizes the parties to file briefs, four paper copies and one electronic copy of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A party shall not attach a document of an evidentiary nature to a brief unless the document is already in the evidentiary hearing record or is the subject of an offer into evidence made at the hearing.
- 10. EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications with State Water Board members or State Water Board hearing team staff and supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to the submission of evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.** Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from our website at: http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.
- 11. RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the operator certification enforcement hearing regarding (name of party or participant)

Charles Grace WWTP Operator Certification Hearing

**scheduled to commence
February 7, 2011**

Check all that apply:

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we decline electronic service.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number, and Fax Number of Attorney or Other Representative:

Signature: _____ Dated: _____

Name (Print): _____

Mailing Address: _____

Phone Number: () _____ Fax Number: () _____

E-mail: _____

