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11 Attorneys for CARPINTERIA SANITARY DISTRICT

12 **BEFORE THE CENTRAL COAST**  
13 **REGIONAL WATER QUALITY CONTROL BOARD**

14 IN THE MATTER OF:

15 Carpinteria Sanitary District,

16 WDID: 3 420101001

Complaint No. R3-2015-0011

For Administrative Civil Liability

NPDES Permit No. CA 0047364 and Order  
No. R3-2011-0003

Carpinteria Sanitary District's Evidentiary  
Objections and Related Issues

Hearing Date: May 29, 2015  
Time: 9:00 a.m.

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18 The Carpinteria Sanitary District (hereinafter the "District") submits its Evidentiary  
19 Objections, as well as other related issues, in advance of the hearing to be held before the Regional  
20 Water Quality Control Board (hereinafter referred to as the "Board") on May 29, 2015, to consider  
21 Administrative Civil Liability Complaint, No. R3-2015-0011 ("ACLC"), filed by the Central  
22 Coast Regional Water Quality Control Board Prosecution Team (hereinafter referred to as the  
23 "Prosecution Team") on March 2, 2015.

24 The District's objections are based upon and supported by the following arguments and  
25 authorities, the District's Initial Statement and Legal Argument submitted on May 1, 2015, and  
26 any additional evidence, exhibits, testimony and arguments to be presented before or at the time of  
27 the hearing on May 29, 2015, or thereafter.  
28

1 I. **A Redacted or “Clean” Version of the ACLC and Attachment A Should be**  
2 **Made Part of the Official Administrative Record of the Hearing and Provided**  
3 **to the Members of the Board.**

4 As noted in, and accompanying, the Prosecution Team’s Opening Brief submitted on  
5 April 15, 2015, the parties entered into “Evidentiary Stipulations Related to ACL No. R3-2015-  
6 0011” on April 10, 2015 (hereinafter referred to as the “Stipulations”). In the Stipulations, the  
7 parties agreed that certain allegations and provisions contained in both the initial ACLC and its  
8 Attachment A filed on March 2, 2015 (hereinafter referred to as the “Initial ACLC and Attachment  
9 A”) would be redacted or modified pursuant to specifically-stipulated deletions and/or amended  
10 language.

11 The District therefore presumes, and in the alternative, respectfully requests, that to the  
12 extent the Advisory Team has not already done so, the Initial ACLC and Attachment A will, or  
13 should, be redacted and amended consistent with the Stipulations (hereafter referred to as the  
14 “Amended ACLC and Attachment A”) and that: 1) the Amended ACLC and Attachment A will be  
15 placed in the Official Administrative Record; 2) the Initial ACLC and Attachment A will be  
16 retrieved from and/or not provided to the members of the Board; 3) the Amended ACLC and  
17 Attachment A will be provided to the members of the Board; and 4) the Amended ACLC and  
18 Attachment A will serve as the charging document upon which the Prosecution Team will  
19 prosecute the allegations in this matter, the District will defend against and that the Board will  
20 consider in determining whether the Prosecution Team has met its burden of proof, as well as in  
21 assessing and imposing any appropriate penalty or sanction.

22 Given the fact that the parties have agreed and stipulated to delete and/or modify several of  
23 the allegations contained in the Initial ACLC and Attachment that were, among other things, not  
24 relevant and/or unduly prejudicial to the District, it is entirely fair and appropriate to grant the  
25 District’s above-listed requests. Failure to do so would allow the Board to review and possibly  
26 consider irrelevant and/or potentially prejudicial allegations and statements that the Prosecution  
27 Team has agreed and stipulated should be deleted from or modified in the Initial ACLC and  
28 Attachment A, and would thereby, improperly and unfairly prejudice the District at the hearing.

1           **II.     Objections to Certain Prosecution Team Exhibits.**

2           The District objects to two of the Prosecution Team’s proposed exhibits, namely, Exhibits  
3 11 and 19. As noted in more detail below, the District contends that these two exhibits are not  
4 relevant to the instant matter and should therefore, be excluded from the hearing.<sup>1</sup>

5                     **1.     Prosecution Team Exhibit 11.**

6           Exhibit 11 is identified as “February 16, 2012 PG Environmental, LLC NPDES  
7 Compliance Evaluation Inspection Reports” (“CEI Reports”), and consists of approximately 27  
8 pages of narrative reports, forms and attached photographs documenting a NPDES compliance  
9 inspection conducted on or about December 14, 2011 at the District’s Facility by a consultant  
10 retained by the United States Environmental Protection Agency (“USEPA”). As noted in the CEI  
11 reports contained in Exhibit 11, certain compliance “ratings” were assigned to the District relating  
12 to various inspected areas and operations.

13           The relevance of Exhibit 11 is unclear to the District, since it does not appear to have been  
14 mentioned or referenced in the Prosecution Team’s Opening Brief, and more importantly, the cited  
15 compliance inspection did not result in any enforcement action against or required corrective  
16 measures undertaken by the District. In fact, the assigned permitting staff member for the  
17 Regional Board, Dr. Peter Von Langen, described the compliance inspection as follows: “The  
18 inspection was looking over the facility in great detail and some of the findings were written in a  
19 dry inspection tone that may have made it sound worse than reality.” (See District Exhibit K,  
20 which is a train of email correspondence dated May 4, 2012 through between May 11, 2012,  
21 attached hereto and incorporated herein by reference).

22           As noted in District Exhibit K, Dr. Von Langen was responding to an email sent by the  
23 District’s General Manager, Craig Murray, on May 8, 2012, after he received a copy of the CEI  
24 reports and related materials comprising Prosecution Team Exhibit 11. Specifically, in his email  
25 to Dr. Von Langen, General Manager Murray inquired in pertinent part:

26 \_\_\_\_\_

27 <sup>1</sup> The District has other potential objections and replies to the Prosecution Team’s Rebuttal Brief filed on May 13,  
28 2015, and respectfully reserves the right to submit such objections and replies thereto prior to and/or during the  
hearing scheduled on May 29, 2015.

1 I was surprised and disappointed to read the findings as they differed remarkably from the  
2 comments we got in the exit interview from PG Environmental staff. I know you had to  
3 leave early from the inspection that day and were not at the wrap up meeting, but every  
4 indication was that our treatment facility and our record keeping/reporting was  
5 outstanding. Aside from one spreadsheet calculation error which was identified and  
6 corrected that day, the message we got was that everything was great. As you know, we  
7 take enormous pride in the maintenance and condition of our facility and I have continued  
8 the practices that earned us the 2008 CWEA Plant of the Year Award for the entire state. I  
9 presume that you have reviewed the report and I wonder if you concur with the findings or  
10 if they were surprising to you also based on your participation in the inspection.

11 I have a few questions. I would like to know how we can or should respond to the findings  
12 of this report. Is there a process to dispute the findings? What is its purpose? Will it result  
13 in enforcement proceedings or will there be any response from the [Regional Board, State  
14 Water Board or US EPA]? Will it be published and made publicly available?

15 (Id.).

16 In his May 11, 2012 response to General Manager Murray's email, Dr. Von Langen further  
17 noted that, "The facility is in compliance with its permit and no enforcement is pending from the  
18 inspection." (Id.). Moreover, in response to Dr. Von Langen's suggestion that the District could  
19 "respond in the next Annual Report and [could] also send [the Regional Board] an email or letter  
20 if [the District] [wanted] to have something additional in the file," on January 28, 2013, the  
21 District submitted a letter to the Regional Board in which it documented its objections to the  
22 ratings assigned in the CEI reports as a result of the compliance inspection. (Id.).

23 To date, the District is not aware of any regulatory enforcement or other action taken or  
24 contemplated based upon the inspection documented in the CEI reports. The relevance of Exhibit  
25 11 is therefore dubious.

26 **B. Prosecution Team Exhibit 19.**

27 In its Rebuttal Brief, the Prosecution Team refers to Exhibit 19, which is identified as,  
28 "Soller, J.A., M.E., Bartrand, T., J.E., and Ashbolt, N.J (2010), '*Estimated human health risks  
from exposure to recreational waters impacted by human and non-human sources of faecal  
contamination,*' Water Research 44, 4674-4691" ("Soller et al. (2010)"). The Prosecution Team  
apparently refers to the Soller et al. (2010) modeling study in Exhibit 19 in an attempt to support  
its assertion that the discharge at issue in the October 2012 Incident posed a potential harm to  
beneficial uses. However, contrary to the Prosecution Team's assertion, this cited study is not  
relevant to the instant matter and more importantly, does not support its arguments.

1 Specifically, the Prosecution Team claims that although additional disinfection in the  
2 District's chlorine tank from leftover chlorine could have reduced indicator bacteria such as total  
3 coliform or enterococcus, "that does not mean that human pathogens associated with the  
4 wastewater would have been reduced too." (See Prosecution Rebuttal Brief, p. 5). In citing the  
5 modeling work by Soller et al. (2010) in Exhibit 19, the Prosecution Team attempts to support an  
6 argument that such pathogens present a greater risk of illness in secondary disinfected effluent  
7 than from raw sewage.

8 Such an argument, however, is specious given that both the California water quality  
9 standards and the limits provided in the District's NPDES permit limits are based on indicator  
10 bacteriological standards for total coliform, fecal coliform and enterococcus bacteria. Moreover,  
11 there are no California water quality standards for viral and parasitic protozoan pathogens, which  
12 are the very wastewater organisms driving the risk estimates in the Soller et al. (2010) modeling  
13 evaluation found in Exhibit 19. Further, the Soller et al. (2010) modeling evaluation assumed a  
14 30-day averaging time, an exposure duration consistent with a USEPA Recreational Water Quality  
15 Criteria (2012; Office of Water 820-F-12-058), but substantially longer exposure duration than the  
16 discharge at issue in the October 2012 Incident. Soller et al. (2010) address this very uncertainty:  
17 "The occurrence of pathogens in recreational waters is a function of both spatial and temporal  
18 variability. Thus, the actual risks to human health present in any specific location at a particular  
19 time could vary substantially from the estimates presented here." (See Prosecution Exhibit 19, p.  
20 4687).

21 In addressing the uncertainty in their model, which included separate risk estimates for raw  
22 sewage and secondary effluent, Soller et al. (2010) further noted that the viral and protozoan  
23 pathogens that account for the modeled estimate human health risks, "stem from the approach that  
24 was used to normalize the fecal contamination across sources: sufficient contamination was  
25 assumed to be present so that the hypothetical waterbody contained the specified indicator  
26 densities." (Id. at p. 4683). The Soller et al. (2010) study also concluded that "This higher risk  
27 from more treated wastewater simply results from a higher proportion of [fecal indicator bacterial]  
28 being removed than viral and parasitic protozoan pathogens by wastewater treatment and

1 disinfection.” (Id. at pp. 4682-83). The Soller et al. (2010) study also concluded, “the two sets of  
2 results presented here for human contamination, bracket possible conditions of human  
3 contamination and taken together represent an average risk that is consistent with the findings  
4 from the epidemiologic studies in the US.” In other words, the different modeling results obtained  
5 for raw sewage and secondary effluent are simply a function of the way the model was constructed  
6 and the results are not intended to be compared to each other.

7 In essence, contrary to the assertions of the Prosecution Team, the Soller et al. (2010)  
8 study, which is noted by the authors to have “a number of important limitations,” has no relevance  
9 to the conditions associated with the discharge at issue in the October 2012 Incident. The Soller et  
10 al. (2010) study was a modeling exercise specifically conducted to compare relative risk from non-  
11 human and human sources of fresh fecal pollution; it was not intended to be used to compare the  
12 potential risk from exposure to raw sewage and secondary effluent.

13 Based on the foregoing, the District submits that neither the CEI reports comprising  
14 Prosecution Team Exhibit 11 nor the Soller et al. (2010) study cited in Exhibit 19 are relevant to  
15 the instant matter. Accordingly, the District respectfully requests that both of those proposed  
16 exhibits and any testimony related thereto be excluded from the hearing as irrelevant.

17 DATED: May 18, 2015

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