



**Los Angeles Regional Water Quality Control Board**

June 22, 2012

Mr. Edward Waymire  
579 Lake Huron Lane  
Boulder City, NV 89005

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7009 2970 0000 0643 0312

Mr. Rafiel Shahbazian  
Mitchell Investors, LLC  
7702 South Maie Avenue  
Los Angeles, CA 90001

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7009 2970 0000 0643 0305

**COMPLAINT NO. R4-2012-0110 AGAINST MR. EDWARD WAYMIRE, WAYMIRE DRUM COMPANY, MR. RAFIEL SHAHBAZIAN AND MITCHELL INVESTORS, LLC, FORMER WAYMIRE DRUM COMPANY, 7702 SOUTH MAIE AVENUE, LOS ANGELES, CALIFORNIA (SITE CLEANUP NO. 0215, SITE ID NO. 204AC00 AND CLEANUP AND ABATEMENT ORDER NO. R4-2010-0095)**

Dear Mr. Waymire and Mr. Shahbazian:

Enclosed is Complaint No. R4-2012-0110 for Administrative Civil Liability in the amount of \$90,515 against Mr. Edward Waymire, Waymire Drum Company, Mr. Rafiel Shahbazian, and Mitchell Investors, LLC (hereinafter Dischargers) for violating requirements contained in Regional Board Cleanup and Abatement Order No. R4-2010-0095. 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 sections 13228.14 and 13323. Should the Dischargers choose to waive their right to a hearing, authorized representatives must sign the waiver form attached to Complaint No. R4-2012-0110 and return it to the Regional Board by 5:00 pm on **July 23, 2012**. An agenda containing the date, time, location, and specific procedures of the hearing will be mailed to you prior to the hearing date.

If you have any questions regarding this matter, please contact Mr. Hugh Marley at (213) 620-6375 or Mr. Bizuayehu Ayele at (213) 576-6623.

Sincerely,

  
Paula Rasmussen  
Assistant Executive Officer

Enclosures: Complaint No. R4-2012-0110

MARIA MEHRANIAN, CHAIR | SAM UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | [www.waterboards.ca.gov/losangeles](http://www.waterboards.ca.gov/losangeles)

Mr. Edward Waymire  
Mr. Rafiel Shahbazian  
Former Waymire Drum Company

- 2 -

June 22, 2012

Notice of Public Hearing  
Administrative Civil Liability Fact Sheet

cc: (via email)  
Samuel Unger, Los Angeles Regional Water Quality Control Board  
Jennifer Fordyce, Office of Chief Counsel, State Water Resources Control Board  
Andrew Tauriainen, Office of Enforcement, State Water Resources Control Board  
Norman Rasmussen, Esq.

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

Mr. Edward Waymire  
Waymire Drum Company

Mr. Rafiel Shahbazian  
Mitchell Investors, LLC

**Complaint No. R4-2012-0110  
For  
Administrative Civil Liability**

**Violations of Cleanup and Abatement  
Order No. R4-2010-0095**

June 22, 2012

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. Mr. Edward Waymire, Waymire Drum Company, Mr. Rafiel Shahbazian and Mitchell Investors, LLC (collectively Dischargers) are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) may impose civil liability pursuant to Water Code section 13350.
2. Unless waived, a hearing on this matter will be held before the Los Angeles Water Board, or a panel of Los Angeles Water Board members, within 90 days following issuance of this Complaint. The Dischargers or their representative(s) will have an opportunity to address and contest the allegations in this Complaint and the proposed imposition of administrative civil liability.
3. At the hearing, the Los Angeles Water 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 assessment of judicial civil liability.

**BACKGROUND**

4. On July 22, 2010, the Los Angeles Water Board issued Cleanup and Abatement Order No. R4-2010-0095 requiring the Dischargers to assess, monitor, cleanup and abate the effects of volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), heavy metals and petroleum hydrocarbons discharged to the soil, soil gas and groundwater beneath the former Waymire Drum Company (Site) located at 7702 South Maie Avenue, Los Angeles, California. The Order's findings are fully incorporated by reference here, with pertinent findings summarized as follows:
  - a. The Site was used for steel drum recycling operations from approximately the late 1920s. Edward Waymire and Waymire Drum Company acquired the property in approximately 1975, and continued drum recycling operations on the site until approximately 1996. In approximately 1997, Mr. Waymire formed Mitchell Investors, LLC, and transferred title of the

Site from Waymire Drum Company to Mitchell Investors. The Site was used for storage of empty drums from approximately 1997 until 2003.

- b. In 1989, the California Department of Health Services, now called the California Department of Public Health (CDPH), inspected the Site and issued a Corrective Action Order and Complaint for Penalty to Waymire Drum Company for Health and Safety Code and regulatory violations at the Site. Waymire Drum Company reportedly took some corrective measures.
- c. Beginning in 1990, the County of Los Angeles, Department of Health Services (LACDHS) and the Los Angeles County Fire Department (LACFD) directed several site assessments, which detected VOCs, SVOCs, heavy metals and petroleum hydrocarbons in the subsurface soil, soil vapor and groundwater beneath the Site. These contaminants originated from the drum recycling activities on the Site.
- d. The Los Angeles Water Board assumed regulatory oversight of the Site in 1995 due to the documented groundwater contamination.
- e. In 1998, the Los Angeles Water Board observed numerous spills and improperly contained storage drums on the Site, and directed Mitchell Investors to undertake waste removal and site assessment activities, provide descriptions of chemicals used or stored at the Site and conduct a quarterly groundwater monitoring program. In response, Mitchell Investors removed drums and undertook certain other waste removal actions. Mitchell Investors began intermittent quarterly groundwater monitoring at the Site in 1999, but discontinued all such activities in approximately 2003.
- f. Rafiel Shahbazian and Abgar Artenyan acquired Mitchell Investors and the Site in 2003. The Site has been used as an automobile reconditioning and recycling facility since 2003. Mr. Shahbazian acquired full ownership of Mitchell Investors and the Site in approximately 2008, and remains the owner.
- g. The Los Angeles Water Board inspected the Site in 2008, finding piles of dismantled auto parts recovered from damaged cars, including oil filters, batteries, tires, engine blocks, radiators, etc. Such materials can typically include volatile organic compounds, heavy metals and petroleum hydrocarbons.
- h. On May 16, 2008, the Los Angeles Water Board issued a California Water Code section 13267 Order to Mitchell Investors directing them to continue

and complete site assessment and groundwater monitoring activities discontinued in 2003. Mitchell Investors did not comply.

- i. The Los Angeles Water Board issued a Notice of Violation (NOV) to Rafiel Shahbazian and Mitchell Investors in December, 2008, for failing to comply with the 13267 Order. Mr. Shahbazian and Mitchell Investors still did not comply.
  - j. The Los Angeles Water Board also issued a separate Section 13267 Order to Edward Waymire and Waymire Drum Company in December, 2008, directing them to continue and complete the site assessment and groundwater activities discontinued in 2003. Mr. Waymire and Waymire Drum Company did not comply.
5. The Dischargers have not complied with the Order.
  6. On December 2, 2010, the Los Angeles Water Board issued an NOV to the Dischargers for failing to comply with the Order. The Dischargers still did not comply.
  7. Los Angeles Water Board staff met to discuss the Order with Rafiel Shahbazian on March 16, 2011, and with Edward Waymire and Mr. Waymire's attorney on April 8, 2011. Mr. Shahbazian and Mr. Waymire each disavowed responsibility for the contamination at the Site. Mr. Shahbazian further indicated that he had financial difficulties that prevented him from complying with the Order. Los Angeles Water Board staff asked Mr. Shahbazian to complete a financial hardship evaluation form, but he has not returned the completed form.

## ALLEGATIONS

### **Dischargers have failed to comply with the Cleanup and Abatement Order.**

8. Required Action No. 1 on pages 11-12 of the Order directs the Dischargers to prepare a work plan to conduct a comprehensive site assessment, including assessment and delineation of contamination in the soil matrix, soil vapor and groundwater onsite and offsite. The Order directed the Dischargers to submit the work plan by October 22, 2010. The Dischargers have not yet submitted the work plan.
9. Required Action No. 3 on page 12 of the Order directs the Dischargers to resume the quarterly groundwater monitoring program and submit quarterly groundwater monitoring reports beginning October 15, 2010. Subsequent reports would be due each January 15, April 15 and July 15. The Dischargers have not submitted any groundwater monitoring reports required by the Order.

10. Required Action No. 4 on page 12 of the Order directs the Dischargers to submit copies of documents previously requested by the Los Angeles Water Board including a list of businesses from whom used drums were purchased during past drum recycling operations, copies of all hazardous and non-hazardous waste disposal manifests for wastes removed from the site, underground storage tank (UST) operating permits and UST closure permits obtained from pertinent regulatory agencies. The Dischargers have failed to submit any site relevant documents.
11. In the December 2, 2010, Notice of Violation, the Los Angeles Water Board notified the Dischargers of their failure to comply with the provisions of the Order, and warned of the potential for the imposition of administrative civil liability. The Dischargers have not yet complied with any provision of the Order.
12. Pursuant to Water Code section 13350, the Los Angeles Water Board may impose liability up to \$5,000 for each day of violation of the Order.
13. Required Action No. 3, the groundwater monitoring reports, had the earliest due date, October 15, 2010. The Los Angeles Water Board has elected to calculate administrative civil liability for failing to comply with the Order based on that violation date.
14. To date, Dischargers have been in violation of Required Action No. 3 for **617** days (October 15, 2010 to June 22, 2012).
15. Water Code section 13327 specifies factors that the Los Angeles Water Board shall consider in establishing the appropriate amount of civil liability under Water Code section 13350. The Water Quality Enforcement Policy (Enforcement Policy) adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to the factors in Water Code section 13327.
16. Attachment A to this Order indicates the proposed civil liability for violating the conditions of the Order. The calculations used to derive this liability are based on the penalty methodology in the Enforcement Policy.
17. As described in Attachment A, the proposed liability for the violation described here is **\$90,515.00**.

#### **MAXIMUM LIABILITY**

18. Pursuant to Water Code section 13350, the maximum administrative civil liability which could be imposed by the Los Angeles Water Board for failing to comply with requirements of Cleanup and Abatement Order No. R4-2010-0095 is five

thousand dollars (\$5,000) for each day in which the violation occurs. The Dischargers have failed to provide the required groundwater report for 617 days. Thus, the maximum liability amount for 617 days of violation is **\$3,085,000**.

#### **MINIMUM LIABILITY**

19. Pursuant to the Enforcement Policy, the minimum administrative civil liability that shall be imposed by the Los Angeles Water Board is the amount of economic benefit derived from the violations, plus 10 percent. The economic benefit for the violations is the estimated cost to produce the required technical reports. Staff estimates the cost-savings for non-compliance to be approximately \$40,000 which is an estimate based on the guidelines presented in the State Water Resources Control Board (SWRCB) Underground Storage Tanks Cleanup Fund's *Cost Guidelines* (Draft Final, October 1, 2001) for consulting costs of producing the required work plan and the seven groundwater monitoring reports (\$5,000 each, adjusted for inflation) which were required to be submitted from October 15, 2010 to April 15, 2012. Thus, the minimum liability amount is **\$44,000**.

#### **PROPOSED LIABILITY**

20. As described in Attachment A, it is recommended that the Los Angeles Water Board impose civil liability against the Respondents in the amount of **\$90,515.00** for the violations described in this Complaint. If the Respondents elect to contest this matter, the recommended liability may increase to recover additional necessary staff costs.

Dated this 22nd day of June, 2012.

  
\_\_\_\_\_  
PAULA RASMUSSEN  
Assistant Executive Officer

## ATTACHMENT A 10-STEP PENALTY CALCULATION METHODOLOGY

The State Water Resources Control Board's Water Quality Enforcement Policy (amended November, 2009)<sup>1</sup> establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in CWC section 13327. The liability methodology spreadsheet, Attachment B, is incorporated herein and made a part of this ACL Complaint by this reference. It presents the administrative civil liability derived from the use of the penalty methodology in the Enforcement Policy.

### 1. Step 1 – Potential for Harm for Discharge Violations

This step does not apply since the violations of Cleanup and Abatement Order No. R4-2010-0095 (CAO) alleged in the Complaint are non-discharge violations.

### 2. Step 2 – Assessment for Discharge Violations

This step does not apply since the violations of Cleanup and Abatement Order No. R4-2010-0095 (CAO) alleged in the Complaint are non-discharge violations.

### 3. Step 3 – Per Day Assessments for Non-Discharge Violations

Regional Board staff used the matrix set forth in Table 3 of the Enforcement Policy to calculate an initial liability factor for the violations of the CAO, considering the "potential for harm" and the extent of "deviation from applicable requirements."

Staff determined that the **Potential for Harm** was **Moderate** since historical groundwater quality data showed existence of chlorinated volatile organic compounds, known to be carcinogens to humans, at concentrations above the maximum regulatory threshold. Thus, "the characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm" as described in the Enforcement Policy.

Staff determined that the **Deviation from Requirement** was **Major** since the Dischargers completely disregarded the requirements of the CAO to submit technical reports, constituting a complete deviation from the requirement. Thus, "the requirement has been rendered ineffective (e.g., the discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions)" as described in the Enforcement Policy.

From the range given in the matrix set forth in Table 3 of the Enforcement Policy non-discharge violations of this type, Staff selected a **Per Day Factor** of **0.55**, which is the

<sup>1</sup> The Enforcement Policy may be found at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)

average factor in the given range.

Pursuant to CWC section 13350, the Regional Board may assess a maximum administrative civil liability of **\$5,000** for each day in which the Dischargers fail to comply with requirements of Cleanup and Abatement Order No. R4-2010-0095.

The Dischargers have been in violation for **617** days, calculated from the October 15, 2010 due date for the first groundwater monitoring report through June 22, 2012, the date of the Complaint.

The **initial per day assessment** is the Per Day Factor (0.55) multiplied by the maximum per day amount allowed under the Water Code (\$5,000), which equals **\$2,750**.

The **initial amount of penalty** is the initial per day assessment (\$2,750) multiplied by the number of violation days (617), which equals **\$1,696,750**.

However, in accordance with the Enforcement Policy (page 18), an alternative approach to penalty calculation for violations that last more than 30 days may be used if the Los Angeles Water Board can make express findings that the violation:

- a. Is not causing daily detrimental impacts to the environment or the regulatory program;
- b. Results in no economic benefit from the illegal conduct that can be measured on a daily basis; **or**
- c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

Los Angeles Water Board staff has determined that the alternative penalty calculation approach is appropriate since the violations result in no economic benefit from the illegal conduct that can be measured on a daily basis.

The alternative penalty calculation approach provides that for violations lasting more than 30 days, the liability shall not be less than an amount that is calculated based on an assessment of the initial liability amount for the first day of the violation, plus an assessment for each 5 day period of violation until the 30<sup>th</sup> day, plus an assessment for each 30 days of violation thereafter.

Using the alternative penalty calculation approach, 26 days' worth of violations would be accrued, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, 90, and so forth for every additional 30 days of violation within the 617 day total.

After adjusting the number of days in violation, Staff calculated the Initial Amount of the Administrative Civil Liability as **\$71,500**. This amount was determined by multiplying the Per Day Factor (0.55) by the adjusted number of days of violation (26 days) by the

maximum per day amount (\$5,000).

#### **4. Step 4 – Adjustment Factors**

Staff considered Violator's Conduct Factors to calculate adjustments to the amount of the Initial Amount of the Administrative Civil Liability as follows:

**Culpability** - The Dischargers are culpable for the violations. The Dischargers were given sufficient notice (one official Notice of Violation and another notice at a meeting) to submit the required documentation to come into compliance. The Dischargers therefore knew about the requirement of the CAO and failed to comply. Upon receiving the first notice, a reasonable and prudent person would have submitted the required technical documents to come into compliance. For this reason, staff selected a factor of 1.1. This factor was then multiplied by the Initial Amount, which resulted in \$78,650.

**Cleanup and Cooperation** - The Dischargers have not voluntarily cooperated in returning to compliance. As of the date of the Complaint, the Dischargers have yet to come into compliance with the CAO by submitting the required documentation, despite one official notice by the Regional Board and a meeting with Regional Board staff. However, the Dischargers attempted limited site cleanup and submitted required technical reports in the past. Therefore, Staff selected 1 which is within the given range. 1 was then multiplied by \$78,650, which remained the same.

**History of Violations** - The Dischargers violated prior California Water Code (CWC) Section 13267 Orders. Therefore, the Dischargers have a history of violations. Staff selected 1.1, which is a minimum multiplier for repeated violations. 1.1 was then multiplied by \$78,650, which resulted in \$86,515.

#### **5. Step 5 – Determination of Total Base Liability Amount**

After considering the Adjustment Factors, Staff calculated the **Total Base Liability Amount** as **\$86,515**.

#### **6. Step 6 – Ability to Pay and Ability to Continue in Business**

Staff lacks sufficient financial information necessary to assess the Dischargers' ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the Dischargers' ability to continue in business. This lack of information is in large part due to the Dischargers' failure to provide information requested to support their claim of financial hardship. Therefore, Staff selected 1, which is a neutral multiplier. Accordingly, the Total Base Liability Amount was not adjusted.

#### **7. Step 7 – Other Factors as Justice May Require**

Staff believes that the Total Base Liability Amount determined using the above factors is

appropriate. Therefore, Staff selected 1, which is a neutral multiplier. Accordingly, the Total Base Liability Amount was not adjusted.

The costs of investigation and enforcement are "other factor as justice may require" and should be added to the Total Base Liability Amount. Staff costs incurred by the Regional Board to date are **\$4,000**. This amount was added to the Total Base Liability Amount, which equals **\$90,515**.

#### **8. Step 8 – Economic Benefit**

Staff estimates the cost-savings for non-compliance to be approximately \$40,000 which is an estimate based on the guidelines presented in the State Water Resources Control Board (SWRCB) Underground Storage Tanks Cleanup Fund's *Cost Guidelines* (Draft Final, October 1, 2001) for consulting costs of producing the required work plan and the seven groundwater monitoring reports (\$5,000 each, adjusted for inflation) which were required to be submitted from October 15, 2010 to April 15, 2012.

#### **9. Step 9 – Maximum and Minimum Liability Amounts**

The minimum liability amount is \$44,000 (economic benefit plus 10%). The maximum liability amount for 617 days of violation is \$3,085,000.

#### **10. Step 10 – Final Liability Amount**

In accordance with the above methodology, Staff recommends a Final Liability Amount of **\$90,515**. Staff has determined that this Final Liability Amount is within the statutory minimum and maximum amounts.

**WAIVER FORM**

**FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2012-0110**

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

I am duly authorized to represent Mr. Edward Waymire, Waymire Drum Company, Mr. Rafiel Shahbazian, and/or Mitchell Investors, LLC (hereinafter "Dischargers") in connection with Administrative Civil Liability Complaint No. R4-2012-0110 (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 Dischargers waive the hearing requirement and will pay the recommended liability.)**
- a. I hereby waive any right the Dischargers may have to a hearing before the Regional Water Board.
  - b. I certify that the Respondents will remit payment for the civil liability imposed in the amount of **\$90,515** by check that references "ACL Complaint No. R4-2012-0110" made payable to the "*Cleanup and Abatement Account*". Payment must be received by the Regional Water Board by **July 23, 2012** or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
  - c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Dischargers 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 Dischargers to further enforcement, including additional civil liability.

- (OPTION 2: Check here if the Dischargers waive the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Dischargers 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 Dischargers 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 Dischargers request that the Regional Water Board delay the hearing so that the Dischargers 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)

For \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Print Name and Title)

For \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Instructions**

1. Select Potential Harm for Discharge Violations
2. Select Characteristics of the Discharge
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Standard
5. Click "Determine Harm & per Gallon/Day..."
6. Enter Values into the yellow highlighted fields

Select Item Potential Harm for Discharge Violations  
 Select Item Characteristics of the Discharge  
 Select Item Susceptibility of Cleanup or Abatement  
 Select Item Deviation from Requirement

Discharger Name/ID: Former Waymire Drum Company		Violation 1	
<b>Step 1</b>	Potential Harm Factor (Generated from Button)		
<b>Step 2</b>	Per Gallon Factor (Generated from Button)		
	Gallons		
	Statutory / Adjusted Max per Gallon (\$)		
	<b>Total</b>		\$
	Per Day Factor (Generated from Button)	0	
	Days		
	Statutory Max per Day		\$
	<b>Total</b>		\$
<b>Step 3</b>	Per Day Factor	0.55	
	Days	26	
	Statutory Max per Day	5,000	
	<b>Total</b>		\$ 71,500.00
	<b>Initial Amount of the ACL</b>		\$ 71,500.00
<b>Step 4</b>	Culpability	1.1	\$ 78,650.00
	Cleanup and Cooperation	1	\$ 78,650.00
	History of Violations	1.1	\$ 86,515.00
<b>Step 5</b>	<b>Total Base Liability Amount</b>		\$ 86,515.00
<b>Step 6</b>	Ability to Pay & to Continue in Business	1	\$ 86,515.00
<b>Step 7</b>	Other Factors as Justice May Require	1	\$ 86,515.00
	Staff Costs	4,000	\$ 90,515.00
<b>Step 8</b>	Economic Benefit	40,000	\$ 90,515.00
<b>Step 9</b>	Minimum Liability Amount	44,000	\$ 90,515.00
	Maximum Liability Amount	3,085,000	\$ 90,515.00
<b>Step 10</b>	<b>Final Liability Amount</b>		\$ 90,515.00

**Penalty Day Range Generator**

Start Date of Violation=	10/15/10
End Date of Violation=	6/22/12
Maximum Days Fined (Steps 2 & 3) =	617
Minimum Days Fined (Steps 2 & 3) =	26

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

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

ACLIC No. R4-2012-0110

**NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES**

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

<u>DISCHARGERS</u>	<u>DISCHARGE LOCATION</u>	<u>RECEIVING WATER</u>
Mr. Edward Waymire Waymire Drum Company Mr. Rafiel Shahbazian Mitchell Investors, LLC	Former Waymire Drum Company 7702 South Maie Avenue Los Angeles, California.	

Administrative Civil Liability Complaint (“ACLIC”) No. R4-2012-0110 alleges that Mr. Edward Waymire, Waymire Drum Company, Mr. Rafiel Shahbazian, and Mitchell Investors, LLC violated CWC §§ 13304 and 13267 by failing groundwater monitoring reports. As stated in the ACLIC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$90,515 be assessed against Mr. Edward Waymire, Waymire Drum Company, Mr. Rafiel Shahbazian, and Mitchell Investors, LLC for this violation.

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

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

**I. HEARING DATE AND LOCATION**

Date: September 20, 2012  
Time: 9:00 A.M.  
Place: To Be Determined

## II. AVAILABILITY OF DOCUMENTS

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

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

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

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the Hearing Panel binder. However, the entire file might not be present at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing Panel binder, they must submit a written or electronic request to the Case Manager of the Prosecution Team (identified in section V below) so that it is received by **5:00 pm on August 31, 2012**. 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. Mr. Edward Waymire, Waymire Drum Company, Mr. Rafiel Shahbazian, and Mitchell Investors, LLC
2. Regional Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Panel identified in section VIII below so that it is received by **5:00 pm on August 6, 2012**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall also include a

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

## **V. COMMUNICATIONS WITH THE PROSECUTION TEAM**

The California Administrative Procedure Act requires the Regional Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of Regional Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Mr. Bizuayehu Ayele, Engineering Geologist. Mr. Andrew Tauriainen, 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 Mr. Tauriainen 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:

Mr. Bizuayehu Ayele  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013  
(213) 576-6623  
[bayele@waterboards.ca.gov](mailto:bayele@waterboards.ca.gov)

## **VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE**

### **A. Submittals By Parties.**

Not later than **August 1, 2012**, 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.

Mr. Edward Waymire, Waymire Drum Company, Mr. Rafiel Shahbazian, and Mitchell Investors, LLC are required to submit:

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

to the attention of the Case Manager of the Prosecution Team (as identified above) and other designated parties so that it is received by **5:00 pm on August 22, 2012**. All documentation listed above must be received by the deadline, or it may be excluded from consideration by the Hearing Panel. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Panel and the parties a final Hearing Panel binder no later than **September 10, 2012**.

#### **B. Submittals By Interested Persons.**

Persons who are not designated as parties, above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Panel to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by the Prosecution Team, included in the final Hearing Panel binder, and fully considered by the Hearing Panel in advance of the hearing, any such written materials must be received by **5:00 pm on July 23, 2012**. If possible, please submit written comments in Word format electronically to bayele@waterboards.ca.gov. Interested persons should be aware the Regional Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Panel will also receive oral comments from any person during the hearing (see below).

#### **VII. HEARING PROCEDURES**

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

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

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

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

anticipated, and the time available for the hearing. The parties should contact the Case Manager by **5:00 pm on August 22, 2012** to state how much time they believe is necessary for their presentations (see Section VI.A above). It is the Regional Board's intent that reasonable requests be accommodated.

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

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

## **VIII. COMMUNICATIONS WITH THE HEARING PANEL**

### **A. Ex Parte Communications Prohibited.**

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

### **B. Hearing Panel Advisors.**

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

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

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Panel as stipulations.
2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing and received by the Legal Advisor to the Hearing Panel (identified below) by **5:00 pm on August 22, 2012.**

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

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

3. Any issues outside the scope of those described in section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Panel, as set forth in section C.2, by **5:00 pm on August 22, 2012** if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

#### **IX. QUESTIONS**

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

Date: June 22, 2012

# Administrative Civil Liability

## Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint (complaint) by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer. The complaint describes the violations that alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

### Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person/s named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

## **Complaint Resolution options**

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; (5) hearing. Each of these options is described below.

**Withdrawal:** may result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

**Withdrawal and reissuance:** may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

**Payment and waiver:** may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

**Settlement:** results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at:

[http://www.waterboards.ca.gov/plans\\_policies/](http://www.waterboards.ca.gov/plans_policies/). Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

**Hearing:** if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Regional Water Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Regional Water Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

## **Factors that must be considered by the Regional Water Board**

Except for Mandatory Minimum Penalties under Water Code section 13385 (h) and (i), the Regional Water Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Cal. Water Code §§ 13327, 13385(e) & 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
  - IRS Form 1120 for C Corporations
  - IRS Form 1120 S for S Corporations
  - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:
  - Audited Financial Statements for last three years;
  - A list of major accounts receivable with names and amounts;
  - A list of major accounts payable with names and amounts;
  - A list of equipment acquisition cost and year purchased;
  - Ownership in other companies and percent of ownership for the last three years;
  - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
  - City/Town/Village;
  - County;
  - Municipality with enterprise fund;
  - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
  - Population;
  - Number of persons age 18 and above;
  - Number of persons age 65 and above;
  - Number of Individual below 125% of poverty level;
  - Median home value;
  - Median household income.
3. Current or most recent estimates of:
  - Population;
  - Median home value;
  - Median household income;
  - Market value of taxable property;
  - Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;

9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

### **Petitions**

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at:

[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/index.shtml](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml)

An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code section 13328, if necessary, in order to collect payment of the administrative civil liability amount.