



Los Angeles Regional Water Quality Control Board

March 23, 2012

Ms. Sindy Cardona Escobar
Owner/Operator
Liberty Metals
5535 Alba Street
Los Angeles, CA 90058

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Claim No. 7005 0390 0000 4138 6495

COMPLAINT NO. R4-2012-0061 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST SINDY CARDONA ESCOBAR AND LIBERTY METALS, 5535 ALBA STREET, LOS ANGELES, CALIFORNIA (ORDER NO. 97-03 DWQ, NPDES PERMIT NO. CAS000001, WDID NO. 419IN601614)

Dear Ms. Cardona:

Enclosed is Complaint No. R4-2012-0061 for Administrative Civil Liability in the amount of \$5,000 against Sindy Cardona Escobar and Liberty Metals (hereinafter Discharger) for failure to obtain the required permit coverage for the discharge of storm water associated with industrial activity for the metal recycling facility located at 5535 Alba Street, Los Angeles CA 90058. Also enclosed is a copy of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) Notice of Public Hearing to Consider an Administrative Civil Liability Complaint.

Unless waived, a hearing before the Regional Board or a Regional Board Hearing Panel (Hearing Panel) will be held on this Complaint pursuant to California Water Code §§ 13228.14 and 13323. Should the Discharger choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. R4-2012-0061 and return it to the Regional Board by 5:00 pm on **April 23, 2012**. If we do not receive the waiver and full payment of the administrative civil liability by **April 23, 2012**, this matter will be heard before the Regional Board or a Hearing Panel. 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 Ms. Pansy Yuen at (213) 620-6367.

Sincerely,


Paula Rasmussen
Assistant Executive Officer

- Enclosures:
1. Administrative Civil Liability Complaint No. R4-2012-0061 and Waiver Form
 2. Notice of Public Hearing
 3. Administrative Civil Liability Fact Sheet

Ms. Sindy Cardona Escobar
Liberty Metals

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cc: [via e-mail only]
Ms. Jennifer Fordyce, Office of Chief Counsel, State Water Resources Control Board
Ms. Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board

MARIA MEHRANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/losangeles

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

In the matter of:)	Complaint No. R4-2012-0061
)	For
Sindy Cardona Escobar and)	Administrative Civil Liability
Liberty Metals)	
5535 Alba Street)	Violation of California Water Code
Los Angeles, California 90058)	§ 13399.30

This Complaint under authority of California Water Code (CWC) § 13323 to assess administrative civil liability pursuant to CWC § 13399.33 is issued to Sindy Cardona Escobar and Liberty Metals (hereinafter collectively referred to as “Discharger”) for failure to obtain the required permit coverage for the discharge of storm water associated with industrial activity at 5535 Alba Street, Los Angeles (WDID No. 419IN601614).

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

1. Sindy Cardona Escobar owns and operates Liberty Metals, a metal recycling facility located at 5535 Alba Street, Los Angeles, CA 90031 (hereinafter “Site”). The subject Site discharges storm water associated with an industrial activity, particularly activity encompassed by Standard Industrial Classification (SIC) code number 5093 – Scrap and Waste Materials, into waters of the United States.
2. Federal regulations require operators of specific categories of facilities where discharges of storm water are associated with an industrial activity to obtain a National Pollutant Discharge Elimination System (NPDES) permit and to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or to prevent pollutants associated with an industrial activity in storm water discharges and to authorize non-storm water discharges. The regulations require such operators either to apply for an individual NPDES permit or to seek coverage under an adopted storm water general permit.
3. Pursuant to federal regulations, the State Water Resources Control Board (State Water Board) adopted Water Quality Order No. 97-03-DWQ NPDES Permit No. CAS000001, Waste Discharge Requirements for Dischargers for Storm Water Associated with Industrial Activities Excluding Construction Activities (Industrial General Permit), to regulate storm water discharges and authorized non-storm water discharges associated with industrial activities set forth in the federal regulations. To obtain coverage, facility operators must submit a Notice of Intent (NOI) and comply with the terms and conditions of the Industrial General Permit.

March 23, 2012

4. The facilities that are required to get permit coverage are listed by industrial category and by SIC codes in 40 CFR § 122.26(b)(14) and in Attachment "1" of the Industrial General Permit, including SIC Code 5093 for Scrap and Waste Materials. Thus, coverage under the NPDES permit at the Site is required for facilities primarily engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials, and must be obtained prior to the start of operations.
5. CWC § 13399.30(a)(2) states, in relevant part, that any person, including a person subject to municipal or industrial storm water requirements, that discharges, proposes to discharge, or is suspected by a Regional Board or the State Water Board of discharging storm water associated with industrial activity that has not obtained coverage under an appropriate storm water NPDES permit, shall submit to the Regional Board, within 30 days from the date on which a notice is sent by the Regional Board, the appropriate notice of intent (NOI) to obtain coverage under an NPDES permit or a notice of nonapplicability.
6. CWC § 13399.30(b) states, in relevant part, if a person to which a notice is sent pursuant to CWC § 13399.30(a) fails to submit the appropriate NOI to obtain coverage to the Regional Board within 30 days from the date on which that notice is sent, the executive officer shall send a second notice to that discharger.

BACKGROUND AND ALLEGATIONS

7. An anonymous complaint was received by the Regional Board on August 29, 2011, in regards to Liberty Metals operating a scrap metal recycling yard without a stormwater permit. According to the complainant, Liberty Metals was alleged to be in operation on August 23, 2011.
8. On September 1, 2011, Regional Board staff inspected the Site located at 5535 Alba Street, Los Angeles, CA 90058. During the inspection Regional Board staff confirmed that the Site is subject to the requirements of the Industrial General Permit and advised Sindy Cardona Escobar of the requirement to file a NOI.
9. Pursuant to CWC § 13399.30, the Regional Board issued a Notice of Non-Compliance (NNC) addressed to the Discharger via certified mail for failure to obtain coverage under the Industrial General Permit for storm water discharges associated with an industrial activity on September 9, 2011. The NNC required the Discharger to file an appropriate NOI to obtain coverage under the Industrial General Permit and to submit an annual fee to the State Water Board by October 11, 2011. In addition, the NNC also required the Discharger to submit a copy of the NOI and a completed Storm Water Pollution Prevention Plan (SWPPP) with certification signature to the Regional Board by October 18, 2011. The return receipt showed that the NNC was received by the Discharger at the Site on September 9, 2011. The Discharger did not submit an NOI and did not otherwise respond to the letter within 30 days from the September 9, 2011 date on which the notice was sent to the Discharger.
10. Following the NNC, a Notice of Violation (NOV) was issued by the Chief Prosecutor of the Regional Board via certified mail addressed to the Discharger on December 22, 2011.

for failing to submit the NOI within 30 days of issuance of the NNC. The NOV informed the Discharger that it was in violation of the CWC § 13399.30 by failing to file a NOI for activities covered by the Industrial General Permit. The letter also informed the Discharger of the administrative civil liability pursuant to CWC § 13399.33(a)(1) for failure to submit the NOI. The NOV required the Discharger to submit a completed NOI with an annual fee to the State Water Board by January 23, 2012, and to submit a copy of the NOI and a completed SWPPP with certification signature to the Regional Board by January 23, 2012. The return receipt showed that the NOV was received by Eddy Moran at the Site.

11. The Discharger failed to respond to the NNC and the NOV and to date, the Discharger has not submitted the NOI. By not submitting the NOI, the Site violated provisions of the Federal Clean Water Act and the CWC.
12. As of March 23, 2012, the Discharger has not submitted the required NOI for the Site.

PROPOSED LIABILITY

13. Pursuant to CWC §13399.30(c)(2), if a discharger fails to submit the required NOI to obtain coverage to the Regional Board within 60 days from the date on which the notice pursuant to § 13399.30(a) was sent, the Regional Board shall impose the penalties described in CWC § 13399.33(a).
14. CWC § 13399.33(a)(1) provides that with regard to a discharger of storm water associated with industrial activity that fails to submit the required NOI to obtain coverage in accordance with CWC § 13399.30, the Regional Board shall impose civil liability administratively in an amount not less than \$5,000 per year of noncompliance or fraction thereof, unless the Regional Board makes express findings setting forth the reasons for its failure to do so as required in CWC § 13399.33(a)(2).
15. Through the NNC issued on September 9, 2011, the Discharger was given notice by the Regional Board pursuant to § 13399.30(a) that the Site required coverage under the Industrial General Permit. The Discharger did not submit the required NOI to the Regional Board within 60 days of this notice. As of March 23, 2012, it has been 196 days since notice was given to the Discharger.
16. The proposed penalty for the violation described above is **\$5,000**, the minimum penalty per year of noncompliance or fraction thereof for failure to submit the required NOI as detailed in CWC § 13399.33(a)(1).

YOU ARE HEREBY GIVEN NOTICE THAT:

17. Sindy Cardona Escobar and Liberty Metals is alleged to have violated provisions of law for which the Regional Board may impose liability under § 13399.33(a) of the CWC.
18. The Assistant Executive Officer proposes that the Discharger be assessed the minimum penalty under CWC § 13399.33(a)(1) in the amount of **\$5,000** for the failure to submit the required NOI to obtain coverage in accordance with CWC § 13399.30.

19. The Discharger may waive the right to a hearing and pay the recommended civil liability. Should the Discharger choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return it to the Regional Board by 5:00 pm on **April 23, 2012**. If the hearing is waived, a check in the amount of \$5,000 (payable to the State Water Pollution Cleanup and Abatement Account) must be received by the Regional Board by 5:00 pm on **April 23, 2012**.
20. If the Regional Board does not receive a waiver and full payment of the recommended penalty by **April 23, 2012**, the Complaint will be heard before the Regional Board or a Regional Board Hearing Panel pursuant to California Water Code §§ 13228.14 and 13323. The Notice of Public Hearing contains that date, time, location, and specific procedures of the scheduled hearing of this matter.
21. If a hearing on this matter is held, the Regional Board will consider whether to affirm, reject, or modify (i.e. increase the proposed civil liability above the minimum penalty) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.
22. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not administrative proceedings. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
23. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations for which penalties have not yet been assessed or for violations that may subsequently occur.
24. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code § 21000 et seq., in accordance with California Code of Regulations, title 14, § 15321.
25. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.



Paula Rasmussen

Assistant Executive Officer

Los Angeles Regional Water Quality Control Board

March 23, 2012

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2012-0061

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

I am duly authorized to represent Sindy Cardona Escobar and Liberty Metals (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R4-2012-0061 (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."

Check here if the Discharger waives the hearing requirement and will pay the recommended liability.

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **\$5,000** by check that references "ACL Complaint No. R4-2012-0061" made payable to the "*Cleanup and Abatement Account*". Payment must be received by the Regional Water Board by **April 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 Assistant 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 Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

Name (print)

Signature

Title

Date

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

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

ACLC No. R4-2012-0061

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES

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

DISCHARGER

Sindy Cardona Escobar and
Liberty Metals

DISCHARGE LOCATION

5535 Alba Street
Los Angeles, CA 90058

RECEIVING WATER

Compton Creek, tributary
to the Los Angeles River

Administrative Civil Liability Complaint (“ACLC”) No. R4-2012-0061 alleges that Sindy Cardona Escobar and Liberty Metals (Discharger) violated CWC § 13399.30 by failing to obtain required permit coverage. As stated in the ACLC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$5,000 be assessed against the Discharger 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 ACLC.

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

I. HEARING DATE AND LOCATION

Date: June 21, 2012

Time: 9:00 A.M.

Place: TBD

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 4th 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 June 1, 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. Sindy Cardona Escobar and Liberty Metals
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 May 7, 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 Ms. Pansy Yuen, Environmental Scientist. Ms. Mayumi Okamoto, Staff Counsel from the State Water Resources Control Board's Office of Enforcement will advise the Prosecution Team prior to and at the panel hearing. Neither Ms. Mayumi Okamoto nor the members of the Prosecution Team will be advising the Regional Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the hearing panel (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Ms. Pansy Yuen
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-6367
pyuen@waterboards.ca.gov

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

A. Submittals By Parties.

Not later than **May 2, 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.

Sindy Cardona Escobar and Liberty Metals 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 May 23, 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 **June 11, 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 April 23, 2012**. If possible, please submit written comments in Word format electronically to pyuen@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 May 23, 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 May 23, 2012.**

Ms. Jennifer Fordyce
State Water Resources Control Board
1001 I Street, 22nd 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 May 23, 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: March 23, 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/. 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

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.