CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

September 16, 2015

Ms. Sarah Postyn
Western Multifamily LLC
c/o GID Investment Advisers LLC
80 E. Sir Francis Drake Blvd., Suite 3G
Larkspur, CA 94939

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7014 2870 0001 4613 7490

Legal Department
Western Multifamily LLC
c/o GID Investment Advisers LLC
125 High Street, High Street Tower
Boston, MA 02110

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7014 2120 0004 7561 6125

COMPLAINT NO. R4-2014-0102 FOR MANDATORY MINIMUM PENALTY AGAINST WESTERN MULTIFAMILY LLC, SEA CASTLE APARTMENTS, 1725 OCEAN FRONT WALK, SANTA MONICA, CALIFORNIA (ORDER NO. R4-2009-0047, NPDES PERMIT NO. CAG994003, CI-8207)

Dear Ms. Postyn:

Enclosed is Complaint No. R4-2014-0102 for Mandatory Minimum Penalties in the amount of $27,000 against Western Multifamily LLC (hereinafter Permittee) for violating waste discharge requirements and monitoring and reporting requirements contained in Regional Water Quality Control Board, Los Angeles Region (Regional Board) Order No. R4-2009-0047. Also enclosed is a copy of the Regional Board "*Hearing Procedures for Administrative Civil Liability Compliant No. R4-2014-0102*" (Hearing Procedures).

Unless waived, a hearing before the Executive Officer of the Regional Board will be held on this Complaint pursuant to Executive Order No. EO-2014-01. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. R4-2014-0102 and return it with full payment to the Regional Board by 5:00 pm on **October 16, 2015**. If we do not receive the waiver and full payment of the mandatory minimum penalty or the waiver to engage in settlement negations by **October 16, 2015** this matter will be heard before the Executive Officer on **December 15, 2015**. An agenda containing the date, time, location and specific procedures of the hearing will be mailed to you prior to the hearing date.

Should you have any questions regarding this matter, please contact Mr. Russ Colby at (213) 620-6373 / russ.colby@waterboards.ca.gov or Mr. Andrew Choi at (213) 576-6791 / andrew.choi@waterboards.ca.gov.

Sincerely,

Paula Rasmussen
Assistant Executive Officer

Enclosures: Complaint No. R4-2014-0102
Exhibit "1"
Hearing Procedures

cc: [via e-mail only]
Ms. Jennifer Fordyce, Office of Chief Counsel, SWRCB
Ms. Laura Drabandt, Office of Enforcement, SWRCB
Ms. Vanessa Young, Office of Enforcement, SWRCB
Ms. Kailyn Ellison, Office of Enforcement, SWRCB
Mr. Stephen J. O'Neil, Sheppard Mullin Richter & Hampton LLP
Ms. Jacqueline Taylor, Bureau of Environmental Protection, Los Angeles County Department of Public Health [jactaylor@ph.lacounty.gov]
Ms. Kathleen Johnson, Enforcement Division, USEPA [johnson.kathleen@epa.gov]
Ms. Nancy Woo, Water Division, USEPA [woo.nancy@epa.gov]
Ms. Alix Hobbs, Heal the Bay [ahobbs@healthebay.org]
Ms. Rachel Stich, Los Angeles Water Keeper [rachel@lawaterkeeper.org]
Mr. Graham Hamilton, West LA/Malibu Chapter, Surfrider Foundation [ghamilton@wlam.surfrider.org]

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

In the matter of:	)	**Complaint No. R4-2014-0102**
	)	**Mandatory Minimum Penalty for**
Western Multifamily LLC	)	**Violation of California Water Code Sections 13376 and 13385**
Sea Castle Apartments	)	**and**
Los Angeles, California	)	**Order No. R4-2009-0047**
	)	**(NPDES No. CAG994003)**

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (Water Code) section 13385, subdivisions (h) and (i) is issued to Western Multifamily LLC (hereinafter Permittee) based on a finding of violations of waste discharge requirements prescribed in Order No. R4-2009-0047 (NPDES No. CAG994003, CI No. 8207).

The Chief Prosecutor of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) alleges the following:

1. The Permittee owns an apartment building (hereinafter facility) located at 1725 Ocean Front Walk, Santa Monica, California. The Permittee discharges up to 20,000 gallons per day of wastewater that consists of blowdown water from a cooling tower and infiltrating groundwater. The discharge flows into the Pico Kenter Storm Drain, then to Santa Monica Bay, a water of the United States. The wastewater is susceptible to containing total suspended solids, settleable solids, copper, and other pollutants, which can degrade water quality and impact beneficial uses of water, and which are defined as wastes under the Porter-Cologne Water Quality Control Act (Water Code section 13000 et seq.).

2. On April 2, 2009, the Regional Board adopted Order No. R4-2009-0047, NPDES Permit and Waste Discharge Requirements for *Discharges of Nonprocess Wastewater to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties.* On January 29, 2010, the Executive Officer determined that the waste discharges from the Permittee's facility met the conditions to be enrolled under Order No. R4-2009-0047.

3. Order No. R4-2009-0047, (Effluent Limitations and Discharge Specifications V. Table 1 and Table 9, pages 13 to 18) contains the following effluent limitations for total suspended solids, settleable solids and copper:

Constituent	Unit of Measure	Discharge Limitations	
		Daily Maximum	Monthly Average
Total Suspended Solids	mg/L	150	50
Settleable Solids	mL/L	0.3	0.1
Copper	µg/L	5.8	2.9

mg/L = milligrams/liter, mL/L = milliliters/liter, µg/L = micrograms/liter

4. Reporting Requirements of the Monitoring and Reporting Program included in Order No. R4-2009-0047 require the Permittee to prepare and submit quarterly NPDES self-monitoring reports to the Regional Board according to the following schedule, pursuant to the authority of Water Code section 13383:

Reporting Period	Report Due
	Order No. R4-2009-0047 Reporting Requirements I.X.B.3 – Table 2
January – March	May 15
April – June	August 14
July – September	November 14
October – December	February 14

5. On June 17, 2014, the Chief Prosecutor of the Regional Board issued the Permittee Settlement Offer No. R4-2014-0102 to participate in the Expedited Payment Program (Settlement Offer). The Settlement Offer was sent via certified mail and received by the Permittee on June 23, 2014. The Settlement Offer included a Notice of Violation (NOV) notifying the Permittee of eight effluent limit violations and one late reporting violation. These violations were cited in Exhibit "1" of the Settlement Offer as subject to mandatory minimum penalties (MMPs) in the total amount of $27,000. The Settlement Offer required the Permittee to respond on or before July 17, 2014.

6. On July 29, 2014, the Permittee's representative, Mr. Stephen J. O'Neil, requested that the due date of July 17, 2014 for submission of a response be extended to August 8, 2014. The request was being made to allow the Permittee's new staff enough time to review the facts and details of the violation. To date, the Permittee has not accepted the Settlement Offer.

7. Therefore, eight effluent limit violations and one late reporting violation of Order No. R4-2009-0047 were noted in the Permittee's self-monitoring reports, as cited in Exhibit "1". All the violations are subject to mandatory minimum penalties in the amount of $27,000. These violations are listed in Exhibit "1", which is incorporated herein by reference.

8. Any discharge containing pollutants violating the effluent limitations set in the waste discharge requirements is prohibited by Water Code section 13376.

9. The maximum amount of administrative civil liability assessable pursuant to Water Code section 13385 subdivision (c) is $10,000 per day of violation plus $10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

10. Water Code section 13385 subdivision (h) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars ($3,000) for each serious violation. Pursuant to Water Code section 13385 subdivision (h)(2) "a 'serious violation' means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant ... by 20 percent or more or for a Group I pollutant ... by 40 percent or more." Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants.

11. Water Code section 13385 subdivision (i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars ($3,000) for each violation

whenever the permittee violates a waste discharge requirement effluent limitation in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations within that time period.

12. Water Code section 13385.1 subdivision (a)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars ($3,000) for a "serious violation" defined by that section as "a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations." This section applies to violations occurring on or after January 1, 2004.

YOU ARE HEREBY GIVEN NOTICE THAT:

13. The Chief Prosecutor proposes that the Permittee be assessed a mandatory minimum penalty in the amount of $27,000 for the violations cited in Exhibit "1". This Complaint addresses administrative civil liability for violations that are specifically identified in Exhibit "1" as subject to a mandatory minimum penalty. Refer to Exhibit "1" for the calculation of the amount of mandatory minimum penalty.

14. The Permittee may waive the right to a hearing and pay the recommended civil liability. Should the Permittee 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 **October 16, 2015**. If the hearing is waived, a check in the amount of $27,000 (payable to the *State Water Pollution Cleanup and Abatement Account*) must be received by the Regional Board by 5:00 pm on **October 16, 2015**.

15. If the Regional Board does not either receive a waiver and full payment of the recommended penalty or a waiver to engage in settlement negotiations by **October 16, 2015**, the Complaint will be heard before the Executive Officer of the Regional Board pursuant to Executive Order No. EO-2014-01. The attached *"Hearing Procedures for Administrative Civil Liability Complaint No. R4-2014-0102"* contains the date, time, location and specific procedures of the scheduled hearing of this matter.

16. If a hearing on this matter is held, the Executive Officer of the Regional Board, pursuant to authority delegated to the Executive Officer by Resolution No. R14-005, will hear evidence, determine facts, make conclusions of law and consider whether to issue an Administrative Civil Liability Order assessing the proposed liability, or a higher or lower amount. The Executive Officer may also decline to assess any liability, may continue the hearing to a later date or may refer the matter to the Attorney General for assessment of judicial civil liability.

17. 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, Section 405(2), p. 510.) Additionally, the State Water Resources Control Board determined that the equitable doctrine of laches does not apply to mandatory minimum penalties. (State Water Board Order Nos. 2013-0053, 2013-0054, 2013-0055, and 2013-0099.)

18. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the Permittee's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

19. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, section 15321.

20. 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

September 16, 2015

Paula Rasmussen
Assistant Executive Officer
Los Angeles Regional Water Quality Control Board

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2014-0102

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

I am duly authorized to represent the Western Multifamily LLC (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. R4-2014-0102 (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 Permittee waives the hearing requirement and will pay the recommended liability.***

a. I hereby waive any right the Permittee may have to a hearing before the Regional Board.

b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of **$27,000** by check that references "ACL Complaint No. R4-2014-0102" made payable to the "*State Water Pollution Cleanup and Abatement Account*". Payment must be received by the Regional Board by **October 16, 2015** or this matter will be placed on the 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 Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Chief Prosecutor may withdraw the complaint, return payment and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Permittee 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 Permittee to further enforcement, including additional civil liability.

☐ ***OPTION 2: Check here if the Permittee waives the 90-day hearing requirement in order to engage in settlement discussions.***

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

Western Multifamily LLC

(Signed Name)	(Date)
(Printed or typed name)	(Title)

EXHIBIT "1"
Effluent Limit Violations

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/ Chronic	Water Code Section 13385	Penalty
03/31/10	1st Quarter 2010	Monthly Average	Settleable Solids	0.2	0.1	mL/L	1	100%	Serious	(h)1	$3,000
04/21/10	2nd Quarter 2010	Daily Max	Copper	400	5.8	µg/L	2	6797%	Serious	(h)1	$3,000
04/21/10	2nd Quarter 2010	Daily Max	Settleable Solids	1.5	0.3	mL/L	1	400%	Serious	(h)1	$3,000
04/30/10	2nd Quarter 2010	Monthly Average	Suspended Solids	61	50	mg/L	1	22%	Chronic	(i)1	$3,000
04/30/10	2nd Quarter 2010	Monthly Average	Copper	400	2.9	µg/L	2	13693%	Serious	(h)1	$3,000
04/30/10	2nd Quarter 2010	Monthly Average	Settleable Solids	1.5	0.1	mL/L	1	1400%	Serious	(h)1	$3,000
05/31/10	2nd Quarter 2010	Monthly Average	Copper	5	2.9	µg/L	2	72%	Serious	(h)1	$3,000
05/31/10	2nd Quarter 2010	Monthly Average	Settleable Solids	0.2	0.1	mL/L	1	100%	Serious	(h)1	$3,000
										Total	**$24,000**

EXHIBIT "1"
Late Reporting Violations

Reporting Period	Violation Type	Due Date	Received Date	Days Late	# of Complete 30-Day Periods	Serious/ Chronic	Water Code Section 13385	Amount Per 30-Day Period	Penalty
1st Quarter 2010	Late Report	05/15/2010	07/07/2010	53	1	Serious	(h)(1)	$3,000	$3,000
							Total		**$3,000**
							Settlement Total		**$27,000**

California Regional Water Quality Control Board, Los Angeles Region

HEARING PROCEDURES
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R4-2014-0102

ISSUED TO
WESTERN MULTIFAMILY LLC
SEA CASTLE APARTMENTS

SCHEDULED FOR DECEMBER 15, 2015

PLEASE READ THESE HEARING PROCEDURES CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Overview

Pursuant to Water Code section 13323, the Assistant Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") has issued an Administrative Civil Liability (ACL) Complaint to Western Multifamily LLC (hereafter Discharger), alleging violations of Water Code sections 13385, subdivisions (h) and (i) and Water Code section 13385.1 by exceeding eight effluent limit violations and by failing to submit a required self-monitoring report. Regional Board staff, represented by the Regional Board Staff Prosecution Team ("Prosecution Team") propose in the ACL Complaint that the Regional Board impose administrative civil liability on the Discharger in the amount of $27,000.

A hearing on this matter is currently scheduled to be conducted before the Executive Officer on December 15, 2015. Pursuant to Resolution No. R14-005, the Regional Board has delegated authority to the Executive Officer to hold evidentiary hearings to consider allegations in ACL Complaints and to issue final ACL Orders on the Regional Board's behalf in certain matters. The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Executive Officer will hear evidence, determine facts, make conclusions of law and consider whether to issue an ACL Order assessing the proposed liability, or a higher or lower amount. The Executive Officer may also decline to assess any liability, or may continue the hearing to a later date. The public hearing will commence at 9:00 am or as soon thereafter as practical. The hearing will be held at:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street
Los Angeles, CA 90013

Hearing Procedures

The hearing will be a formal adjudicative proceeding and will be conducted in accordance with these Hearing Procedures. The Executive Officer has directed the use of these standardized hearing procedures for the adjudication of such matters. The procedures governing adjudicatory hearings before the Regional Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at http://www.waterboards.ca.gov. Copies will be provided upon request.

In accordance with section 648(d), any procedure not provided by these Hearing Procedures are deemed waived. Except as provided in section 648(b) and herein, Chapter 5 of the California Administrative Procedure Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

Objections to these hearing procedures must be in writing and must be received by the Advisory Team no later than the deadline listed under "Important Deadlines" below, or they will be waived. Objections about the matters contained in these Hearing Procedures will not be entertained at the hearing. Failure to comply with the deadline and requirements contained herein may result in the exclusion of documents and/or testimony. The Discharger shall attempt to resolve objections to these Hearing Procedures with the Prosecution Team BEFORE submitting objections to the Advisory Team.

The procedures and deadlines herein may be amended by the Executive Officer or by the Advisory Team.

Separation of Prosecutorial and Advisory Functions

The Regional Board separates prosecutorial and adjudicative functions in matters that are prosecutorial in nature. To ensure the fairness and impartiality of this proceeding, those who will act in a prosecutorial role by presenting evidence for consideration by the Executive Officer (the "Prosecution Team") are separate from those who will provide legal and technical advice to the Executive Officer (the "Advisory Team"). Members of the Advisory Team are: Ms. Cris Morris, Senior Water Resources Control Engineer and Ms. Jennifer Fordyce, Attorney III. Members of the Prosecution Team are: Ms. Paula Rasmussen, Assistant Executive Officer, Mr. Hugh Marley, Supervising Engineering Geologist, Mr. Russ Colby, Senior Environmental Scientist, Mr. Andrew Choi, Water Resources Control Engineer and Ms. Laura Drabandt, Attorney III.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Further, members of the Advisory Team have not exercised any authority over the Prosecution Team, or advised them with respect to this matter, or vice versa. Ms. Rasmussen regularly advises the Executive Officer in other, unrelated matters, but is not advising the Executive Officer in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Executive Officer in other, unrelated matters, but they are not advising the Executive Officer in this proceeding. Members of the Prosecution Team have not had any substantive ex parte communications with the Executive Officer or the Advisory Team regarding this proceeding.

Hearing Participants

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons."

Designated Parties are those subject to the ACL Complaint and other persons or organizations anticipated to have a substantial interest in the outcome of the hearing. Designated Parties may present written evidence, summarize their evidence orally at the hearing and cross-examine other parties' witnesses (if they are called). "Evidence" includes witness testimony, documents, and tangible objects that tend to prove or disprove the existence of any alleged fact. "Relevant evidence" is evidence that relates to any fact in dispute in the proceedings. Designated Parties are subject to cross-examination about any evidence they present.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Regional Board Prosecution Team

2. Western Multifamily LLC

Interested Persons include any person or organization that is interested in the outcome of the hearing, but who has not been designated as a Designated Party. Interested Persons generally may not present

evidence (e.g., photographs, eye-witness testimony, and monitoring data), but may present written and/or oral non-evidentiary comments and policy statements. Interested Persons may not cross-examine witnesses and are not subject to cross-examination.

At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Executive Officer, Advisory Team, or others, at the discretion of the Executive Officer.

Requesting Designated Party Status

Persons or organizations who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses, etc.), along with a statement explaining why the Designated Parties listed above do not adequately represent the person's or organization's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below. All participants will be notified before the hearing whether the request for designated party status is granted.

Primary Contacts

Advisory Team:

Ms. Cris Morris, Senior Water Resources Control Engineer
320 West Fourth Street, Suite 200
Los Angeles, CA 90013
Phone: (213) 620-2083
Email: cris.morris@waterboards.ca.gov

Ms. Jennifer Fordyce, Attorney III
State Water Resources Control Board, Office of Chief Counsel
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 423-6682
Email: jennifer.fordyce@waterboards.ca.gov

Prosecution Team:
Mr. Andrew Choi
320 West Fourth Street, Suite 200
Los Angeles, CA 90013
Phone: (213) 576-6791
Email: andrew.choi@waterboards.ca.gov

Ms. Laura Drabandt, Attorney III
State Water Resources Control Board, Office of Enforcement
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5180
Email: laura.drabandt@waterboards.ca.gov

Discharger:

Ms. Sarah Postyn
80 E. Sir Francis Drake Blvd., Suite 3G
Larkspur, CA 94939

Mr. Stephen J. O'Neil
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071

Ex Parte Communications

While this adjudicative proceeding is pending, the California Government Code forbids Designated Parties and Interested Persons from engaging in ex parte communications regarding this matter with the Executive Officer and the Advisory Team, except during the public hearing itself. An ex parte communication is a written or verbal communication, either direct or indirect, that relates to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and the Executive Officer or a member of the Advisory Team that occurs in the absence of other parties and without notice and opportunity for all parties to participate in the communication (*see* Gov. Code, § 11430.10 et seq.). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Therefore, any written communication to the Executive Officer or the Advisory Team before the hearing must also be copied to all other Designated Parties. Communications regarding non-controversial procedural matters, including a request for a continuance, are permissible ex parte communications and are not restricted.

The following communications to the Advisory Team must be copied to all Designated Parties: objections to these Hearing Procedures; requests for modifications to these Hearing Procedures; requests for designated party status, or objections thereto; and all written evidence, arguments, or policy statements from Designated Parties. This is not an all-inclusive list of ex parte communications.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each Designated Party shall have a combined total of **30** minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide opening and/or closing statements. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Executive Officer (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal or technical argument requires extra time, and why it could not have been provided in writing by the applicable deadline. Decisions will be based upon the complexity and the number of issues under consideration, the extent to which the Designated Parties have coordinated and/or have similar interests, and the time available for the hearing.

A timer will be used, but will not run during questions from the Executive Officer and the Advisory Team or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence, Argument and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information in advance of the hearing, which must be received no later than the deadline listed under "Important Deadlines" below:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Executive Officer to consider. Evidence and exhibits already in the public files of the Regional Board may be submitted by reference, as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. The Executive Officer will not generally receive copies of materials incorporated by reference unless copies are provided by the Designated Party proffering the evidence as part of the Designated Party's evidentiary submission. Referenced materials are generally not posted on the Regional Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the Designated Party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

Prosecution Team: The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list of all evidence on which the Prosecution Team relies (which must include, at a minimum, all documents cited in the ACL Complaint or other material submitted by the Prosecution Team); and the witness information required under items 3-4 for all witnesses, including Regional Board staff. The Prosecution Team shall submit this information so that it is received no later than the deadline listed under "Important Deadlines" below.

Designated Parties (including the Discharger): All Designated Parties shall submit comments, arguments or analysis regarding the ACL Complaint along with any additional supporting evidence not cited by the Regional Board's Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Regional Board staff. Designated Parties shall submit this information so that it is received no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party who would like to submit evidence, legal or technical arguments, or policy statements to rebut information submitted by other Designated Parties, shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis, or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

Final Hearing Package and Proposed Order: The Prosecution Team will submit the Final Hearing Package and a proposed Order so that it is submitted no later than the deadline listed under "Important Deadlines" below.

Copies: The Executive Officer and the Advisory Team will receive copies of all submitted materials. If hard copies of the submitted materials are provided to the Executive Officer and the Advisory Team, the materials will be printed or copied double-sided in black and white on 8.5"x11" paper. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra four paper copies for the Executive Officer and the Advisory Team. For voluminous submissions, the Executive Officer and Advisory Team may receive copies in electronic format only. Electronic copies may also be posted on the Regional Board's website. Designated Parties without

access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Executive Officer will not reject materials solely for failure to provide electronic copies.

Interested Persons: Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under "Important Deadlines" below to be included in the Executive Officer's hearing package. Interested persons should be aware that this matter may settle without further notice, and therefore timely submittal by the deadline may be the only opportunity for an Interested Person to comment on the subject of the ACL Complaint. If the hearing proceeds as scheduled, the Executive Officer will also receive oral comments from Interested Persons during the hearing. Interested Persons do not need to submit written comments in order to speak at the hearing.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Executive Officer may exclude evidence and testimony that is not submitted in accordance with these Hearing Procedures. Excluded evidence and testimony will *not* be considered by the Executive Officer and will *not* be included in the administrative record for this proceeding.

Presentations: PowerPoint and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing in electronic format, and hard copy if requested by the Advisory Team, so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination by Designated Parties.

Administrative Record and Availability of Documents

The ACL Complaint and evidentiary documents submitted in accordance with these Hearing Procedures shall be considered part of the official administrative record for this matter. Other submittals received for this proceeding will be added to the administrative record absent a contrary ruling by the Executive Officer. Written transcriptions of oral testimony or comments that are made at the hearing will be included in the administrative record.

These documents may be inspected and copied between the hours of 8:00 a.m. and 5:00 p.m. at the Regional Board's office located at 320 West Fourth Street, Suite 200 Los Angeles, California 90013. Arrangements for document review and/or obtaining copies of the documents may be made by contacting the Prosecution Team Primary Contact above. Appointments are encouraged so the documents can be readily available upon arrival.

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

IMPORTANT DEADLINES

All submissions must be received by 5:00 p.m. on the respective due date below.[1,2] Where both electronic and hard copy formats are required to be submitted to the Prosecution Team, a complete electronic copy must be received by 5:00 p.m. on the respective due date below, and a complete hard copy may follow via overnight delivery so that it is received by the Prosecution Team the next day.

September 16, 2015	▪ Prosecution Team issues ACL Complaint, Hearing Procedures and other related materials. Hard Copies to: All other Designated Parties (by certified mail) Electronic *or* Hard Copies to: All known Interested Persons, Advisory Team
September 28, 2015	▪ Objections due on Hearing Procedures. ▪ Deadline to request "Designated Party" status. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Advisory Team Electronic *and* Hard Copies to: Prosecution Team
October 1, 2015	▪ Deadline to submit objections to requests for Designated Party status. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Advisory Team Electronic *and* Hard Copies to: Prosecution Team
October 16, 2015	▪ Discharger's deadline to submit *Hearing Waiver Form.*[3] Electronic *or* Hard Copy to: Prosecution Team ▪ Interested Persons' written comments are due. Electronic *or* Hard copies to: All Designated Parties, Advisory Team
October 19, 2015*	▪ Advisory Team transmits decision on requests for designated party status. ▪ Advisory Team transmits decision on objections to Hearing Procedures. Electronic *or* Hard Copies to: All Designated Parties, All known Interested Persons
October 27, 2015*	▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence, Argument and Policy Statements," above. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Advisory Team
November 16, 2015*	▪ Remaining Designated Parties' (including the Discharger's) deadline to submit all information required under "Submission of Evidence, Argument, and Policy Statements" above. This includes all written comments regarding the ACL Complaint. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Advisory Team Electronic *and* Hard Copies to: Prosecution Team

[1] With the exception of the deadline to submit the Final Hearing Package and proposed Order.
[2] Where a deadline falls on a weekend or holiday, the deadline is extended to the next business day.
[3] Pursuant to California Water Code section 13323(b), persons subject to an ACL Complaint have the right to a hearing before the Regional Board within 90 days of receiving the ACL Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, the Discharger is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing administrative civil liability. However, if the Board accepts the waiver, all deadlines marked with an "*" will be revised if a settlement cannot be reached.

November 30, 2015*	▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal/ technical arguments and/or policy statements and all evidentiary objections. ▪ Deadline to request Prehearing Conference. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Advisory Team Electronic *and* Hard Copies to: Prosecution Team
December 2, 2015*	▪ Deadline to submit requests for additional time at the hearing. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Advisory Team
December 4, 2015*	▪ Prosecution Team sends Final Hearing Package and proposed Order. Electronic *or* Hard Copies to: Executive Officer, Advisory Team, All other Designated Parties
December 8, 2015*	▪ Advisory Team transmits hearing time limits Electronic *or* Hard Copies to: All Designated Parties, All known Interested Persons
December 15, 2015*	▪ Hearing