

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
		Appendix A_A		
8/21/2006	Construction Dewatering Isolated Pool B	This is a technical violation of condition 9 based solely upon the location of Isolated Pool B at 70' rather than 100' from the river. Board's §401 Certification drafter/Person Most Knowledgeable stated he would not have disapproved a 70' distance for this project, and testified there is nothing "special" about a 100' distance versus a 70' distance.	Grady Deposition 31:1-5; proffered evidence Depo Pratt 38: 4-25; 39: 1-25, 40: 1-25; 41:1-25, 42: 1-25, 43: 1-25, 44: 1-17	Use of Isolated Pool B represents a discharge to the gravel bar not to waters of the State in violation of condition 12. Condition 17 is a "catchall" provision that effectively doubles the fines of permit violations.
8/29/2006	Construction Dewatering to Isolated Pool B	This is a technical violation of condition 9 based solely upon the location of Isolated Pool B at 70' rather than 100' from the river. Board's §401 Certification drafter/Person Most Knowledgeable stated he would not have disapproved a 70' distance for this project, and testified there is nothing "special" about a 100' distance versus a 70' distance.	Grady 40: 4-10 Depo Pratt 38: 4-25; 39: 1-25, 40: 1-25; 41:1-25, 42: 1-25, 43: 1-25, 44: 1-17	Use of Isolated Pool B represents a discharge to the gravel bar not to waters of the State in violation of condition 12. Condition 17 is a "catchall" provision that effectively doubles the fines of permit violations.
8/30/2006	Construction Dewatering to Isolated Pool B	This is a technical violation of condition 9 based solely upon the location of Isolated Pool B at 70'	Grady Deposition 42: 15-21'	Use of Isolated Pool B represents a discharge to the gravel bar not to

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
		rather than 100' from the river. Board's §401 Certification drafter/Person Most Knowledgeable stated he would not have disapproved a 70' distance for this project, and testified there is nothing "special" about a 100' distance versus a 70' distance.	Depo Pratt 38: 4-25; 39: 1-25, 40: 1-25; 41:1-25, 42: 1-25, 43: 1-25, 44: 1-17	waters of the State in violation of condition 12. Condition 17 is a "catchall" provision that effectively doubles the fines of permit violations.
8/31/2006	Construction Dewatering to Isolated Pool B	This is a technical violation of condition 9 based solely upon the location of Isolated Pool B at 70' rather than 100' from the river. Board's §401 Certification drafter/Person Most Knowledgeable stated he would not have disapproved a 70' distance for this project, and testified there is nothing "special" about a 100' distance versus a 70' distance.	Grady Depo 41: 14-25; 42-1-21 Depo Pratt 38: 4-25; 39: 1-25, 40: 1-25; 41:1-25, 42: 1-25, 43: 1-25, 44: 1-17	A discharge to the gravel bar is not waters of the State in violation of condition 12. Condition 17 is a "catchall" provision that effectively doubles the fines of permit violations.
8/31/2006	Construction Dewatering	Evidence does not specify date of violation or amount of water pumped, length of time water pumped. BOP not met.	Grady 44:15-25; 45:1-5	A discharge to the gravel bar is not to waters of the State in violation of condition 12. Condition 17 is a "catchall" provision that effectively doubles the

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
				finest of permit violations.
9/5/2006	Construction Dewatering	Evidence does not meet BOP. Based on second-hand quote that does not specify date. Grady concedes at depo that the quote that forms basis of charge may refer to August 31, 2006 event.	Grady Depo 45: 10-25; 46: 1-24.	<p>A discharge to the gravel bar is not waters of the State in violation of condition 12.</p> <p>Condition 17 is a “catchall” provision that effectively doubles the fines of permit violations.</p>
9/7/2006	Construction Dewatering to Isolated Pool B	The evidentiary basis of this charge is the acting Structure Representative’s Daily Report form 9/7/06. The report merely references the alleged discharges occurring on 8/29-8/31. There is no evidence that additional discharges occurred on 9/7/06. Grady concedes at depo that quote that forms basis of violation could be referring to events occurring on 8/29-8/31.	Grady Depo 47: 3-25; 48: 1-21	<p>Use of Isolated Pool B represents a discharge to the gravel bar not to waters of the State in violation of condition 12.</p> <p>Condition 17 is a “catchall” provision that effectively doubles the fines of permit violations.</p>
9/11/2006	Construction Dewatering	The basis for charge is Asst. RE Daily report from John Railey. Railey quotes Mitch Shands “Some pumping of H2O out of CMP was done.” This represents multiple levels of hearsay.	Grady Depo 49: 3-18	<p>A discharge to the gravel bar is not waters of the State in violation of condition 12.</p> <p>Condition 17 is a</p>

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
		<p>The quote does not specify where water was pumped. Grady concedes at depo that he has no actual knowledge water was pumped to Iso pool B.</p> <p>BOP not met.</p>		<p>“catchall” provision that effectively doubles the fines of permit violations.</p>
10/3/2006	Construction Dewatering	Not clear from evidence whether event occurred on 10/3 or on prior days. Grady concedes same. Does not meet BOP.	Grady depo 49: 23-25; 50: 1-25	<p>A discharge to the gravel bar is not waters of the State in violation of condition 12.</p> <p>Condition 17 is a “catchall” provision that effectively doubles the fines of permit violations.</p>
10/6/2006	Construction Dewatering to Isolated Pool B	<p>This is a technical violation of condition 9 based solely upon the location of Isolated Pool B at 70’ rather than 100’ from the river. Board’s §401 Certification drafter/Person Most Knowledgeable stated he would not have disapproved a 70’ distance for this project, and testified there is nothing “special” about a 100’ distance</p>	<p>Grady depo 55: 6-10</p> <p>Depo Pratt 38: 4-25; 39: 1-25, 40: 1-25; 41:1-25, 42: 1-25, 43: 1-25, 44: 1-17</p>	<p>Use of Isolated Pool B represents a discharge to the gravel bar not to waters of the State in violation of condition 12.</p> <p>Condition 17 is a “catchall” provision that effectively doubles the fines of permit violations.</p>

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
		versus a 70' distance.		
10/7/2006	Construction Dewatering	<p>The quote that forms basis of this violation is ambiguous and does not meet the BOP.</p> <p>If it is assumed that the quote refers to a discharge to Isolated Pool B it represents only a technical violation of condition 9 based upon the pool's location.</p>	Grady depo 62: 15-25; 63: 1-25, 64:1-25; 65: 1-4	<p>A discharge to the gravel bar is not waters of the State in violation of condition 12.</p> <p>Condition 17 is a "catchall" provision that effectively doubles the fines of permit violations.</p>
11/13/2006	Construction Dewatering	Cited evidence is inconclusive. Reference to "permits" is ambiguous. BOP is not met.		Evidence cited by prosecution indicates that BMPs were in place. The prosecution alleges a violation of condition 7 even where BMPs are in place, if BMP is not 100 percent effective. This is an unreasonable interpretation. (Grady 212: 22-25; 213: 1-23)
11/14/2006	Construction Dewatering	The quote that forms basis of this violation does not specify a date. It appears to reference event of 11/13. Grady concedes same. BOP not met.	Grady depo 71: 6-21	

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
3/7/2007	Construction Dewatering	Cited evidence indicates discussion with Board staff. Small discharge of native waters “ok’ed”.		
		Appendix A_B		
8/21/2006	Leaky Equipment	Violation occurred re fueling on gravel bar. Contractor advised to cease.		Condition 13 is applicable; Condition 9 is not applicable if rainfall was unforeseeable. Application of last sentence of Cond. 9 is not distinct from prohibition of Cond. 13.
8/29/2006	Leaky Equipment	Charge based on sole photo and Grady assumption that substance on rocks is oil or even hydraulic fluid (“I don’t know what it is”); no knowledge from where rocks were collected or when collected. BOP not met.	Grady deposition – 81:21 – 84:9	
9/9/2006	Leaky Equipment	Charge based entirely on speculation about photograph. No evidentiary substantiation regarding allegations. BOP not met.	Grady deposition, 85:8 – 24	
9/26/2006	Leaky Equipment	Charge based entirely on speculation about photograph, although concession that photo taken “somewhere” outside of gravel bar.	Grady deposition, 85:25 – 87:1	

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
		No evidentiary substantiation regarding allegations. BOP not met.		
9/27/2006	Leaky Equipment	ACL drafter cited a document from a report without knowing who drafted the report, why it was drafted, and whether report even refers to an incident or violation occurring on the alleged date. Photos are based on speculation as to what is portrayed. BOP not met. Also, admission that trestle provided a measure of protection against spills, and that the record contains no evidence that spills reached riverbed.	Grady deposition, 90:13 – 91:6; (87:25 – 88 -25; 92:14 – 93:4; 96:3 – 8	
10/5/2006	Leaky Equipment	Charge is that oil and diesel stains identified for cleanup, but Board staff testified to lack of knowledge that any leak occurred on 10/5; admission that the alleged charge could already be covered by a different violation.	Grady deposition, 97:19 – 98 :7.	
10/6/2006	Leaky Equipment	Charge re “excessively leaky” backhoe viewed by NRWQCB staff on site. October NOV provides general statement that backhoe was present, but neither ACL nor NOV established that backhoe was used on date of violation, and if so, where, and a foundation as to how	Grady deposition, 98:8 – 101:11	If sufficient evidence is deemed to establish a violation, either Condition 9 or 13 should apply, but not both as the violations would be duplicative.

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
		“excessively” should be defined. -		
10/11/2006	Leaky Equipment	Evidence does not meet burden of proving leaks occurred on the alleged date, or that the equipment was being used on that date. Charge based on speculation about the meaning of the Biological Monitor’s report, , including the Monitor’s use of term “excessively.”	Grady deposition, 106: 11 – 18.	
10/12/2006	Leaky Equipment	Neither photos nor reports specify that the identified stains occurred on the date of the charge, or where they occurred. Evidence that the stains were identified for cleanup.	Grady deposition, 110:23 – 113:3; 114: 11 – 18	ACL lacks evidence to establish violation of Condition 9 or 13, but even if applicable, a charge of both would be improperly duplicative.
10/27/2006	Leaky Equipment	Board staff conceded that the Biological Monitor quote, upon which the charge relies, states a general observation, not a specific allegation of violation(s) on said date. Staff admitted that equipment shown in photos may not have leaked, and does not know if stains are even from oil.	Grady deposition, 115:12 – 119:2.	
*10/28/2006	Leaky Equipment	Photos only – no evidence that stain is caused by oil, if stain occurred on 10-28 or some other date, or is even connected to the project (i.e., area is	Grady deposition, 119: 3-4.	

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
		accessible to public). BOP not met		
10/30/2006	Leaky Equipment	Board witness conceded lack of evidence that stains resulted from oil, that the equipment in the photos caused the stains, when the stains appeared (on Oct. 30 or some other date), and further admitted alleged stain on road (061030 ~ 04) could have been caused by any vehicle, project-connected or not. BOP not met.	Grady deposition, 122:27 – 126:9.	
10/31/2006	Leaky Equipment	No evidence to support charge, No evidence equipment was ever used during or after leak.	Grady deposition, 133:18 – 134:15.	
11/3/2006	Leaky Equipment	Cited evidence appears to state violation re leaky equipment on trestle. Department staff alerted contractor. Attempts to prevent discharges were in place, albeit they were not considered ideal.		Given nature of charge, application of Conditions 9 and 13 would be duplicative.
		Appendix A_C		
9/15/2006	Welding Slag	ACL drafter testified he does not know what “minor slag” (quote from Departmental report upon which charge is based). Nature of alleged violation is speculative.	Grady deposition, 138:4-6.	

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
9/21/2006	Welding Slag Discharge to River	Based on ACL drafter's testimony, it is just as possible the cited email actually referred to the September 15 slag as a separate event that occurred on 9/21. No probative evidence that a violation occurred; BOP not met. Moreover, there is evidence that protective measures were being employed on subject date to contain sparks.	Grady deposition, 145:16 – 18; 146:21 – 24.	
10/6/2006	Welding Slag Discharge	ACL describes a slag discharge violation on the subject date.		
10/6/2006	Steel Cutting	Condition 11 permits deposit of "excess materials or debris" until operations are completed. With no reasonably foreseeable rain forecast in evidence, this allegation does not constitute a violation of Condition 9 on its face.		No evidence that Condition 9 was violated; activities fall within Condition 11.
10/17/2006	Steel Cutting Discharge	Part 1: Board staff cannot produce source of quote. On its face, may constitute a violation but cleanup was immediate. Part II – Appears to be violation, but Dept. addressed situation promptly	Grady deposition, 156:6-16.	
10/18/2006	Steel Cutting Discharge	1) Photo 061018-01 only shows cutting of culvert – no residue on surface is shown, nor welding slag on riverbed.	Photo 061018-01; Grady deposition, 166:20 – 167:7	

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
		2) Per Board staff testimony, there is no evidence that slag was deposited on 10/18. Concession that referenced slag in cited Engineering Diary could be same as already encompassed in 10/17 charge. BOP not met.		
10/20/2006	Welding Slag	ACL drafter had no knowledge as to where and when the referenced slag was deposited, or if it was encompassed in another violation.	Grady deposition, 170:14 – 171:4.	
10/24/2006	Steel Cutting	ACL describes a violation. Department promptly addressed the incident, and contractor indicated intent to comply.		
10/25/2006	Steel Cutting	Violation is described. However, evidence shows Dept. actively attempting to enforce use of BMPs.		
10/26/2006	Welding Slag	Violation is described. However, evidence shows Dept. actively attempting to enforce use of BMPs.		
10/26/2006	Welding Slag	Violation is described. However, evidence shows Dept. actively attempting to enforce use of BMPs.		

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
10/28/2006	Welding Slag	Charge relies on quote that does not exist in the cited report.		
10/30/2006	Steel Cutting	Photos are only evidence; they do not show the nature of the violation or proof of a violation. Photo 06 shows items comprised of same base metal as allowed to be in river. Photo 061030-07 depicts a piece of metal that could have been deposited at any time by anyone, without any connection to project. Charge is speculative per se. BOP not met.	Photos 061030-06 and 07; Grady deposition, 187:25-189:1.	
10/31/2006	Steel Cutting	Same as above. BOP not met	Photos 061031-01-03.	
11/1/2006	Welding slag	Photos are only evidence provided. They do not actually show "welding slag discharged to river." BOP not met.	Photos 061101-01-07.	
		Appendix A_D		
8/29/2006	Turbid Discharge to River	Violation occurred as described, reported to Board staff.		The prosecution alleges a violation of condition 7 even where BMPs are in place, if BMP is not 100 percent effective. This is an unreasonable interpretation. (Grady

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
				212: 22-25; 213: 1-23)
8/30/2006	Turbid Discharge to River	Violation occurred as described, reported to Board staff.		
9/1/2006	Cement Discharge to River	Violation based upon quote and photo. Quote cited in support of this violation does not indicate cement discharge. Grady concedes photograph does not provide evidence that plume is cementitious. This may be sediment from the river bottom.	Grady 218: 6-25; 219: 1-13	
9/7/2006	Turbid Discharge to River	The evidence cited by the prosecution for this violation is from a 9/7/06 engineering diary. However, the diary refers to the events occurring in late August. There is no evidence a violation occurred on this day. BOP not met.	Grady 217: 1-25; 218: 1-5)	violation of condition 7 even where BMPs are in place, if BMP is not 100 percent effective. This is an unreasonable interpretation. (Grady 212: 22-25; 213: 1-23)
9/7/2006	Turbid Discharge to River	The evidence cited by the prosecution for this violation is from a 9/7/06 engineering diary. However, the diary refers to the events occurring in late August. There is no evidence a violation occurred on this day. BOP not met.	Grady 221: 24-25; 222: 1-15)	
9/9/2006	Turbid Discharge to River	The evidence cited by the prosecution consists of photos from 9/9 and an engineering diary from 9/11. The descriptions in the diary	Grady 224 15-25; 225; 226: 1-7	

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
		do not correspond with the photos. BOP not met.		
9/22/2006	Turbid Discharge to River	Heavy equipment river crossings were permitted.	Application	
9/29/2006	Cement Discharge	Insufficient evidence that plume observed contained cementitious material. BOP not met. The turbidity may result from sediment on the river bottom.	Grady 241: 8-25; 242: 1-4	
9/29/2006	Cement Discharge	Not clear what portion of plume is cementitious, if any. This may be turbidity resulting from in-river sediment. BOP not met.	Grady 244-47	
10/7/2006	Turbid Discharge to River	Grady concedes that this is not a violation of condition 9 as it concerned only in-stream sediments. (Grady 250: 4-25; 251: 1-4)		Grady concedes that this is not a violation of condition 9 as it concerned only in-stream sediments. (Grady 250: 4-25; 251: 1-4) Condition 17 is a "catchall" provision that effectively doubles the fines of permit violations.
10/7/2006	Turbid Discharge to River	Prosecution has assumed violation occurred. Insufficient evidence, BOP not met.	Grady 254: p. 18-25; 255: 1-7	Condition 17 is a "catchall" provision that effectively doubles the fines of permit violations.

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
10/7/2006	Turbid Discharge to River	Prosecution has assumed violation occurred. Insufficient evidence, BOP not met.	Grady 254: p. 18-25; 255: 1-7	Condition 17 is a "catchall" provision that effectively doubles the fines of permit violations.
10/16/2006	Cement Discharge	Charge based upon single quote. No evidence of cement, location discharge, or amount. Turbidity may have resulted from in-stream sediment which is not a violation. BOP not met.	Grady 256: 1-16	
10/20/2006	Cement Discharge to River	Quote that forms basis of charge refers to sediment plume. No indication of cement. Turbidity may have resulted from in-stream sediment which is not a violation. BOP not met.	Grady 256: 16-25; 258: 1-18	This is not a violation of condition 9 as evidence suggests plume created by in-stream sediments only.
1/5/2007	Turbid Discharge to River	No evidence of amount, location of discharge. Turbidity may result from in-stream sediment which is not a violation. BOP not met.	Grady 260: 8-25; 261: 1-13	
		Appendix A_E		
8/29/2006	Turbid Discharge to River	No evidence regarding length or time of plume. No photograph of plume. BOP not met.	Grady 200: 23-25; 201: 1-5	
8/30/2006	Turbid Discharge to River	No evidence regarding length or time of plume. No photographs of plume.	Grady 205: 13-23	

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
		BOP not met.		
9/1/2006	Insufficient Turbidity Measurements	Evidence cited by prosecution indicates turbidity measurements taken downstream. This is a technical violation for failure to take an upstream measurement.		
9/1/2006	Cement Discharge to River	The Department acknowledges that a plume was visible in the river, no measurements taken. No evidence of cement.		
9/6/2006	Insufficient Turbidity Measurements	The Department acknowledges that a plume was visible in the river, no measurements taken.		Visual observations were completed in compliance with condition 19. Condition 19 does not require monitoring with an NTU meter.
9/7/2006	Turbid Discharge to River	The evidence cited by the prosecution for this violation is from a 9/7/06 engineering diary. However, the diary refers to the events occurring in late August. There is no evidence a violation occurred on this day. BOP not met.	Grady 217: 1-25; 218: 1-5)	
9/7/2006	Turbid Discharge to River	The evidence cited by the prosecution for this violation is from a 9/7/06 engineering diary. However, the diary refers to the events occurring in late August. There is no evidence a violation	Grady 217: 1-25; 218: 1-5)	

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
		occurred on this day. BOP not met.		
9/9/2006	Turbid Discharge to River	Prosecution concedes it does not know whether turbidity actually occurred. BOP not met.	Grady 277: 20-25; 278: 1-2	
9/22/2006	Turbid Discharge to River	The Department acknowledges that a plume was visible in the river, no measurements taken.		
9/28/2006	Insufficient Turbidity Monitoring	The Department acknowledges that a plume was visible in the river, no measurements taken.		
9/29/2006	Cement Discharge	The Department acknowledges that a plume was visible in the river.		
9/29/2006	Cement Discharge	The Department acknowledges that plume was visible in the river.		
10/2/2006	Turbid Discharge to River	This violation is based upon the assumption that NTU meter was not properly calibrated and/or maintained. There is insufficient evidence to support this assumption. BOP not met.	Grady 292: 21-25, 293, 294, 295, 296	
10/7/2006	Turbid Discharge to River	This violation is based upon the assumption that NTU meter was not properly calibrated and/or maintained. There is insufficient evidence to support this assumption. BOP not met.	Grady 292: 21-25, 293, 294, 295, 296	
10/7/2006	Turbid Discharge	Prosecution has assumed violation	Grady 254: p. 18-25;	

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
	to River	occurred. Insufficient evidence, BOP not met.	255: 1-7	
10/7/2006	Turbid Discharge to River	Prosecution has assumed violation occurred. Insufficient evidence, BOP not met.	Grady 254: p. 18-25; 255: 1-7	
10/14/2006	Insufficient Turbidity Measurements	BMPs were in place and measurements were taken per cited evidence.		
10/16/2006	Insufficient Turbidity Measurements	Prosecution concedes that there is no evidence of increased turbidity.	Grady 301: 13-25; 302: 1-23	
10/16/2006	Cement Discharge	Prosecution concedes that there is no evidence of increased turbidity.	Grady 301: 13-25; 302: 1-23	
10/18/2006	Insufficient Turbidity Measurements	The Department acknowledges that a plume was visible in the river, no measurements taken.		
10/20/2006	Cement Discharge to River	Cited evidence is inconclusive. BOP not met.		
		Appendix A_F		
8/29/2006	Improper Disposal of Cement Wastes	Charge based on Board staff's "educated guess" about the disposal of the water. Also, the quote supporting the charge indicates the water was pumped to basin in order to avoid overflow directly to river.	Grady deposition -- 309:18-310:14; Appendix A_F, quote for 8/29/06, violation #1	Even if substantiated, the charge would involve violation of only one substantive limitation, not two separate ones. Only #9 should apply, if at all.
8/29/2006	Improper Disposal of	Board staff made assumption that tools were cleaned in an uncontained	Grady deposition -- 317:15-318:14.	Even if substantiated, the charge would involve

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
	Cement Wastes	location, but has no evidence to support the assumption. BOP not met.		violation of only one substantive limitation, not three separate ones.
8/30/2006	Concrete Washout to unlined area	Charge based solely on Board staff's "hypothetical" regarding the origin of gray liquid depicted in two photographs. No evidence supports the assumptions or conclusions. BOP not met.	Grady deposition -- 319:22-320:20.	The charge would involve violation of only one substantive limitation, not two separate ones.
9/8/2006	Cement Discharge	Violation assumed by Board staff to have occurred on 9/8/06, but supporting evidence (Report dated 9/7/06) does not support the assumption.	Grady deposition -- 327:2-17.	The charge would involve violation of only one substantive limitation, not two separate ones.
9/13/2006	Cement Discharge	Supporting photos do not support conclusion that cement was discharged on the alleged date. Photos are inconclusive as to what the whitish material is, how it arrived at the photographed location, or how long it remained at the site.	Grady deposition -- 329:11-329:23	The charge would involve violation of only one substantive limitation, not two separate ones.
9/29/2006	Cement Discharge	Cited Report does describe a discharge violation. It is noted that the untreated water was diverted away from the river.	Assistant R.E. Report dated 9/29/06; None of attached photos, however, depict the discharge event, per Board staff testimony (Grady deposition -- 331:1-17.)	The charge would involve violation of only one substantive limitation, not two separate ones.

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
9/29/2006	Cement Discharge	Per Board staff, existence of violation hinges on whether equipment was cleaned in an uncontained area; however, Board staff admits there is no evidence supporting assumption that area was uncontained. BOP not met.	Grady deposition -- 333:12-19	The charge would involve violation of only one substantive limitation, not two separate ones.
		Appendix A_G		
9/18/2006	Rubbish Discharge to River	No evidence whatsoever that photographed wood chunk or alleged rope emanated from, or were even connected with, the subject construction project. The river is publicly accessed; the items could have been deposited by anyone, from anywhere, at any time. BOP not met.	Grady deposition -- 342:5-343:13.	
9/22/2006	Rubbish Discharge to River	Quote from Biological Monitor does not establish that a violation occurred on the 9/22 date; Board staff acknowledges that there is no evidence that the referenced photographs depict the charged violation. BOP	Grady deposition -- 348:19-353:14; 354:17-355:5.	
9/26/2006	Rubbish Discharge to River	Testimony of Board staff establishes that this charge is based wholly on speculation as to what the alleged rubbish is, where it came from (i.e.,	Grady deposition -- 356:8-359:18.	

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
		whether it emanated from construction activities or from unrelated sources), and when it appeared. BOP not met.		
9/27/2006	Rubbish Discharge to River	Testimony of Board staff establishes that this charge is based wholly on speculation as to what the alleged rubbish is, where it came from (i.e., whether it emanated from construction activities or from unrelated sources), and when it appeared. BOP not met.	Grady deposition -- 360:5-25.	
10/16/2006	Rubbish Discharge to River	Board evidence, on its face, does not establish that the described violation was committed by the respondents on the subject date, or any date.	ACL Appendix A-F, alleged 10/16/06, and proffered evidence.	
10/24/2006	Rubbish Discharge to River	The quoted passage does not make clear whether the referenced slag and flakes were deposited on the alleged violation date, or on another date encompassed by another violation. BOP not met.		
10/25/2006	Rubbish Discharge to River	Charge is not substantiated by referenced photos or cited quotation as none of them show a "discharge to river".		It is noted that quotation indicates an intent to comply with Condition 11.
10/26/2006	Rubbish Discharge to River	No evidence that alleged rust in photograph was "discharge[d] to river", or was even located above the	Grady deposition -- 376:13-5.	

DEPARTMENT DEFENSE MATRIX

Date	Alleged Violation	Defense	Defense Evidence	Assertions re Permit Conditions
		river.		
10/31/2006	Rubbish Discharge to River	No evidence that “rust” is depicted in the photograph which solely supports the charge; no evidence when alleged rust was deposited, how it was deposited, or whether it was connected to project work. BOP not met.	Grady deposition -- 377:6-378:6.	
		Appendix A_H		
8/17/2006	Hydraulic fluid spill	No evidence that any spill occurred on the subject date; Board staff is speculating that the rocks in the photos are stained with hydraulic fluid. BOP not met.	Grady deposition -- 382:11-19.	
8/22/2006	Equipment Fueling on Gravel Bar	Violation occurred as described. Department promptly addressed the event, as evidenced by the August 25, 2006, electronic correspondence cited in the ACL.		Condition 13 applies.
11/3/2006	Sediment Discharge	Conclusion of “sediment discharge” not supported by quote from Mr. Dragaloski’s correspondence.	11/7/06, electronic note from W. Dragaloski, cited by ACL.	
5/23/2007	Sand Blasting	Violation occurred as described, was promptly reported to Board on same date, and addressed with contractor.	5/23/07, electronic note from W. Dragaloski, cited by ACL.	