



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

September 3, 2015

Mr. Mike Tenove  
Progressive Frame & Fabricating Company  
5050 Everett Court  
Vernon, California 90058

Certified Mail  
Return Receipt Requested  
Claim No. 7014 2120 0003 7814 0086

Mr. Michael John Tenove  
Agent for Service of Process for  
Progressive Frame & Fabricating Company  
5313 Chaumont Drive  
Wrightwood, CA 92397

Certified Mail  
Return Receipt Requested  
Claim No. 7014 2120 0003 7814 0185

**COMPLAINT NO. R4-2015-0238: MANDATORY MINIMUM PENALTY AGAINST PROGRESSIVE FRAME & FABRICATING COMPANY, 5050 EVERETT COURT, VERNON, CALIFORNIA (ORDER NO. 97-03-DWQ, NPDES NO. CAS000001, WDID NO. 4 19I022161)**

Dear Mr. Tenove:

Enclosed is Complaint No. R4-2015-0238 for a Mandatory Minimum Penalty in the amount of \$4,500 against Progressive Frame & Fabricating Company (hereinafter "Permittee" or "you") for late submittal of the Fiscal Year 2009-2010, 2010-2011, 2011-2012, and 2012-2013 annual reports required by the General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 97-03-DWQ (General Permit) for the industrial activities conducted at 5050 Everett Court, Vernon, CA 90058. Also enclosed is a copy of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) "*Hearing Procedures for Administrative Civil Liability Complaint No. R4-2015-0238*" (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. R4-2015-0238 and return it with full payment to the Regional Board by 5:00 pm on **October 5, 2015**. If we do not receive the waiver and full payment of the mandatory minimum penalty or the waiver to engage in settlement negotiations by **October 5, 2015**, this matter will be heard before the Executive Officer on **December 2, 2015**. An agenda containing the date, time, location, and specific procedures of the hearing will be mailed to you prior to the hearing date.

CHARLES STRINGER, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

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

Mr. Mike Tenove  
Progressive Frame & Fabricating Company

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September 3, 2015

If you have any questions regarding this matter, please contact Ms. Luz Vargas at (213) 620-6190 / [Luz.Vargas@waterboards.ca.gov](mailto:Luz.Vargas@waterboards.ca.gov) or Ms. Pavlova Vitale at (213) 620-6751 / [Pavlova.Vitale@waterboards.ca.gov](mailto:Pavlova.Vitale@waterboards.ca.gov).

Sincerely,



Paula Rasmussen  
Assistant Executive Officer

Enclosures: Complaint No. R4-2015-0238  
Exhibit "1"  
Hearing Procedures

cc: (via email only)

Ms. Jennifer Fordyce, Office of Chief Counsel, State Water Resources Control Board  
Ms. Kailyn Ellison, Office of Enforcement, State Water Resources Control Board  
Ms. Nancy Woo, Water Division, USEPA  
Ms. Kathleen Johnson, Enforcement Division, USEPA  
Ms. Rita Kampalath, Science and Policy Director, Heal the Bay  
Ms. Rachel Stich, Events and Communication Director, Los Angeles Water Keeper  
Mr. Jerrick Torres, Public Relations Coordinator, City of Vernon  
Ms. Claudia Arellano, Operations Coordinator, City of Vernon

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

<b>In the matter of:</b>	)	<b>Complaint No. R4-2015-0238</b>
	)	<b>Mandatory Minimum Penalty for</b>
	)	<b>Violation of California Water Code</b>
		<b>Section 13399.31</b>
	)	<b>and</b>
<b>Progressive Frame &amp; Fabricating Company</b>	)	<b>Order No. 97-03-DWQ</b>
<b>Vernon, California</b>	)	<b>(NPDES No. CAS000001)</b>

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (Water Code) section 13399.33, subdivision (c) is issued to Progressive Frame & Fabricating Company (hereinafter Permittee or facility) based on violations for late submittal of the Fiscal Year 2009-2010, 2010-2011, 2011-2012, and 2012-2013 annual reports. Annual reports were due to the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) by July 1 of each year as required in Section B.14 of the General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) No. CAS000001, Waste Discharge Identification (WDID) No. 4 19I022161).

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

1. The Permittee owns and operates Progressive Frame & Fabricating Company located at 5050 Everett Court, Vernon, CA 90058. The Permittee fabricates structural steel for structural purposes. The facility's industrial activities are classified under the Standard Industrial Classification (SIC) codes of 3441-Fabricated Structural Metal and 3452-Bolts, Nuts, Screws, Rivets, and Washers. Runoff from this facility enters the city storm drain system and thence to the Los Angeles River, a water of the United States. The runoff is susceptible to containing zinc, nitrate plus nitrite nitrogen, iron, aluminum, and other pollutants, which can degrade water quality and impact beneficial uses of the Los Angeles River. The Permittee is required to implement best management practices (BMPs) on site to prevent and monitor discharges of pollutants to storm water. The General Permit Section B.14 requires annual reporting of these activities by July 1 of each year.
2. On May 28, 2009, the State Water Resources Control Board (State Board) issued Waste Discharge Identification (WDID) No. 4 19I022161 for *Storm Water Discharges Associated with Industrial Activities, Order No. 97-03-DWQ, NPDES No. CAS000001, WDID No. 4 19I022161* to the facility.

3. Section B.14 of the General Permit requires Permittees to submit an annual report by July 1 of each year.
4. On December 11, 2013, the Regional Board issued a Notice of Violation (NOV) via certified mail to the Permittee for Storm Water Pollution Prevention Plan (SWPPP) violations, Best Management Practices (BMP) violations, and failure to submit the Fiscal Year 2009-2010, 2010-2011, 2011-2012, and 2012-2013 annual reports. The Permittee received the NOV on December 12, 2013.
5. On January 13, 2014, the Permittee requested the Regional Board to extend the NOV due date of January 13, 2014 because additional time was needed to complete the missing annual reports. Regional Board staff extended the due date to April 21, 2014. The Permittee did not submit the annual reports or a response to the NOV.
6. On October 2, 2014, the Regional Board issued a second NOV via certified mail with the due date of November 3, 2014, for failure to submit the Fiscal Year 2009-2010, 2010-2011, 2011-2012, and 2012-2013 annual reports. The Permittee did not submit the annual reports or a response to the second NOV. The Permittee received the second NOV on October 3, 2014.
7. On February 27, 2015, the Chief Prosecutor of the Regional Board issued the Permittee Settlement Offer No. R4-2015-0238 to participate in the Expedited Payment Program (Settlement Offer). The Settlement Offer included copies of the NOVs notifying the Permittee of the failure to submit the Fiscal Year 2009-2010, 2010-2011, 2011-2012, and 2012-2013 annual reports. The violations were cited in Exhibit "1" of the Settlement Offer as subject to mandatory minimum penalties (MMPs) of \$4,000, plus \$500 in staff costs.
8. Subsequent to the issuance of Settlement Offer No. R4-2015-0238, the Permittee submitted the four missing annual reports on April 27, 2015, 502 days after the date the Regional Board issued the first NOV, but failed to respond to Settlement Offer No. R4-2015-0238.
9. Water Code section 13399.31 subdivision (d) provides that "[i]f a discharger to which a notice is sent pursuant to subdivision (c) fails to submit the annual report ... to the regional board within 60 days from the date on which the notice is sent pursuant to subdivision (b), the regional board shall impose the penalties described in subdivision (c) of Section 13399.33."
10. Water Code section 13399.33 subdivision (c) requires the Regional Board to assess a mandatory minimum penalty of \$1,000 plus staff costs, for each violation whenever the Permittee fails to submit an annual report.
11. Four late reporting violations of the General Permit are noted, and cited in Exhibit "1". The late reporting violations are subject to mandatory minimum penalties in the amount of \$4,000, plus \$500 in staff costs. These violations are listed in Exhibit "1", which is incorporated herein by reference.

12. 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.

**YOU ARE HEREBY GIVEN NOTICE THAT:**

13. The Chief Prosecutor proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$4,000, plus \$500 in staff costs 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 5, 2015**. If the hearing is waived, a check in the amount of \$4,500 (payable to the *State Water Resources Control Board, Waste Discharge Permit Fund*) must be received by the Regional Board by 5:00 pm on **October 5, 2015**.
15. If the Regional Board does not receive a waiver and full payment of the recommended penalty or a waiver to engage in settlement negotiations by **October 5, 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. R4-2015-0238*" 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 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  
Assistant Executive Officer  
Los Angeles Regional Water Quality Control Board

September 3, 2015

## WAIVER FORM

### FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2015-0238

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

I am duly authorized to represent the Progressive Frame & Fabricating Company (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. R4-2015-0238 (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 **\$4,500** by check that references "ACL Complaint No. R4-2015-0238" made payable to the "State Water Resources Control Board, Waste Discharge Permit Fund". Payment must be received by the Regional Board by **October 5, 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".

Progressive Frame & Fabricating Company

\_\_\_\_\_  
(Signed Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed or typed name)

\_\_\_\_\_  
(Title)

### Exhibit 1

Reporting Period	Violation Type	Due Date	Received Date	Days Late	Water Code Section	Penalty
2009-2010 Annual Report	Late Report	07/01/2010	04/27/2015	1,761	13399.33 (c)	\$1,000
2010-2011 Annual Report	Late Report	07/01/2011	04/27/2015	1,396	13399.33 (c)	\$1,000
2011-2012 Annual Report	Late Report	07/01/2012	04/27/2015	1,030	13399.33 (c)	\$1,000
2012-2013 Annual Report	Late Report	07/01/2013	04/27/2015	665	13399.33 (c)	\$1,000

**Total \$4,000**

**Staff Cost \$ 500**

**Total \$4,500**

**California Regional Water Quality Control Board, Los Angeles Region**

**HEARING PROCEDURES  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
NO. R4-2015-0238**

**ISSUED TO  
PROGRESSIVE FRAME & FABRICATING COMPANY**

**SCHEDULED FOR DECEMBER 2, 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 Progressive Frame & Fabricating Company (hereafter "Discharger"), alleging violations of Water Code section 13399.33 for late submittal of the Fiscal Year 2009-2010, 2010-2011, 2011-2012, and 2012-2013 Annual Reports. 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 \$4,500.

A hearing on this matter is currently scheduled to be conducted before the Executive Officer on December 2, 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 a.m. 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: Mr. Ivar Ridgeway, Senior Environmental Scientist and Ms. Jennifer Fordyce, Attorney III. Members of the Prosecution Team are: Ms. Paula Rasmussen, Assistant Executive Officer; Mr. Hugh Marley, Supervising Engineering Geologist; Ms. Pavlova Vitale, Senior Environmental Scientist; Ms. Luz Vargas, Environmental Scientist; and Kailyn Ellison, Attorney.

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. Progressive Frame & Fabricating Company

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:**

Mr. Ivar Ridgeway, Senior Environmental Scientist  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013  
Phone: (213) 260-2150  
Email: [Ivar.Ridgeway@waterboards.ca.gov](mailto:Ivar.Ridgeway@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) 324-6682  
Email: [Jennifer.Fordyce@waterboards.ca.gov](mailto:Jennifer.Fordyce@waterboards.ca.gov)

#### **Prosecution Team:**

Ms. Luz Vargas, Environmental Scientist  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013  
Phone: (213) 620-6190  
Email: [Luz.Vargas@waterboards.ca.gov](mailto:Luz.Vargas@waterboards.ca.gov)

Ms. Kailyn Ellison, Attorney  
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) 445-9557  
Email: [Kailyn.Ellison@waterboards.ca.gov](mailto:Kailyn.Ellison@waterboards.ca.gov)

**Discharger:**

Mr. Mike Tenove  
Progressive Frame & Fabricating Company  
5050 Everett Court  
Vernon, CA

**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.<sup>1,2</sup> 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.*

<p>September 3, 2015</p>	<ul style="list-style-type: none"> <li>▪ Prosecution Team issues ACL Complaint, Hearing Procedures and other related materials.</li> </ul> <p><u>Hard Copies to:</u> All other Designated Parties (by certified mail)  <u>Electronic or Hard Copies to:</u> All known Interested Persons, Advisory Team</p>
<p>September 14, 2015</p>	<ul style="list-style-type: none"> <li>▪ Objections due on Hearing Procedures.</li> <li>▪ Deadline to request "Designated Party" status.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team  <u>Electronic and Hard Copies to:</u> Prosecution Team</p>
<p>September 18, 2015</p>	<ul style="list-style-type: none"> <li>▪ Deadline to submit objections to requests for Designated Party status.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team  <u>Electronic and Hard Copies to:</u> Prosecution Team</p>
<p>October 5, 2015</p>	<ul style="list-style-type: none"> <li>▪ Discharger's deadline to submit <i>Hearing Waiver Form</i>.<sup>3</sup></li> <li>▪ Interested Persons' written comments are due.</li> </ul> <p><u>Electronic or Hard Copy to:</u> Prosecution Team  <u>Electronic or Hard copies to:</u> All Designated Parties, Advisory Team</p>
<p>October 7, 2015*</p>	<ul style="list-style-type: none"> <li>▪ Advisory Team transmits decision on requests for designated party status.</li> <li>▪ Advisory Team transmits decision on objections to Hearing Procedures.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All Designated Parties, All known Interested Persons</p>
<p>October 14, 2015*</p>	<ul style="list-style-type: none"> <li>▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence, Argument and Policy Statements," above.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team</p>
<p>November 2, 2015*</p>	<ul style="list-style-type: none"> <li>▪ 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.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team  <u>Electronic and Hard Copies to:</u> Prosecution Team</p>

<sup>1</sup> With the exception of the deadline to submit the Final Hearing Package and proposed Order.

<sup>2</sup> Where a deadline falls on a weekend or holiday, the deadline is extended to the next business day.

<sup>3</sup> 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 16, 2015*	<ul style="list-style-type: none"><li>▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal/ technical arguments and/or policy statements and all evidentiary objections.</li><li>▪ Deadline to request Prehearing Conference.</li></ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team</p>
November 19, 2015*	<ul style="list-style-type: none"><li>▪ Deadline to submit requests for additional time at the hearing.</li></ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team</p>
November 20, 2015*	<ul style="list-style-type: none"><li>▪ Prosecution Team sends Final Hearing Package and proposed Order.</li></ul> <p><u>Electronic or Hard Copies to:</u> Executive Officer, Advisory Team, All other Designated Parties</p>
November 25, 2015*	<ul style="list-style-type: none"><li>▪ Advisory Team transmits hearing time limits</li></ul> <p><u>Electronic or Hard Copies to:</u> All Designated Parties, All known Interested Persons</p>
December 2, 2015*	<ul style="list-style-type: none"><li>▪ Hearing</li></ul>