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Public Notice No. 7-10-22
NPDES Permit No. CA0104523
July 7, 2010

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R7-2010-0030
ISSUED TO CITY OF BRAWLEY, OWNER/OPERATOR,
MUNICIPAL WASTEWATER TREATMENT PLANT
Brawley – Imperial County

**NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD
BEFORE THE REGIONAL BOARD ON SEPTEMBER 16, 2010**

Background

The Assistant Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13323 (CWC) to the City of Brawley, Owner/Operator of the Brawley Wastewater Treatment Plant (WWTP) (hereinafter as Discharger) alleging that it has violated CWC Section 13385. The Complaint proposes that administrative civil liability in the amount of \$24,000 be imposed as authorized by CWC Section 13385. Unless the Discharger waives its right to a hearing by August 6, 2010, and pays the proposed liability, the hearing will be held before the Regional Board during its meeting of September 16, 2010.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Regional Board will consider whether to adopt the proposed assessment, modify it, or reject it. If it adopts the proposed assessment, the Regional Board will issue an Administrative Civil Liability Order. The public hearing on September 16, 2010, will commence at 10:00 a.m. or as soon thereafter as practical, or as announced in our Board meeting agenda. The meeting will be held in La Quinta, California at the City Hall Council Chambers located at 78-495 Calle Tampico. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Regional Board's web page at <http://www.waterboards.ca.gov/coloradoriver>.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This hearing procedure has been pre-approved by the Regional Board's Advisory Staff in model format, but the Advisory Staff may modify the procedure on its own or at the request of any designated party. A copy of the procedures governing an adjudicatory hearing before the Regional Board may be found at Title 23 of the California Code of Regulations (CCRs), Section 648 et seq., and is available at

<http://www.waterboards.ca.gov> or upon request. In accordance with Title 23, CCR, Section 648(d), any procedure not provided by this hearing procedure is deemed waived. Except as provided in Title 23, CCR, Section 648(b), Chapter 5 of the Administrative Procedure Act (commencing with Section 11500 of the Government Code) does not apply to adjudicatory hearings before the Regional Board. This Notice provides additional requirements and deadlines related to this proceeding.

THE PROCEDURE AND DEADLINES DESCRIBED IN THIS NOTICE MAY BE AMENDED BY THE ADVISORY STAFF AS NECESSARY. **ANY OBJECTIONS TO THIS HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL BOARD'S ADVISORY STAFF BY 5:00 P.M. ON JULY 19, 2010, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff, or others at the discretion of the Regional Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Regional Board Prosecution Staff
- (2) City of Brawley, Owner/Operator of Brawley WWTP

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party shall request party status by submitting a request in writing (with copies to the designated parties) no later than **5 p.m. on July 26, 2010** to Lori Okun. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted to Ms. Okun by **5:00 p.m. on August 2, 2010**. The parties will be notified by Ms. Okun by **5:00 p.m. on August 16, 2010** in writing whether the request has been granted or denied.

Contacts

Advisory Staff:

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Prosecution Staff:

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Doug Wylie, Senior Water Resource Control Engineer
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Discharger:

Ruben Mireles, Superintendent
Brawley Wastewater Treatment Plant
383 Main Street
Brawley, CA 92227

Preliminary Witness List

The Prosecution Staff does not expect to testify at this public hearing, and also does not expect any other witnesses to testify. Therefore, there is no preliminary witness list. The Prosecution Staff will update the preliminary witness list, if necessary, by August 16, 2010.

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Board (Prosecution Staff) have been separated from those who will provide advice to the Regional Board (Advisory Staff). Although Tom Vandenberg is usually assigned as Advisory Staff counsel, given his general duties as Regional Board counsel for all matters, for this enforcement matter he will be representing the Prosecution Staff. Despite his different role in this enforcement matter, Mr. Vandenberg has carefully observed the separation of functions procedures to ensure fairness and impartiality are maintained. Therefore, counseling assistance to the Advisory Staff for this matter will be provided by Ms. Lori Okun. Members of the Advisory Staff are: Robert Perdue, Executive Officer; Lori Okun, Staff Counsel; and Jon Rokke, Water Resource Control Engineer. Members of the Prosecution Staff are: Jose Angel, Assistant Executive Officer; Tom Vandenberg, Staff Counsel; and Doug Wylie, Senior Water Resource Control Engineer.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the Regional Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a Regional Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

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 15 minutes to testify, present evidence, and cross-examine witnesses, and 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. Additional time may be provided at the discretion of the Advisory Staff (prior to the hearing) or the Regional Board Chair (at the hearing) upon a showing that additional time is necessary.

Written Evidence, Testimony, Exhibits, and Policy Statements

The Prosecution Staff shall submit in writing 15 copies of the following information to Lori Okun no later than **5:00 p.m. on August 16, 2010**, with one copy to the Discharger. The Discharger shall submit in writing 15 copies of the following information to Lori Okun no later than **5:00 p.m. on August 23, 2010**, with one copy to the Prosecution Staff:

1. All evidence, testimony (except rebuttal testimony) and exhibits proposed to be offered at the hearing. Evidence and exhibits already in the public files of the Regional Board may be submitted by reference so long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
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.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit in writing 15 copies of their rebuttal information to Lori Okun no later than **5:00 p.m. on August 30, 2010**, and one electronic copy of the information to the Discharger. Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Interested persons may submit one (1) copy of non-evidentiary policy statements by the close of the hearing.

In accordance with Title 23, CCR, Section 684.4, the Regional Board endeavors to avoid surprise testimony or evidence. Accordingly, oral testimony offered at the hearing that is beyond the scope of the previously submitted written testimony may be excluded. Power Point and other computer assisted visual presentations may be, but are not required to be, submitted prior to the hearing as long as the contents do not exceed the

scope of other submitted written material. Any witness providing written testimony shall appear at the hearing and affirm that the written testimony is true and correct.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in Government Code Section 11511.5(b). Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable. No party who appears at a prehearing conference is precluded from appearing before the Regional Board at any subsequent hearing relating to the matter.

Evidentiary Objections

Any designated party objecting to evidence, testimony, or exhibits submitted by another designated party must submit a written objection by **5:00 p.m. on September 7, 2010** to the Advisory Staff with a copy to all other designated parties. The Advisory Staff will notify the parties about further action to be taken on such objections and when that action will be taken. At the discretion of the Advisory Staff, a pre-hearing conference may be scheduled to discuss the further actions to be taken on the objections.

Evidentiary Documents and File

The Complaint, related evidentiary documents, and comments received are on file and may be inspected or copied at the Regional Board office at Colorado River Basin Regional Water Quality Control Board, 73-720 Fred Waring Drive, Suite 100, Palm Desert, CA. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Board Chair. Many of these documents are also posted on-line at www.waterboards.ca.gov/coloradoriver. Although the web page is updated regularly, to assure access to the latest information, you may contact Doug Wylie at dwyllie@waterboards.ca.gov or (760) 346-6585.

Questions

Procedural questions concerning this proceeding may be addressed to Lori Okun at lokun@waterboards.ca.gov or (916) 341-5165.

IMPORTANT DEADLINES

July 7, 2010	Prosecution Staff issues ACL Complaint to Discharger and Advisory Staff, electronically posts the Notice of Public Hearing, and sends to the Discharger a copy of the Notice.
July 19, 2010	Deadline for objections, if any, to proposed hearing procedure.
July 26, 2010	Deadline for requests for designated party status.
August 2, 2010	Deadline for oppositions to designated party status.
August 6, 2010	Discharger's deadline for waiving right to hearing.
<u>August 16, 2010</u>	<u>Prosecution Staff's deadline for all information required under "Written Evidence, Testimony, Exhibits and Policy Statements." and deadline for Updating Witness List</u>
August 16, 2010	Advisory Staff issues decision on request for designated party status, if any.
August 16, 2010	Discharger's deadline for submitting proposed Supplemental Environmental Project, if any, for consideration at the Board hearing.
August 23, 2010	Remaining Designated Parties' deadline for all information required under "Written Evidence, Testimony, Exhibits and Policy Statements."
August 30, 2010	All Designated Parties' deadline for evidentiary objections and requests for additional time at the hearing, if any.
September 7, 2010	All Designated Parties' deadline for rebuttal information and deadline for submission of Power Point and other computer assisted visual presentations for use at the hearing.
September 7, 2010	Interested Persons' deadline for written non-evidentiary policy statements.
September 16, 2010	Hearing Date.