

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

Sana Ana Region

3737 Main Street, Suite 500

Riverside, CA 92501-3348

In the matter of:

Veolia ES Industrial Services,
Inc., and Hoag Hospital
[Amended] Complaint No. R8-
2010-0053

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Order No. R8-2011-0007
Settlement Agreement and Stipulation
For Administrative Civil Liability Order;
(Proposed) Order

INTRODUCTION:

This Settlement Agreement and Stipulation for Administrative Civil Liability Order (Stipulation) is entered into by and between the Enforcement Staff of the Santa Ana Regional Water Quality Control Board (Enforcement Staff), Veolia ES Industrial Services, Inc., (Veolia) and Hoag Memorial Hospital Presbyterian (Hoag Hospital) (Veolia and Hoag Hospital are collectively referred to as the Settling Respondents; Veolia, Hoag Hospital and the Enforcement Staff are collectively referred to the Parties) and is presented to the Executive Officer of the Santa Ana Regional Water Quality Control Board (Regional Water Board) for adoption as an Order by settlement, pursuant to Government Code section 11415.60 and pursuant to the authority delegated to the Executive Officer by the Regional Water Board.

The Enforcement Staff has alleged violations against the Settling Respondents as set forth in [Amended] Complaint No. R8-2010-0053 dated December 14, 2010, which is attached hereto as Exhibit "A" (Complaint).

RECITALS:

1. On June 2, 2010, the City of Newport Beach and the California Emergency Management Agency notified Regional Water Board staff regarding an orange-colored discharge into Lower Newport Bay. The discharge originated from the Hoag Hospital located at One Hoag Drive in Newport Beach. Veolia, who was retained by Hoag Hospital, was conducting maintenance services at Hoag Hospital on a hydrogen sulfide scrubber at the time of the discharge. Some of the wastes from the maintenance operations were discharged into a sump within the Hoag Hospital facility that has an automated sump pump that discharges to a storm drain system tributary to Lower Newport Bay when it is actuated.

2. The Complaint proposed that the Settling Parties be assessed an administrative civil liability totaling \$10,000 for alleged violations of the California Water Code (CWC) section 13385(a)(1) by discharging pollutants to waters of the U.S. in violation of CWC section 13376. That liability amount includes staff costs of \$9,000.
3. The Complaint alleges that the Settling Respondents are both responsible for the unauthorized discharge. Veolia and Hoag each expressly denies it caused or had any responsibility for the alleged violations. Enforcement Staff does not agree with this assertion. Veolia and Hoag each agrees to be bound by the terms of this Stipulation and to pay the sum agreed to herein, in order to avoid the expense and inconvenience of defending against the violations alleged by the Enforcement Staff in the Complaint.
4. To resolve by consent and without further administrative proceedings certain alleged violations of CWC section 13385 set forth in the Complaint, the Parties have agreed to the imposition of \$2,500 in liability against Veolia and \$7,500 against Hoag Hospital. These amounts must be paid to the State Water Pollution Cleanup and Abatement Account no later than 30 days following the Regional Water Board or its delegee executing this Order. In settling this matter, the Settling Respondents do not admit to any of the alleged violations in the Complaint, or that they have been or are in violation of the CWC, or any other federal, state, or local law or ordinance, as provided below in paragraph 8.

STIPULATIONS:

The Parties stipulate to the entry of this Order as set forth below, and recommend that the Regional Water Board or its delegee issue this Order to effectuate the settlement:

5. **ADMINISTRATIVE CIVIL LIABILITY:** The Settling Respondents hereby agree to pay the administrative civil liability totaling \$10,000 as set forth in Paragraph 4 herein.
6. **COMPLIANCE WITH APPLICABLE LAWS:** The Settling Respondents understand that payment in accordance with this Order is not a substitute for compliance with applicable laws, and that any violations of the type alleged in the Complaint may subject them to future enforcement, including future administrative civil liability.
7. **MATTERS ADDRESSED BY STIPULATION:** Upon adoption by the Regional Water Board as an Order, whether directly or through the authority delegated to its Executive Officer, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint or which could have been asserted based on the

specific facts alleged in the Complaint against Settling Respondents, and their subsidiaries, corporate parents, affiliates, successors, heirs, assigns, and their officers, directors, partners, employees, representative agents, and attorneys, as of the issuance date of the Complaint (Covered Matters). The provisions of this Paragraph are expressly conditioned on the Settling Respondents' full satisfaction of the obligations described herein.

8. **SETTLING RESPONDENTS' DENIAL OF LIABILITY:** In settling this matter, the Settling Respondents do not admit to any of violations alleged in the Complaint, or that they have been or are in violation of the CWC, or any other federal, state, or local law or ordinance, provided, the Settling Respondents agree that, in the event of any future enforcement actions by the Regional Water Board, this Order may be used as evidence of a prior enforcement action consistent with CWC section 13327.
9. **PUBLIC NOTICE PROCESS:** The Settling Respondents understands that this Order must be noticed for public comment prior to consideration by the Regional Water Board. In the event objections are raised during the public comment period for the Order, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the Order as necessary or advisable under the circumstances.
10. **SUFFICIENCY OF PROCESS:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties, as reflected in this Stipulation and Order, will be adequate. In the event procedural objections are raised prior to this Stipulation becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
11. **REGIONAL WATER BOARD IS NOT LIABLE:** Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Settling Respondents its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Settling Respondents, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order.

The Settling Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their

officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

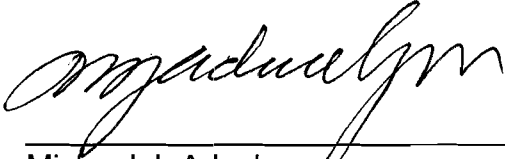
12. **EFFECTIVE DATE:** The obligations under Paragraphs 2 and 4 of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board which incorporates the terms of this Stipulation.
13. **IF ORDER DOES NOT TAKE EFFECT:** In the event that this Stipulation does not take effect because it is vacated in whole or in part by the State Water Resources Control Board (State Water Board) or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to: 1) objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing on the alleged violations in this matter; or 2) laches or delay or other equitable defenses based on the time period for administrative or judicial prosecution to the extent that this period has been extended by these settlement proceedings, and/or administrative or judicial review of the Order.
14. **AUTHORITY TO BIND:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.
15. **WAIVER OF RIGHT TO HEARING:** The Settling Respondents have been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives their right to a hearing before the Regional Water Board prior to the adoption of the Order.
16. **WAIVER OF RIGHT TO PETITION:** The Parties covenant and agree that they will not contest the Stipulation and Order before the Regional Water Board, the State Water Board, or any court.

17. **ATTORNEY FEES AND COSTS:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
18. **INTERPRETATION:** This Stipulation shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
19. **MODIFICATION:** This Stipulation shall not be modified by any of the Parties by oral representation made before or after the execution of this Order. All modifications must be made in writing and approved by the Regional Water Board Executive Officer.
20. **COUNTER SIGNATURES:** This Stipulation may be executed by the parties and delivered in any number of counterparts and by facsimile signature, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.
21. **NO WAIVER OF RIGHT TO CONTRIBUTION:** Nothing in this Stipulation or Order limits the Settling Respondents' legal rights or ability to seek contribution for the liability imposed herein from any third party, including each other, in an action in the superior court and upon proof that the unauthorized discharge alleged in the Complaint was caused in whole or in part by an act or omission of the third party.
22. **THIRD PARTY PETITION RIGHTS:** Pursuant to CWC § 13320, an aggrieved person may seek review of this Order by filing a petition within 30 days of the date of adoption of this Order by the Regional Water Board or its delegee with the State Water Board. The petition must be sent to the State Water Board, PO Box 100, Sacramento, CA 95812-0100.

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THIS SPACE INTENTIONALLY LEFT BLANK

IT IS SO STIPULATED¹



Michael J. Adackapara
Division Chief, on behalf of
Santa Ana Water Board Enforcement Staff

01/27/2011

Date

Representative for Hoag Memorial Hospital
Presbyterian

Date

Printed Name of Representative

Title of Representative

Representative for
Veolia ES Industrial Services, Inc.

Date

Printed Name of Representative


Title of Representative

¹ The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

IT IS SO STIPULATED¹

Michael J. Adackapara
Division Chief, on behalf of
Santa Ana Water Board Enforcement Staff

Date



Representative for Hoag Memorial Hospital
Presbyterian

1/27/11

Date

James D Rice

Printed Name of Representative

VP Facilities Management

Title of Representative

Representative for
Veolia ES Industrial Services, Inc.

Date

Printed Name of Representative

Title of Representative

¹ The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

IT IS SO STIPULATED¹

Michael J. Adackapara
Division Chief, on behalf of
Santa Ana Water Board Enforcement Staff

Date

Representative for Hoag Memorial Hospital
Presbyterian

Date

Printed Name of Representative

Title of Representative



Representative for
Veolia ES Industrial Services, Inc.

2-8-11

Date

TONY WITTER

Printed Name of Representative

GENERAL MANAGER

Title of Representative

¹ The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

HAVING CONSIDERED THE ALLEGATIONS DESCRIBED ABOVE AND THE PARTIES' STIPULATIONS, THE REGIONAL WATER BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

23. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
24. In adopting this Order, the Executive Officer has considered all the factors prescribed in California Water Code section 13327 and 13385(e). The Executive Officer's consideration of these factors is based upon information and comments provided by the Parties and by members of the public, and finds that settlement of this matter is in the best interest of the People of the State.
25. Fulfillment of the Settling Respondents' obligations under the Order constitutes full and final satisfaction of any and all liability in the Complaint in accordance with the terms of the Order.
26. The foregoing Stipulations are incorporated into this Order.

Pursuant to section 13323 of the California Water Code and section 11415.60 of the California Government Code, IT IS HERE BY ORDERED on behalf of the California Regional Water Quality Control Board, Santa Ana Region.

Kurt Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board

Date

EXHIBIT A



California Regional Water Quality Control Board Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

December 14, 2010

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Eric Lidecis
Manager, Utility Operations
Hoag Hospital
One Hoag Drive
Newport Beach, CA 92663
(Via email only)

and Lisa Bynum
Agent for Service
Hoag Hospital
One Hoag Drive
Newport Beach, CA 92658-6100
(Via certified mail)

Tony Witter, Area Manager
Veolia ES Industrial Services, Inc.
1250 E. 23rd Street
Signal Hill, CA 90755
(Via email only)

and C T Corporation (Agent for Service of Process)
818 West Seventh Street
Los Angeles, CA 90017
(Via certified mail)

TRANSMITTAL OF AMENDED ADMINISTRATIVE CIVIL LIABILITY (ACL) COMPLAINT NO. R8-2010-0053 ISSUED TO HOAG HOSPITAL AND VEOLIA ES INDUSTRIAL SERVICES, INC.

Addressees:

The Regional Board's Prosecution Team issued the above-referenced Complaint on July 28, 2010 to Veolia ES Industrial Services, Inc. Based on additional information provided to the Prosecution Team by the party named in the Complaint and other interested parties, the Prosecution Team has determined that it is appropriate to add Hoag Hospital as an additional responsible party to this Complaint. No other substantive changes have been made to the Complaint. Enclosed is a certified copy of the amended Complaint.

Please note that the public hearing on this item is now scheduled for the March 4, 2011 Regional Board meeting. Accordingly, the deadlines specified in the Hearing Procedure have been revised as shown in the enclosed Hearing Procedure.

Please read each document carefully. This Complaint may result in the issuance of an order by the Regional Board requiring that you pay a penalty.

The staff report regarding this Complaint and the meeting agenda will be mailed to you not less than 10 days prior to the hearing.

Pursuant to California Water Code Section 13323, the responsible parties have the option to waive their right to a hearing. Should the responsible parties waive their right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter.

California Environmental Protection Agency



December 14, 2010

If the responsible parties choose to waive their right to a hearing, please sign and submit the enclosed Waiver Form by January 14, 2011 along with a check for the assessed amount of ten thousand dollars (\$10,000) made payable to the State Water Pollution Cleanup and Abatement Account. The Waiver Form and check should be sent to the Regional Board office in the enclosed pre-printed envelope as per the deadlines provided in the attached Hearing Procedure.

If the responsible parties do not wish to waive their right to a hearing, requesting a pre-hearing meeting, as set forth in the Hearing Procedure is recommended. Should you wish to schedule a pre-hearing meeting, please contact Stephen D. Mayville, Chief of Enforcement, at (951) 782-4992, smayville@waterboards.ca.gov.

If you have any questions about the Complaint or the enclosed documents, please contact Stephen D. Mayville (see contact information above). All legal questions should be directed to Yvonne West at (916) 341-5445 (ywest@waterboards.ca.gov), Staff Counsel, Office of Enforcement.

Sincerely,



Michael J. Adackapara
Division Chief
Regional Board Prosecution Team

Enclosures: Amended Complaint No. R8-2010-0053, Waiver Form, Hearing Procedure and Preprinted Envelope

Cc with a copy of the amended complaint (by electronic mail only):

Regional Board
Executive Officer – Kurt V. Berchtold (Regional Board Advisory Team)
State Water Resources Control Board, Office of Chief Counsel – David Rice (Regional Board Advisory Team Attorney)
State Water Resources Control Board, Division of Water Quality – Bruce Fujimoto
State Water Resources Control Board, Office of Enforcement – Yvonne West (Regional Board Prosecution Team Attorney)
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Ken Greenberg
Orange County Public Works Department – Chris Crompton
Orange County Health Care Agency- Gary Zimmerman (Gzimmerman@ochca)
City of Newport Beach – Shane Burckle/John Kappeler (jkappeler@city.newport-beach.ca.us)
GeoScience Analytical, Inc. – Louis Pandolfi (Geosci10@aol.com)
Veolia ES Industrial Services, Inc. - Greig Siedor, Legal Counsel (greig.siedor@veoliaes.com)

California Environmental Protection Agency



State of California
California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:

Veolia ES Industrial Services, Inc.)	[AMENDED] Complaint No. R8-2010-0053
1250 E. 23 rd Street,)	
Signal Hill, CA 90755)	
Attn: Mr. Tony Witter)	for
)	Administrative Civil Liability
)	
Hoag Hospital)	
One Hoag Drive)	
Newport Beach, CA 92663)	
Attn: Eric Lidecis)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Hoag Hospital and Veolia ES Industrial Services, Inc., (hereinafter Veolia) (hereinafter collectively referred to as Dischargers), are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), may impose administrative civil liability, pursuant to California Water Code (CWC) Section 13385.
2. A hearing concerning this Complaint will be held before the Regional Board within 90 days of the date of issuance of this Complaint, unless, pursuant to CWC Section 13323, the Dischargers waive their right to a hearing. Waiver procedures are specified in the attached Waiver Form. The hearing on this matter is scheduled for the Regional Board's regular meeting on March 4, 2011 at the City Council Chambers, 25541 Barton Road, Loma Linda, California. The Dischargers, or their representative(s), will have the opportunity to appear and be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

THE COMPLAINT IS BASED ON THE FOLLOWING:

4. On June 2, 2010, the City of Newport Beach and the California Emergency Management Agency notified Regional Board staff regarding an orange-colored

discharge into Lower Newport Bay. The discharge originated from the Hoag Hospital located at One Hoag Drive in Newport Beach. Veolia, who was retained by Hoag Hospital, was conducting maintenance services at Hoag Hospital on a hydrogen sulfide scrubber. Some of the wastes from the maintenance operations drained into a location within the Hoag Hospital facility that has an automated sump pump that discharges to a storm drain system and into Lower Newport Bay when it is actuated.

5. Hoag Hospital has two hydrogen sulfide scrubbers that are used to remove hydrogen sulfide from methane gas that is used in the co-generation plant. The scrubber vessels contain SulfaTreat, a granular reactant media, containing metal oxide catalytic converters. In the scrubbers, hydrogen sulfide is converted to elemental sulfur and water in the presence of the catalyst. The scrubbers have to be serviced and the spent material has to be removed from the scrubbers approximately every 18 months. For the last ten years, Hoag Hospital has employed Veolia to service these scrubbers. In prior years, the wastewater generated during the servicing operation was discharged to the sanitary sewer and the spent media was analyzed and disposed of at proper disposal locations. With the exception of 2009 and 2010, the spent media has been determined to be non-hazardous and disposed of at a local landfill. In 2009 and 2010, the spent media was disposed of as hazardous material at the Kettleman Landfill due to its chromium content.
6. During the scrubber service, the spent material, including any liquid wastes, from the scrubbers is removed into a roll-off box lined with a filter fabric. Any liquid from this roll-off box drains to the concrete floor and is collected in a storm water sump. Hoag Hospital has installed a sump-pump in the storm water sump that turns on automatically once a certain amount of water collects in the sump and pumps the collected storm water to a storm drain system that discharges to Lower Newport Bay. To avoid any unauthorized discharges into the Bay during the scrubber service, this storm water sump-pump must be removed, disabled or the flow otherwise diverted. In the past, during the scrubber servicing operations, a diaphragm-pump had been used to pump the wastes collected in the storm water sump to an onsite sanitary sewer. During the scrubber service in question, however, the sump-pump was left in place and in service with the hose set to discharge to the storm drain system.
7. The scrubber servicing started on May 26, 2010 and ended on June 2, 2010. As a last step in the process, the bottom drain of the scrubber vessel was opened to drain approximately 1,350 gallons of wash water and residual media. This discharge was collected in the storm water sump. From this sump, the wastes were simultaneously pumped by the sump-pump and the diaphragm-pump to the storm drain system and the sanitary sewer, respectively. The wastes pumped to the storm drain system were discharged to Newport Bay.
8. On June 2, 2010, an orange-colored substance was reported in Newport Bay near 4 Balboa Coves around 14:32 hours. Further investigations by various responding

agencies indicated that the discharge was coming through a forty-inch storm drain near 8 Balboa Coves. A significant quantity of the spent scrubber media was visible inside the storm drain at the outlet to Lower Newport Bay. A sample of the discharge was collected. Preliminary field screening of the sample indicated that the sample contained glutaric dialdehyde. Glutaric dialdehyde is used as a disinfectant for medical equipment. The material safety data sheet (MSDS) for this material indicates that glutaric dialdehyde is highly toxic. Since glutaric dialdehyde was not used in the scrubbers or during servicing of the scrubber, its source appears to be from the hospital operations. However, this constituent was not detected in the laboratory analysis of the sample. The laboratory analysis detected iron oxide, which is a major component of SufaTreat.

9. The discharge to Lower Newport Bay on June 2, 2010 appeared to be mostly wastes generated during the servicing of the scrubber, including spent scrubber media. The orange-colored plume, including scum, extended approximately 0.58 miles in Lower Newport Bay in front of 8-20 Balboa Coves. Under directives from the regulatory agencies, Veolia attempted to cleanup the affected area. An absorbent boom was deployed to sweep the plume and then a vacor truck was used to pump this water into the truck. Any visible contamination on the beach sand and solids from the storm drains were also cleaned up.
10. On June 2 and 3, 2010, a number of agencies responded to the spill incident including: (1) Newport Beach City Code Enforcement/ Water Quality and Conservation; (2) Newport Beach Police, Harbor Patrol and Fire Departments; (3) Orange County Health Care Agency; (4) Huntington Beach Haz-Mat (mutual aid); (5) State Department of Fish and Game; (6) Regional Board staff; and (7) US Coast Guard.
11. The discharge of wastes from the scrubber servicing operations created a nuisance and potentially impacted the beneficial uses of the waters in Newport Bay. The designated beneficial uses of Lower Newport Bay include: (1) Navigation; (2) Water contact recreation; (3) Non-contact water recreation; (4) Commercial and sportfishing; (5) Rare threatened or endangered species; (6) Spawning; (7) Marine habitat; (8) Wildlife habitat; and (9) Shell fish harvesting.
12. Neither Veolia nor Hoag Hospital has authorization to discharge wastes to the storm drain systems or to waters of the U.S. Unauthorized discharges of wastes from Hoag Hospital by Hoag Hospital or its service providers are a violation of the California Water Code Section 13376, 13385 and Clean Water Act section 301.
13. The Dischargers are alleged to have violated CWC Section 13385(a)(1) by discharging pollutants to waters of the U. S. in violation of California Water Code Section 13376.
14. Pursuant to CWC Section 13385(c), the Regional Board can administratively assess civil liability in an amount not to exceed the sum of the following:

- A. Ten thousand dollars (\$10,000) for each day in which the violation occurs; and,
 - B. Where there is a discharge, any portion of which is not susceptible to clean up or is not cleaned up, and the volume discharged, but not cleaned up, exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged, but not cleaned up exceeds 1,000 gallons.
15. CWC Section 13385(c) states that civil liability on a per day basis may not exceed \$10,000 for each day the violation occurs. The maximum liability for the violation cited above is \$10,000 based on a one day violation (June 2, 2010, at \$10,000 per day). Since the volume of the discharge was estimated to be less than 1,000 gallons, a per gallon assessment is not included.
16. CWC Section 13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. The Water Quality Enforcement Policy (the Policy) adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to this statute. Use of methodology addresses the factors in CWC section 13385(e). The policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf
17. This discharge was caused by negligence on the part of the Dischargers and both Dischargers are responsible parties. Regional Board staff investigations of the spill incident indicated that there was no written agreement between Veolia and Hoag Hospital regarding individual responsibilities during the scrubber servicing operations for disabling the sump pump which caused the discharge. Hoag Hospital hired Veolia to conduct the scrubber servicing operations and as the employer of Veolia had the ability to control how those services were conducted. Furthermore, Hoag Hospital is the owner of the facilities from which the discharge originated, including the automated sump pump set to discharge to the storm drain system. Hoag Hospital knew the existence of the sump pump and did not remove it from the sump. At the same time, the scrubber servicing operations conducted by Veolia generated the wastes. Veolia installed the diaphragm pump in the storm water sump. Staff investigations indicated that at the time the diaphragm pump was installed, the sump pump was already in the sump and was clearly visible. Veolia neither removed the sump pump nor requested Hoag Hospital to remove it. Neither Veolia nor Hoag Hospital exercised due diligence to ensure proper disposal of wastes generated during the scrubber servicing operations. Accordingly, both Veolia and Hoag Hospital are responsible parties.
18. After consideration of the factors in accordance with the CWC statutes and the Policy, the Division Chief proposes that civil liability be imposed on the Dischargers

in the amount of ten thousand dollars (**\$10,000**) for the violations cited above. Attachment A presents the administrative civil liability derived from the use of the penalty methodology in the Policy. In summary, this amount is based on the following:

- A. The maximum statutory per day penalty for one day's violation is \$10,000. The Policy requires a consideration of the potential for harm from the discharge. Based on a potential harm factor of 0.150, the per day penalty is \$1,500 ($1 \text{ day} \times \$10,000/\text{day} \times 0.150 = \$1,500$).
- B. This amount is then adjusted based on Veolia and Hoag Hospital's culpability (1.5), cleanup effort and cooperation (1.0), and history of violations (1.0). The adjusted penalty is $\$1,500 \times 1.5 \times 1.0 \times 1.0 = \$2,250$.
- C. California Water Code Section 13385(e) also requires consideration for economic benefit or savings, if any, resulting from the violations and other matters as justice may require. Regional Board staff has determined that the Dischargers did not realize any significant savings from its failure to remove the sump-pump from the storm water sump.
- D. The costs of investigation and enforcement are considered as one of the "other factors as justice may require," and should be added to the final liability. Investigation costs have been estimated to be \$9,000 (60 hours at \$150 per hour = \$9,000). Staff costs should be added to the assessed amount. The total penalty with the staff costs is \$11,250 ($\$9,000 + \$2,250 = \$11,250$). The Division Chief proposes to assess Veolia the statutory maximum of **\$10,000**.


19. The Dischargers are jointly and severally liable for the alleged violation. No attempt has been made to apportion liability between the parties.

WAIVER OF HEARING

The Dischargers may waive their right to a hearing. If the Dischargers choose to do so, please sign the attached Waiver Form and return it, together with a check for **\$10,000** payable to the State Water Pollution Cleanup and Abatement Account, in the enclosed preprinted envelope. If the Dischargers waive their right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this complaint.

If you have any questions, please contact Stephen D. Mayville at (951) 782-4992.

12/14/10
Date



Michael J. Adackapara
Division Chief
Regional Board Prosecution Team

Discharger Name/ID: ACLC No. R8-2010-0053 - Attachment A

		Violation 1			
Discharge Violations	Step 1	Potential Harm Factor (Generated from Button)			
	Step 2	Per Gallon Factor (Generated from Button)			
		Gallons			
		Statutory / Adjusted Max per Gallon (\$)			
		Total		\$	
	Discharge Violations	Step 2	Per Day Factor (Generated from Button)		
Days			1		
Statutory Max per Day			10000.00		
Total				\$	1,500
Non-Discharge Violations	Step 3	Per Day Factor			
		Days			
		Statutory Max per Day			
		Total		\$	
		Initial Amount of the ACL		\$	1,500.00
Add'l Factors	Step 4	Culpability	1.5	\$	2,250.00
		Cleanup and Cooperation	1	\$	2,250.00
		History of Violations	1	\$	2,250.00
		Step 5 Total Base Liability Amount			\$
	Step 6	Ability to Pay & to Continue in Business	1	\$	2,250.00
	Step 7	Other Factors as Justice May Require	1	\$	2,250.00
		Staff Costs	\$ 9,000	\$	11,250.00
	Step 8	Economic Benefit	\$ -	\$	11,250.00
	Step 9	Minimum Liability Amount			
		Maximum Liability Amount	\$ 10,000		
	Step 10	Final Liability Amount		\$	10,000.00



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board

Santa Ana Region

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana



Arnold Schwarzenegger
Governor

HEARING PROCEDURE FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

NO. R8-2010-0053

(AMENDED: December 14, 2010)

ISSUED TO

Veolia ES Industrial Services, Inc.
1250 E. 23rd Street
Signal Hill, CA 990755

Hoag Hospital
One Hoag Drive
Newport Beach, CA 92663

SCHEDULED FOR MARCH 4, 2011

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

Background

The Division Chief has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13323 against Veolia ES Industrial Services, Inc. , and Hoag Hospital (hereinafter collectively referred to as the "Dischargers") alleging that they violated California Water Code Section 13385 by discharging pollutants to Lower Newport Bay. The Complaint proposes that administrative civil liability in the amount of ten thousand dollars (\$10,000) be imposed as authorized by Water Code Section 13385(c). A hearing is currently scheduled to be held before the Regional Board during its March 4, 2011 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Regional Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a lower amount, reject the proposed liability, or seek a higher liability amount through a judicial civil liability action. The public hearing on March 4, 2011 will commence at 9:00 a.m. or as soon thereafter as practical, or as announced in the Regional Board meeting agenda. The meeting will be held at the City Council Chambers, 25541 Barton Road, City of Loma Linda, California. An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's web page at:

California Environmental Protection Agency



http://www.waterboards.ca.gov/santaana/board_info/agendas/index.shtml.

The agenda will include the final hearing date and location, and the estimated start time for the meeting. Since the start time for this item is uncertain, all interested parties are urged to be present from the start of the Board meeting.

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 Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional Board may be found at Title 23 of the California Code of Regulations, Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM AT ITS DISCRETION. ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL BOARD'S ADVISORY TEAM BY DECEMBER 29, 2010 OR THEY WILL BE WAIVED.

Hearing Participants

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 generally may not submit evidence, cross-examine witnesses, or be subject to cross examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). Interested persons who would like to submit evidence may do so if the evidence is submitted in accordance with the procedures and deadlines for submitting evidence described below. Interested persons who present evidence may be 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 Team.
- (2) Veolia ES Industrial Services, Inc., referred to as one of the Dischargers.
- (3) Hoag Hospital, also referred to as one of the Dischargers.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on December 29, 2010 by Advisory Team Attorney David Rice, Davidrice@waterboards.ca.gov. 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 received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on January 7, 2011. The parties will be notified by 5 p.m. on January 14, 2011 in writing whether the request has been granted or denied.

Primary Contacts

Advisory Team: David Rice (email: Davidrice@waterboards.ca.gov)
Phone: 916-341-5182
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Prosecution Team: Yvonne West (email: ywest@waterboards.ca.gov)
Phone: 916-341-5445
State Water Resources Control Board
Office of Enforcement, 16th Floor
P.O. Box 100
Sacramento, CA 95812-0100

Discharger: Tony Witter, Area Manager
Email: tony.witter@veoliaes.com
Phone: 562-981-6363X107
Veolia ES Industrial Services, Inc.
1250 E. 23rd Street
Signal Hill, CA 90755

Eric Lidecis, Manager, Utility Operations
Email: Eric.Lidecis@Hoaghospital.org
Phone: 949-764-6574
Hoag Hospital
One Hoag Drive
Newport Beach, CA 92663

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 Team) have been separated from those who will provide advice to the Regional Board (Advisory Team). Members of the Advisory Team are: David Rice, Staff Counsel, State Water Resources Control Board and Kurt Berchtold, Executive Officer, Santa Ana Regional Water Quality Control Board. Members of the Prosecution Team are: Yvonne West, Office of Enforcement, State Water Resources Control Board; Michael Adackapara, Division Chief, Santa Ana Regional Water Quality Control Board; Stephen D. Mayville, Enforcement Unit Chief, Santa Ana Regional Water Quality Control Board, Mary Bartholomew, Environmental Scientist, Coastal Storm Water Unit, Santa Ana Regional Water Quality Control Board and Mike Kashak, Environmental Scientist, Coastal Storm Water Unit, Santa Ana Regional Water Quality Control Board. 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. Members of the Prosecution Team may have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

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 Team or members of the Regional Board. An ex parte contact is any written or oral communication pertaining to the investigation, preparation, or prosecution of the Complaint between a member of a designated party or interested person on the one hand, and a Regional Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if oral). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons 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 a combined 20 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; 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. Participants who would like additional time must submit their

request to the Advisory Team so that it is received no later than February 18, 2011. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Regional Board 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 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.
5. If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit 15 hard copies of its information and one electronic copy of the information to Advisory Team Attorney David Rice so that it is received by 5 p.m. on January 20, 2011.

The remaining designated parties shall submit 15 hard copies of their information and one electronic copy of the information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on January 20, 2011.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit 15 hard copies of their rebuttal information and one electronic copy of the information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on February 11, 2011. 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.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing. In addition to the foregoing, each designated party shall submit (1) one copy of the above information to

each of the other designated parties so that it is received by 5 p.m. on the deadline specified above.

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 no later than January 20, 2011. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, 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 Regional Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the Regional Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team by February 18, 2011 for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

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 subdivision (b) of Government Code Section 11511.5. 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.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits, such as the Power Point presentation, submitted by another designated party must submit a written objection to the Advisory Team and all other designated parties so that it is received by 5 p.m. on February 25, 2011. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Board office at 3737 Main Street, Suite 500, Riverside, CA 92501 by contacting August Lucas (email: alucas@waterboards.ca.gov; phone: 951-782-7961). 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: http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml. Although the web page is updated regularly, to assure access to the latest information, you may contact Steve Mayville (smayville@waterboards.ca.gov).

Questions

Questions concerning this proceeding may be addressed to the Advisory Team Attorney David Rice (Davidrice@waterboards.ca.gov).

IMPORTANT DEADLINES

(Note: the Regional Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the discharger waives that requirement.)

- | | |
|--------------------|--|
| December 14, 2010: | Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice. |
| December 29, 2010: | Deadline for requests for designated party status and deadline for objections, if any, to proposed Hearing Procedure. |
| January 7, 2011: | Deadline for opposition to requests for designated party status. |
| January 14, 2011: | Discharger's deadline for waiving right to hearing. Advisory Team issues decision on requests for designated party status, if any. |
| January 20, 2011: | All designated and interested parties' deadline for all information required under "Submission of Evidence and Policy Statements." |
| February 11, 2011: | All Designated Parties' deadline for rebuttal of evidence and policy statements. |
| February 18, 2011: | Requests for additional time at the hearing, if any. |
| February 18, 2011: | All parties deadline for presentation materials (Power Point or other materials). |
| February 25, 2011: | Deadline for objections to presentation materials. |

March 4, 2011: Public Hearing.



Michael J. Adackapara
Division Chief
Regional Board Prosecution Team

Date



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2010-0053 (Amended: December 14, 2010)

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

I am duly authorized to represent Hoag Hospital (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2010-0053 (hereinafter "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 Discharger waives the hearing requirement and will pay the liability in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **ten thousand dollars (\$10,000)** by check that references "ACL Complaint No. R8-2010-0053." made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must be received by the Regional Board by **January 14, 2011** or the Regional Board may adopt an Administrative Civil Liability Order requiring payment.
- 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. 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 Division Chief may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer for 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 Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger 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 Discharger will promptly engage the Regional Board Prosecution Team in settlement discussions to attempt to resolve

California Environmental Protection Agency



**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2010-0053**

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the outstanding violation(s). By checking this box, the Discharger requests that the Regional Board delay the hearing so that the Discharger 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."

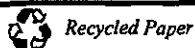
(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

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