



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board Santa Ana Region

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

April 15, 2010

Alan C. Kapanicas, City Manager
City of Beaumont
550 E. 6th Street
Beaumont, CA 92223

CITY OF BEAUMONT - ADMINISTRATIVE CIVIL LIABILITY (ACL) COMPLAINT NO. R8-2010-0007

Dear Mr. Kapanicas:

Enclosed is a certified copy of Administrative Civil Liability Complaint No. R8-2010-0007 (hereinafter the "Complaint"). The Complaint alleges that the City of Beaumont violated State Water Resources Control Board Order No. 2006-0003-DWQ by discharging untreated wastewater (sewage) to waters of the State, for which a penalty may be imposed under Section 13350 of the California Water Code. The Complaint proposes that administrative civil liability in the amount of one hundred and eleven thousand dollars (\$111,000) be imposed as authorized under Water Code Section 13350(e)(2). Also enclosed are a Waiver Form and a Hearing Procedure that sets forth important requirements and deadlines for participation in the hearing. Additionally, a Fact Sheet describing the Complaint process is available at:

http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml

The Fact Sheet describes the Complaint process and explains what the City of Beaumont can expect and its obligations as the process proceeds. If preferred, a hard copy of the Fact Sheet may be obtained by contacting Stephen D. Mayville at (951) 782-4992.

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.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on June 10, 2010. 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 City of Beaumont has the option to waive its right to a hearing. Should the City of Beaumont waive its right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this

California Environmental Protection Agency



Recycled Paper

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	\$	} Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

7008 1140 0002 4103 1479

CEP
RETURN RI

Sent To: Alan C. Kapanicas, City Manager
Street, Apt. No., or PO Box No.: City of Beaumont
City, State, ZIP+4: Beaumont, CA 550 E. 6th St. 92223

PS Form 3800, August 2006 See Reverse for Instructions

April 15, 2010

matter. If the City of Beaumont chooses to waive its right to a hearing, please sign and submit the enclosed Waiver Form with a check for one hundred and eleven thousand dollars (\$111,000) made payable to the State Water Resources Control Board-WDPF. The Waiver Form and check should be sent to the Regional Board office in the enclosed pre-printed envelope by April 29, 2010.

If the City of Beaumont does not wish to waive its 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 me (951-782-3286) prior to April 29, 2010.

If you have any questions about the Complaint or the enclosed documents, please contact Stephen D. Mayville, Chief of Enforcement, at (951) 782-4992 (smayville@waterboards.ca.gov). All legal questions should be directed to Reed Sato, Director, Office of Enforcement, at (916) 341-5889 (rsato@waterboards.ca.gov).

Sincerely,



Kurt V. Berchtold
Assistant Executive Officer
Regional Board Prosecution Team

Enclosures: Complaint No. R8-2010-0007, Waiver Form, Hearing Procedure, and Preprinted Envelope

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

Board Members
Executive Officer (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 – Darrin Polhemus
State Water Resources Control Board, Office of Enforcement – Reed Sato
(Regional Board Prosecution Team Attorney)
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Ken Greenberg



STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the Matter of:

City of Beaumont)	Complaint No. R8-2010-0007
550 E. 6 th Street)	for
Beaumont, CA 92223)	Administrative Civil Liability
)	
Attn: Alan C. Kapanicas)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Beaumont (hereinafter "the City" or "Beaumont") is 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 under California Water Code (hereinafter "CWC") §13350.
2. A hearing concerning this Complaint will be held before the Regional Board within ninety days of the date of issuance of this Complaint, unless pursuant to CWC Section 13323, Beaumont waives its right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Board's regular meeting on April 30, 2010, at the City Council Chambers, 25541 Barton Road, City of Loma Linda, California. Beaumont, or its designated representative, will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. An agenda for the meeting and the staff report relating to this item will be mailed to you not less than 10 days prior to the hearing date.
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. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

THE COMPLAINT IS BASED ON THE FOLLOWING FACTORS:

4. Beaumont owns and operates one hundred thirty five (135) miles of gravity sanitary sewer main and fifteen (15) miles of sanitary sewer force main within its service boundary. The operation and maintenance of sanitary sewer systems are regulated under the State's General Waste Discharge Requirements for Sanitary Sewer

Systems, Water Quality Order No. 2006-0003 (hereinafter "SSO Order"). On November 2, 2006, Beaumont obtained coverage under the SSO Order.

5. Beaumont's sanitary sewer system normally contains wastewater from residential, commercial and industrial establishments. Untreated sanitary wastewater (sewage) generally contains high levels of bacteria, metals, nutrients and other pollutants.
6. Beginning on December 18 and continuing into December 19, 2009, an estimated 403,000 gallons of raw sewage were spilled from the Marshall Creek Lift Station to an un-named tributary to San Timoteo Creek. Approximately 300 gallons were recovered and returned to the sanitary sewer system. This resulted in an estimated 402,700 gallons of sewage being discharged to an un-named ephemeral drainage course tributary to San Timoteo Creek, a water of the United States. Subsequently the City submitted revised estimates of the discharge volume which indicated that the total discharge volume was approximately 200,000 gallons. The initial discharge volume estimates were based on the actual difference between the average discharge volume for the previous weeks and the week of the spill incident. Subsequent estimates were based on theoretical pump and wet-well capacities, pumping times and pump cycles, which could not be independently verified. As such, the initial estimates have been used for purposes of this Complaint. Most of the discharged sewage percolated into the soil within the un-named tributary.
7. The following information is based on investigations conducted by Regional Board staff and information provided by the City and its contractors operating the sanitary sewer system and the sewage treatment plant.
 - a. The City's sanitary sewer system and its sewage treatment plant are operated by Aquarion Operating Services (hereinafter "AOS", a wholly-owned subsidiary of United Water) under contract with the City. According to information provided by the City, AOS is responsible for operation and maintenance of the City's sewage treatment plant and the sanitary sewer collection system, including the lift stations. However, AOS has indicated that it had not accepted full responsibility for operation and maintenance of some of the lift stations and sewage collection systems. The City is responsible for repair and replacement of equipment, such as the pumps and the electrical systems.
 - b. Marshall Creek lift station is a sewage pump station for pumping sewage into the force main sewer system for delivery to the sewage treatment plant. This lift station has a level alarm which sends an alarm to the SCADA system (Supervisory Control and Data Acquisition, an electronic monitoring system) located at the sewage treatment plant when the level of wastewater in the wet well exceeds a preset level. The SCADA system also receives continuous information regarding the wastewater levels in the wet wells from remote locations, such as the Marshall Creek lift station. The City's SCADA system has an operator screen and an alarm

screen. Generally a level alarm would be displayed in both systems and is an indication of a non-functioning pump or other malfunctions at the lift station.

- c. The Marshall Creek lift station was equipped with dual pumps and dual power supply sources. When the primary operating system fails, the lift station should automatically switch to the alternate (standby) system. On December 18, 2009, both pumps at the Marshall Creek lift station failed either due to an electrical failure or due to mechanical problems with the pumps.
- d. According to information provided by the City, both pumps at the lift station were tested and were found to be functional prior to the December 18th incident. However, the City stated that the spare pump was known to have problems, but functioned properly in the test mode. On December 18, 2009, the operating pump failed due to a seal problem. When this happened, the system failed to switch to the standby pump. Information provided by AOS indicated that the second pump may have failed on December 18, 2009 due to preexisting mechanical problems; the City claims that the failure was due to an electrical failure. In any case, on December 18, 2009, both pumps failed, both electrical systems failed, and the alarm sensor switch failed. These failures at the lift station triggered an alarm at the SCADA alarm screen. However, the SCADA operator screen did not register an alarm because of the malfunctioning sensor switch. Had the operator at the SCADA operator station been properly trained, high wastewater levels in the wet well indicated on the operator screen should have triggered a series of further actions, including checking the alarm screen to determine the source of high wastewater levels in the wet well. The operators at the sewage treatment plant were not properly trained to recognize and to take further steps to respond to the high wastewater levels.
- e. The overflow from the wet well at the Marshall Creek lift station continued for approximately 18 hours until an employee of an electrical contractor noticed it and reported it to the sewage treatment plant operators on December 19, 2009. Once the sewage treatment plant was notified of the incident, AOS responded within 45 minutes and the cleanup crew (another subcontractor) arrived approximately 1.5 hours later. AOS was able to start the standby pump and stop the overflow of sewage. By the time the cleanup contractor arrived, most of the sewage that overflowed had percolated into the dry creek bed and they recovered approximately 300 gallons from a total estimated discharge of 403,000 gallons.
- f. Section D.8 of the SSO Order requires the City to properly manage, operate, and maintain all parts of the sanitary sewer system owned or operated by the City to ensure that the system operators (including

employees, contractors, or other agents) are adequately trained and possess adequate knowledge, skills, and abilities. Information gathered during the investigation of this spill incident and other recent spill incidents within the City indicates that the City failed to properly manage, operate, and maintain all parts of the sanitary sewer system owned by the City. It also failed to ensure that its contractors were adequately trained and possess adequate knowledge, skills, and abilities.

- g. On November 2, 2009, AOS reported pump problems at the Marshall Creek lift station and requested the City's immediate attention. The chief plant operator requested the City to rehabilitate both pumps at the Marshall Creek lift station. As early as May 2008, the City Council had approved approximately \$200,000 to replace and/or rehabilitate the pumps at various lift stations. On November 24, 2009, the City replaced the primary pump at the lift station with a pump which was known to have some mechanical problems. The primary pump, which also had reported problems, was then used as the standby pump. The standby pump was then sent for rehabilitation. The simultaneous failure and/or malfunctions of three different systems (dual pumps, dual power supply system, and level alarm switch) indicate a lack of proper maintenance and operation of the sewer collection and appurtenance systems. The failure of the operating staff to properly monitor, review and to take appropriate action based on the information on the SCADA operator screen also indicates a lack of training.

8. The discharge was into an ephemeral, un-named tributary of San Timoteo Creek, a water of the United States. The Basin Plan designates the following beneficial uses for the Creek: groundwater recharge, water contact recreation, non-contact water recreation, warm fresh water habitat and wildlife habitat.
9. The City violated several provisions of the SSO Order. By discharging untreated wastewater to waters of the United States, it violated Provision C.1 which states, "Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited." Provision D.1 states, "The Enrollee must comply with all conditions of this Order. Any noncompliance with this Order constitutes a violation of the California Water Code and is grounds for enforcement action." By failing to properly operate and maintain and provide adequate training to its employees and by not ensuring that its contractors are properly trained, the City violated Provision D.8. Beaumont is alleged to have violated Provisions C.1 and D.8 of the SSO Order.
10. Pursuant to CWC §13350(e), the Regional Board may impose civil liability administratively either on a daily basis [per CWC §13350(e)(1)] or on a per gallon basis [per CWC §13350(e)(2)], but not both. The Assistant Executive Officer proposes to impose civil liability per CWC §13350 (e)(2).

11. CWC §13350(e)(2) states that administrative civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged. For the discharge incident described above, the total volume discharged and not recovered was 402,700 gallons. The maximum liability for the violation cited above on a per gallon basis is \$4,027,000 (402,700 gallons X \$10 per gallon = \$4,027,000).
12. CWC §13327 specifies factors that the Regional Board shall consider in establishing the amount of civil liability. Consideration of these factors is addressed in the following table.

Factor	Comment
<p>A. Nature, Circumstances, Extent and Gravity of Violation</p>	<p>An estimated 402,700 gallons of untreated wastewater (sewage) was discharged from Beaumont's sanitary sewer system to an ephemeral, un-named, tributary to San Timoteo Creek, a water of the United States.</p> <p>The sewage discharged to the tributary has the potential to impact the designated beneficial uses of the San Timoteo Creek by the introduction of bacteria, nutrients, and other pollutants. The nature of the soils in the tributary allowed sewage to be absorbed and percolated before reaching San Timoteo Creek. However, the nutrients and some of the other pollutants in sewage, once deposited in the soil, have the potential to migrate through the soil column into the ground water or be carried by storm water into the Creek and other surface waterbodies. The discharge of sewage also is a threat to public health.</p> <p>Once Beaumont became aware of the discharges at the Marshall Creek lift station (18 hours after its failure), Beaumont responded to the spill and was able to mobilize equipment and personnel to put the lift station back into operation.</p>

B. Culpability	<p>Regional Board staff has alleged in a previously issued administrative civil liability complaint (Complaint No. R8-2009-0068) that Beaumont has failed to develop and implement a comprehensive Sanitary Sewer Management Plan (hereinafter "SSMP") in compliance with the SSO Order. Staff has been working with Beaumont to bring them into compliance with this provision of the SSO Order. It has been alleged that Beaumont's failure to develop this plan, as required by the SSO Order, and its failure to take proactive steps to prevent SSOs and develop a comprehensive operation and maintenance plan has contributed to previous failures of lift stations. Failures of mechanical systems associated with the lift stations could have been prevented, or at least minimized, by proper operation and maintenance of these systems through development and implementation of a SSMP. Provision D.6(i) of the SSO Order requires the Regional Board to consider the City's progress towards developing and implementing the SSMP in any enforcement action.</p> <p>As indicated above, the City also failed to ensure that its contractors were adequately trained. Had AOS employees been properly trained to effectively utilize the SCADA operator screen, the spill could have been prevented or at least minimized.</p> <p>During the previous spill incidents, Regional Board staff had reiterated to the City the need for proper operation and maintenance of its sanitary sewer systems and for providing adequate training to its employees/contractors.</p>
C. Economic Benefit or Savings	<p>Beaumont's decision to not act on a recommendation to repair problematic pump units and replace them with properly sized temporary units contributed to the magnitude of the discharge. However, based on recent information provided by the City, it appears that these savings were insignificant.</p>

<p>D. Prior History of Violations</p>	<p>The Assistant Executive Officer issued Administrative Civil Liability Complaint No R8-2009-0068 on November 19, 2009 to Beaumont due to eight sanitary sewer overflow incidents that discharged sewage into tributaries of San Timoteo Creek. Regional Board staff are working with Beaumont to resolve this Complaint.</p> <p>Beaumont has also violated provisions of the Riverside County Municipal Storm Water Permit (of which they are a co-permittee). The Regional Board issued an administrative civil liability complaint for these violations.</p>
<p>E. Staff Costs</p>	<p>Regional Board staff spent approximately 78 hours investigating this incident. The total cost for staff time is \$11,700 (78 hrsX\$150/hr=\$11,700).</p>
<p>F. Ability to pay</p>	<p>Beaumont is a city of more than 30,000 citizens. Pursuant to Water Code section 13385(k) it is not considered a small community with financial hardship and, therefore, it appears that Beaumont has the ability to pay the proposed administrative civil liability. The Prosecution Team is not in the possession of any information that Beaumont would be unable to pay the proposed liability amount.</p>

13. After consideration of the above factors, the Assistant Executive Officer proposes that civil liability be imposed administratively on Beaumont in the amount of \$111,000 for the violations cited above.

14. This penalty assessment is based on a consideration of the potential for harm from the sanitary sewer overflow event described above. Based on the potential harm from the discharge and the characteristics of the discharge, the Assistant Executive Officer determined that an assessment of \$0.25 per gallon is appropriate. This is based on the fact that all of the discharge percolated into a dry creek bed and there were no identifiable beneficial use impacts. The total assessment based on flow is \$100,675 (402,700 gallonsX\$0.25/gallon=\$100,675).

This amount is then adjusted based on Beaumont's a) culpability, b) the susceptibility of the discharge to cleanup and cooperation with Regional Board staff, and c) history of violations.

As indicated in the table above, Beaumont appears to have had an inordinate number of overflow incidents that suggest a lack of proper operation and maintenance. Based on lack of training and failure to implement an effective operations and maintenance

program, an adjustment factor of 1.1 was applied related to culpability. With regard to the cleanup factor, a 0.75 adjustment factor is used in considering cleanup cooperation, Beaumont's response activities (the City responded immediately upon discovery of the discharge) and the absence of any observable impacts on the beneficial uses from the discharge. With regard to the history of violations factor, the assessment was increased by a factor of 1.2 based on the chronic history of on-going violations that has resulted in the issuing of an earlier administrative civil liability complaint (Complaint No. R8-2009-0068). Applying each of these adjustment factors results in an adjusted final assessment of \$99,668.25 ($\$100,675 \times 1.1 \times 0.75 \times 1.2 = \$99,668.25$).

CWC §13327 also requires consideration of economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. The amount of economic benefit is insignificant so no economic benefit has been assessed for this violation. The costs of investigation and enforcement are considered as one of the "other factors as justice may require". The staff costs (\$11,700) are added to the adjusted amount above, for a total assessment of \$111,368.25 ($\$99,668.25 + \$11,700 = \$111,368.25$). This amount is rounded to the nearest thousand for a final proposed assessment of \$111,000.00.

WAIVER OF HEARING

Beaumont may waive its right to a hearing. If you choose to do so, please sign the attached waiver form and return it, together with a check for \$111,000 payable to the State Water Resources Control Board-WDPF in the enclosed preprinted envelope. If you waive your 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 or Chuck Griffin at (951) 782-4996.

4/15/10

Date

Kurt V. Berchtold

Kurt V. Berchtold
Assistant Executive Officer



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

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R8-2010-0007
ISSUED TO
City of Beaumont
550 East 6th Street
Beaumont, CA 92223
Riverside County

SCHEDULED FOR JUNE 10, 2010

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

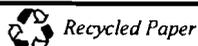
The Assistant Executive Officer has issued an Administrative Civil Liability Complaint (hereinafter "Complaint") pursuant to California Water Code Section 13323 against the City of Beaumont (hereinafter "Discharger") alleging that it has violated Water Code Section 13350 by violating State Water Resources Control Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (Order) wherein the discharge of untreated wastewater (sewage) to waters of the United States is prohibited. The Complaint proposes that administrative civil liability in the amount of one hundred and eleven thousand dollars (\$111,000) be imposed as authorized by Water Code Section 13350(e)(2). A hearing is currently scheduled to be held before the Regional Board during its June 10, 2010 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint. At the hearing, the Regional Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on June 10, 2010 will commence at 9:00 a.m. or as soon thereafter as practicable, or as announced in the Regional Board meeting agenda. The meeting will be held at the Irvine Ranch Water District, 16600 Sand Canyon Avenue, Irvine, 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:

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

California Environmental Protection Agency



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 April 22, 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 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) City of Beaumont, also referred to as the Discharger

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 April 22, 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 April 29, 2010. The parties will be notified by 5 p.m. on May 6, 2010 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: **Reed Sato (email: rsato@waterboards.ca.gov)**
Phone: 916-341-5889
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Discharger: **Alan Kapanicas, City Manager**
Email: (currently not available)
Phone: 909-395-2010
City of Beaumont
550 East 6th Street
Beaumont, CA 92223

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 Gerard Thibeault, Executive Officer, Santa Ana Regional Water Quality Control Board. Members of the Prosecution Team are: Reed Sato, Director, Office of Enforcement, State Water Resources Control Board; Kurt Berchtold, Assistant Executive Officer, Santa Ana Regional Water Quality 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; Chuck Griffin, Enforcement Unit, Santa Ana Regional Water Quality Control Board and Ken Theisen, Compliance and Regulations Section, 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 May 6, 2010. 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 May 6, 2010.

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 May 6, 2010.

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 May 13, 2010. 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 May 6, 2010. 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 May 6, 2010 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 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 May 13, 2010. 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 Reed Sato (rsato@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.)

- | | |
|-----------------|--|
| April 15, 2010: | Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice. |
| April 22, 2010: | Deadline for requests for designated party status. |
| April 22, 2010: | Deadline for objections, if any, to proposed Hearing Procedure. |
| April 29, 2010: | Deadline for oppositions to requests for designated party status. |
| April 29, 2010: | Discharger's deadline for waiving right to hearing. |
| May 06, 2010: | Advisory Team issues decision on requests for designated party status, if any. |
| May 06, 2010: | Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements." |

- May 06, 2010: Designated Parties' Deadline for all information required under "Submission of Evidence and Policy Statements."
- May 06, 2010: Interested Persons' deadline for written non-evidentiary policy statements.
- May 13, 2010: All Designated Parties' deadline for rebuttal information, evidentiary objections, and requests for additional time at the hearing, if any.
- June 10, 2010: Public Hearing.

KtV. Berchtold

Kurt V. Berchtold
Assistant Executive Officer
Regional Board Prosecution Team

4/15/10

Date





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

WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

I am duly authorized to represent the City of Beaumont (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2010-0007 (hereinafter "Complaint"). I am informed that California Water Code Section 13323, Subdivision (b), states that, "a hearing before the regional board (Santa Ana Regional Water Quality Control Board [hereinafter "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 **one hundred and eleven thousand dollars (\$111,000)** by check that references "ACL Complaint No. R8-2010-0007" made payable to the "State Water Resources Control Board-WDPF". Payment must be received by the Regional Board by **April 29, 2010** 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 Assistant Executive Officer 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 the outstanding violation(s). By checking this box, the Discharger requests that the Regional

California Environmental Protection Agency



WAIVER FORM
ACL No. R8-2010-007, CITY OF BEAUMONT

- 2 -

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.

(**OPTION 4: Check here if the Discharger waives the hearing requirement and will submit a proposed compliance project or supplemental environmental project. If the proposal is rejected, the Discharger 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 Prosecution Team has authorized the Discharger to submit a proposed Supplemental Environmental Project in lieu of payment of \$55,500. I agree to submit the proposal and check for \$55,500 [the remainder of the proposed civil liability] within 60 days of the date of the Complaint. I understand that the proposal must conform to the requirements specified in the State Water Resources Control Board's Water Quality Enforcement Policy. If I receive written notice from the Prosecution Team that the Discharger has failed to timely submit a proposal or that the Prosecution Team has rejected the proposal, I certify that the Discharger will remit payment of the proposed civil liability in the full amount of one hundred and eleven thousand dollars (**\$111,000**) by check that references "ACL Complaint No. R8-2010-0007." made payable to the "State Water Resources Control Board - WDPF" within ten days of the notice. If payment is not timely received, the Regional Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the acceptance or rejection of the proposed supplemental environmental project and payment of the remainder of the proposed civil liability 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 Assistant Executive Officer 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 of 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

California Environmental Protection Agency



**WAIVER FORM
ACL No. R8-2010-007, CITY OF BEAUMONT**

- 3 -

Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

