

## California Regional Water Quality Control Board, San Diego Region

June 14, 2013

CERTIFIED MAIL: 7011 0470 0002 8961 8446

In reply refer to:  
291369:cmeans

Mr. Chad Enniss  
Enniss Inc.  
P.O. Box 1769  
Lakeside, CA 92040

Mr. Enniss:

### **NOTICE OF HEARING AND ISSUANCE OF COMPLAINT NO. R9-2013-0051 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST ENNISS INC. FOR VIOLATION OF STATE BOARD ORDER NO. 97-03-DWQ, NPDES NO. CAS000001**

Enclosed find Complaint No. R9-2013-0051, for Administrative Civil Liability against Enniss Inc. (Discharger) in the amount of \$5,950 for violation of reporting requirements established by State Water Board Order No. 97-03-DWQ, NPDES No. CAS000001. The violation addressed in the Complaint results from failure to submit the Fiscal Year 2010-2011 annual monitoring report for your industrial facility.

California Water Code (CWC) sections 13399.33(2)(c) and (d) require the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) to impose civil liability in an amount that is not less than one thousand dollars (\$1,000) plus staff costs for failure to submit the annual report required by Order No. 97-03-DWQ. The amount of liability recommended in Complaint No. R9-2013-0051 is for the minimum required plus \$4,950 in staff costs.

### **Waiver of Hearing**

Pursuant to California Water Code section 13323, the San Diego Water Board will hold a hearing on the Complaint no later than 90 days after it is served. The Discharger may elect to waive its right to a hearing before the San Diego Water Board. Waiver of the hearing constitutes admission of the validity of the allegations of violation in the Complaint and acceptance of the assessment of civil liability in the amount of \$5,950 as set forth in the Complaint. For the San Diego Water Board to accept the waiver of the Discharger's right to a public hearing, the Discharger must submit the following by 5 P.M. July 15, 2013:

TOMAS MORALES, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

9174 Sky Park Court, Suite 100, San Diego, CA 92123 | (858) 467-2952 | [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)



Enclosures:

- 1. ACL Complaint R9-2013-0051
- 2. Technical Analysis
- 3. ACL Fact Sheet
- 4. Waiver Form
- 5. Proposed Hearing Procedures

Tech Staff Info & Use (SMARTS)	
Order No.	R9-2013-0051
Enforcement ID	412398
WDID	9 371019954
Violation ID	845539
Application ID	291369

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**In the matter of:**

**Mr. Chad Enniss  
Enniss Inc.  
12535 Vigilante Road  
Lakeside, CA 92040**

**WDID: 9 371019954**

**COMPLAINT NO. R9-2013-0051  
FOR  
ADMINISTRATIVE CIVIL LIABILITY**

**Violations of  
Order No. 97-03-DWQ, National  
Pollutant Discharge Elimination  
System General Permit No.  
CAS000001, Waste Discharge  
Requirements for Discharges of  
Storm Water Associated with  
Industrial Activities Excluding  
Construction Activities**

**June 14, 2013**

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. Enniss Inc. (hereafter Discharger), located at 12535 Vigilante Road, Lakeside, California, is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) must impose civil liability pursuant to Section 13399.33 and Section 13385 of the California Water Code (CWC).
2. This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.
3. The Discharger operates a diversified construction company with areas of specialization including sand and material sales, construction material recycling and reclamation, steel design, fabrication, assembly and erection, earth moving, grading and site work, and demolition. The Discharger is identified with Standard Industrial Classification (SIC) number 3325 (Steel Foundries – NEC). This category of industrial facility is required to obtain coverage under Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (General Permit).
4. On November 17, 2005, the Discharger submitted a Notice of Intent for coverage under the General Permit.

5. The integrity and effectiveness of the Industrial NPDES regulatory program relies upon discharger compliance accomplished by self-evaluation and self-reporting. Self-evaluation is accomplished by implementing the programs and provisions of the General Permit. Self-reporting is accomplished by the submission of an annual report as outlined in General Permit Sections B 8-14. Section B 14 requires all facility operators to submit an annual monitoring report by July 1<sup>st</sup> of each year. The annual report includes a summary and evaluation of visual observations and sampling results, laboratory reports and an Annual Comprehensive Site Compliance Evaluation Report. Therefore, timely submittal of the required annual report is critically important for the evaluation of a facility's compliance with water quality standards.
6. Pursuant to Water Code section 13399.31, the San Diego Water Board issued a Notice of Violation dated September 29, 2011 for failure to submit the FY 2010/2011 annual storm water monitoring report. On December 20, 2011, San Diego Water Board Staff conducted a site inspection of the facility, and requested submittal of the missing report. This inspection constituted the 2nd notification of failure to submit the annual monitoring report.
7. Water Code sections 13399.31(d) and 13399.33 direct the San Diego Water Board to impose administrative civil liability in an amount that is not less than one thousand dollars (\$1,000) and recover the costs incurred if a discharger fails to submit the required annual report within 60 days after the San Diego Water Board issues the initial notice of noncompliance.

#### **VIOLATION SUBJECT TO THIS COMPLAINT**

8. The Discharger violated Monitoring and Reporting Requirements in Section 14 of the General Permit by failing to submit the required monitoring report for Fiscal Year (FY) 2010-2011 by the July 1, 2011 due date. The San Diego Water Board did not receive the report until March 7, 2012. The report was 249 days late.
9. The details of this violation are set forth in full in the accompanying Technical Analysis, which is incorporated herein by this reference as if set forth in full.

#### **MAXIMUM LIABILITY**

10. CWC section 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day of violation.

11. Based on the late submittal of the FY 2010-2011 annual report, the Discharger is alleged to have violated the General Permit for 249 days (from July 2, 2011 to March 7, 2012). The total maximum liability for this violation is \$2,490,000.

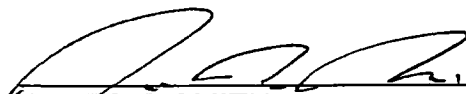
### **MINIMUM LIABILITY**

12. CWC section 13399.33(c-d) **requires** that the Regional Board impose a mandatory minimum penalty of not less than \$1,000 **and** recover staff costs associated with this enforcement action for any person who fails to submit an annual report after being given appropriate notice in accordance with CWC section 13399.31.

### **PROPOSED LIABILITY**

13. It is recommended that the San Diego Water Board impose civil liability against the Discharger in the amount of five thousand nine hundred fifty dollars (\$5,950), which includes staff costs of \$4,950 to date, for failure to submit the FY 2010-2011 annual report on time. If the Discharger elects to contest this matter, the recommended liability may increase to recover additional necessary staff costs.
14. The State Water Boards 2009 Enforcement Policy penalty calculation methodology is not required to be used in determining the amount of civil liability when assessing a mandatory minimum penalty pursuant to CWC section 13399.33(c).

Dated this 14th day of June, 2013,



JAMES G. SMITH

Assistant Executive Officer

Signed pursuant to the authority delegated  
by the Executive Officer to the Assistant  
Executive Officer.

SMARTS:

Application ID: 291369  
Violation ID: 947974  
Regulatory Measure ID: 390384

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**TECHNICAL ANALYSIS**

**Proposed Administrative Civil Liability Contained in  
Complaint No. R9-2013-0051  
Enniss Inc.**

**Noncompliance with**

**State Water Resources Control Board Order No. 97-03-DWQ, National  
Pollutant Discharge Elimination System General Permit No. CAS000001,  
Waste Discharge Requirements (WDRs) for Discharges of Storm Water  
Associated With Industrial Activities Excluding Construction Activities**

**June 14, 2013**

**Prepared by**

**Christopher Means  
Compliance Assurance Unit  
San Diego Water Board**

Section B of the General Permit contains Monitoring and Reporting Requirements. Item 14 of Section B requires all facility operators to submit an annual report to the Executive Officer of the San Diego Water Board by July 1 of each year. The annual report must include, but is not limited to, a summary of visual observations and sampling results, an evaluation of the visual observations and sampling and analysis results, laboratory reports, an annual comprehensive site compliance evaluation report, and if necessary, an explanation of why the facility did not implement any activities required by the General Permit.

The Discharger complied with the annual report submittal requirements of the General Permit for the first three years of coverage. However in 2009 the Discharger failed to submit the 2008/2009 Annual Report in a timely fashion. After receiving two Notices of Violation from the San Diego Water Board the report was ultimately submitted 173 days late.

On September 29, 2011, in accordance with Water Code section 13399.31, the San Diego Water Board issued Notice of Violation R9-2011-0093 to the Discharger for failure to submit its 2010/2011 Annual Report. On December 20, 2011, the San Diego Water Board conducted a site inspection of the facility and requested submittal of the missing annual report. This inspection constituted the second notification of failure to submit the annual report. Mr. Enniss stated during inspection that a copy of the report would be submitted by December 22, 2011. There is no record of this report being submitted on or around that date.

#### Issuance of Expedited Payment Letter (EPL)

By letter, on February 23, 2012, the San Diego Water Board offered the Discharger the opportunity to participate in the Expedited Payment Program to resolve the violation associated with the failure to submit the 2010/2011 Annual Report (see attached Exhibit B). The EPL outlined a conditional offer to the Discharger to pay the mandatory \$1,000 administrative civil liability, submit the outstanding annual report, and waive its right to a hearing. In return the San Diego Water Board agreed to forgo any additional liability that may have been assessed pursuant to Water Code Section 13385, and to consider the matter settled.

On March 7, 2012, the Discharger responded to the San Diego Water Board with a letter rejecting the Expedited Payment Program offer (see attached Exhibit C). The Discharger asserted that its consultant Highfill Group Engineering submitted the report in a timely fashion "on or before July 1, 2011". However, a thorough review of the San Diego Water Board records did not find the report in question. The rejection letter further asserted that a copy of the report was hand delivered to the San Diego Water Board "sometime in late December 2011". However, no documentation supporting this claim has been found in the Water Board files, nor has the discharger provided any documentation supporting this claim. And lastly,

recover San Diego Water Board staff costs associated with this enforcement action for any person who fails to submit an annual report in accordance with Water Code section 13399.31. The San Diego Water Board staff costs for enforcement of this violation are \$4,950 (see Exhibit E for staff costs breakdown).

### Proposed Liability

It is recommended that the San Diego Water Board impose civil liability against the Discharger in the amount of five thousand nine hundred fifty dollars (\$5,950), which includes staff costs of \$4,950 to date (as described in the complaint), for failure to submit the FY 2010/2011 annual report. If the Discharger elects to contest this matter, the recommended liability may increase to recover additional necessary staff costs.

### **E. EXHIBITS**

- A. November 29, 2005 Notice of Intent
- B. February 23, 2012 Expedited Payment Letter (EPL)
- C. March 7, 2012 Discharger Response to EPL
- D. March 30, 2012 Withdrawal of EPL Offer Letter
- E. Staff Cost Estimation



**EXHIBIT A**

**ENNISS INC. Notice of Intent**

**November 29, 2005**

State of California  
State Water Resources Control Board

019954

### NOTICE OF INTENT

TO COMPLY WITH THE TERMS OF THE  
GENERAL PERMIT TO DISCHARGE STORM WATER  
ASSOCIATED WITH INDUSTRIAL ACTIVITY (WO ORDER No. 97-03-DWQ)  
(Excluding Construction Activities)

#### SECTION I. NOI STATUS (please check only one box)

A. <input checked="" type="checkbox"/> New Permittee	B. <input type="checkbox"/> Change of Information	WDID #
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#### SECTION II. FACILITY OPERATOR INFORMATION (See instructions)

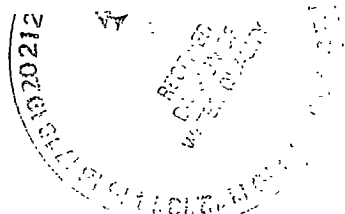
A. NAME KAWASS FIRM		Phone: 627-801-1101
Mailing Address: PO BOX 1769 LAKE		
City: LAKEVILLE	State: CA	Zip Code: 92640
Contact Person: CHAD KAWASS		
B. OPERATOR TYPE: (check one) <input checked="" type="checkbox"/> Private    2. <input type="checkbox"/> City    3. <input type="checkbox"/> County    4. <input type="checkbox"/> State    5. <input type="checkbox"/> Federal    6. <input type="checkbox"/> Special District    7. <input type="checkbox"/> Gov. Combo		

#### SECTION III. FACILITY SITE INFORMATION

A. FACILITY NAME KAWASS FIRM		Phone: 627-801-1101
Facility Location: 12535 Virginia Rd		County: SAN DIEGO
City: LAKEVILLE	State: CA	Zip Code: 92640
B. MAILING ADDRESS: SAME AS ABOVE		
City: SAME		State: CA
Contact Person: CHAD KAWASS		
C. FACILITY INFORMATION (check one) Total Size of Site: ACRES 85 <input checked="" type="checkbox"/> Sq. Ft. ( )		Percent of Site Impervious (including rooftops) _____%
D. SIC CODE(S) OF REGULATED ACTIVITY: 1. 3325 2. _____ 3. _____	E. REGULATED ACTIVITY (describe each SIC code): STEEL FABRICATION SAND MINING EQUIPMENT STORAGE	

FOR STATE USE ONLY...

WDID: 9 371019954  
 Fee Paid: \$ 830  
 Processing Date 11/29/05



SECTION IV. ADDRESS FOR CORRESPONDENCE

Facility Operator Mailing Address (Section II) Facility Mailing Address (Section III, B.) Both

SECTION V. BILLING ADDRESS INFORMATION

SEND BILL TO: Facility Operator Mailing Address (Section II) Facility Mailing Address (Section III, B.) Other (enter information below)
Name: EMMISS, FRANK Phone: 661-956-1101
Mailing Address: PO Box 1769
City: LAKEVILLE State: CA Zip Code: 92546
Contact Person: CHAD EMMISS

SECTION VI. RECEIVING WATER INFORMATION

Your facility's storm water discharges flow: (check one) Directly OR Indirectly to waters of the United States.
NEVER LEAVES THE PROPERTY
Name of receiving water: SAN VINCENTE CREEK
(river, lake, stream, ocean, etc)

SECTION VII. IMPLEMENTATION OF PERMIT REQUIREMENTS

A. STORM WATER POLLUTION PREVENTION PLAN (SWPPP) (check one)
A SWPPP has been prepared for this facility and is available for review.
A SWPPP will be prepared and ready for review by (enter date): 12/2/05
B. MONITORING PROGRAM (check one)
A Monitoring Program has been prepared for this facility and is available for review.
A Monitoring Program will be prepared and ready for review by (enter date): 12/2/05
C. PERMIT COMPLIANCE RESPONSIBILITY
Has a person been assigned responsibility for:
1. Inspecting the facility throughout the year to identify any potential pollution problems? YES NO
2. Collecting storm water samples and having them analyzed? YES NO
3. Preparing and submitting an annual report by July 1 of each year? YES NO
4. Eliminating discharges other than storm water (such as equipment or vehicle wash-water) into the storm drain? YES NO

For State Use only.

SECTION VIII. SITE MAP

I HAVE ENCLOSED A SITE MAP YES X A new NOI submitted without a site map will be rejected

SECTION IX. CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In addition, I certify that the provisions of the permit, including the development and implementation of a Storm Water Pollution Prevention Plan and a Monitoring Program Plan, will be complied with.
Printed Name: CHAD EMMISS
Signature: [Signature] Date: 11/17/05
Title: MANAGING MEMBER

**EXHIBIT B**

**Expedited Payment Letter**

**February 23, 2012**

AGS



# California Regional Water Quality Control Board San Diego Region



Matthew Rodriguez  
Secretary for  
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Edmund G. Brown, Jr.  
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353  
(858) 467-2952 • Fax (858) 571-6972  
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

February 23, 2012

**Certified Mail-Return Receipt Requested**  
7010 1060 0000 4952 9864

Mr. Chad Enniss  
Enniss, Inc.  
PO Box 1769  
Lakeside, CA 92040

In reply refer to:  
Application ID: 291369:wghoram  
WDID:9 371019954

**OFFER TO PARTICIPATE IN AN EXPEDITED PAYMENT PROGRAM FOR FAILURE TO SUBMIT THE 2010-2011 ANNUAL INDUSTRIAL STORM WATER REPORT, ORDER NO. 97-03-DWQ, NPDES NO. CAS000001**

**ENNISS, INC., PO BOX 1769, LAKESIDE, CA 92040**

Mr. Enniss:

This letter is to notify Enniss, Inc. of an alleged violation of the California Water Code (Water Code) regarding the failure to submit the 2010-2011 Annual Industrial Storm Water Report (Annual Report) to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), as required by the State Water Resources Control Board (State Water Board) *General Permit for Storm Water Discharges Associated with Industrial Activities* (Industrial Storm Water Permit). This letter also notifies Enniss, Inc. of the opportunity to participate in the San Diego Water Board Expedited Payment Program for failure to submit the Annual Report. The Expedited Payment Program addresses liability that must be assessed pursuant to Water Code section 13399.33 and would forgo additional liability that may be assessed pursuant to Water Code section 13385. A plain language summary of the alleged violation and the offer to participate in the Expedited Payment Program is attached hereto as Exhibit A.

**NOTIFICATION**

Based on San Diego Water Board Administrative Records, as of February 23, 2012, Enniss, Inc. still has not submitted the 2010-2011 Annual Report as required by the Industrial Storm Water Permit. Failure to submit the Annual Report violates the requirements of the Industrial Storm Water Permit, the Water Code, and the Federal Water Pollution Control Act (Clean Water Act (CWA)). The San Diego Water Board previously sent Enniss, Inc. a Notice of Violation (NOV) attached hereto as Exhibit B.

Resolution and Waiver of Right to Hearing, [Proposed] Order" (Acceptance and Waiver) attached hereto as Exhibit E.

To promote resolution of the alleged failure to submit the report, the San Diego Water Board enforcement staff makes the following conditional offer. Enniss, Inc. may accept this offer, waive its right to a hearing, submit its Annual Report on or before **March 23, 2012** and pay a ONE THOUSAND DOLLAR (\$1,000) administrative civil liability for the failure to submit the report identified in the NOV attached hereto as Exhibit B. If Enniss, Inc. elects to take advantage of this early settlement offer, subject to the conditions set forth herein, the San Diego Water Board will accept Enniss, Inc.'s Annual Report and payment of the administrative civil liability as settlement of any enforcement action that would otherwise arise out of the failure to submit the report identified in the NOV attached hereto as Exhibit B.

The Expedited Payment Program does not address liability for any violation that is not specifically identified in the NOV attached hereto as Exhibit B.

#### **ENNISS, INC.'S OPTIONS AND INSTRUCTIONS FOR RESPONDING TO OFFER**

##### **ACCEPTING OFFER:**

If Enniss, Inc. accepts this early settlement offer, please sign and submit the Acceptance and Waiver attached hereto as Exhibit E and the delinquent Annual Report on or before **March 23, 2012** to:

California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123  
Attention: Application ID: 291369:wghoram, WDID:9 371019954

A blank copy of the 2010-2011 Annual Report forms can be downloaded from the State Water Board's web site:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/annual\\_reports/annrpt10\\_11.pdf](http://www.waterboards.ca.gov/water_issues/programs/stormwater/annual_reports/annrpt10_11.pdf)

If the Annual Report is determined to be complete by the San Diego Water Board, the Acceptance and Waiver (Exhibit E) will be held, pending a 30-day public notice period described below, and counter-signed by the San Diego Water Board Executive Officer and returned to you with an invoice for payment.

### **CONDITIONS FOR SAN DIEGO WATER BOARD ACCEPTANCE OF RESOLUTION**

This offer to participate in the Expedited Payment Program is conditional upon the San Diego Water Board's receipt of confirmation that Enniss, Inc. has submitted the Annual Report to the San Diego Water Board on or before **March 23, 2012**. If Enniss, Inc. chooses not to or fails to submit the Annual Report on or before that date, this offer will be deemed withdrawn and a formal enforcement action will be pursued. After the offer is deemed withdrawn, the San Diego Water Board enforcement staff will notify Enniss, Inc. of the impending enforcement action and any associated deadlines.

Should Enniss, Inc. participate in the Expedited Payment Program, the settlement will be published in the following manner: Federal regulations require the San Diego Water Board to publish notice of and to provide at least thirty (30) days for public comment on any settlement of an enforcement action addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon the receipt of Enniss, Inc.'s Acceptance and Waiver (Exhibit E) and Annual Report on or before **March 23, 2012**, the San Diego Water Board enforcement staff will publish a notice of the proposed resolution of the failure to submit the report alleged in the NOV attached hereto as Exhibit B.

1. If no comments are received within the notice period, the San Diego Water Board Executive Officer will execute the Acceptance and Waiver (Exhibit E) as a stipulated order assessing the uncontested penalty amount pursuant to Water Code section 13399.33 as described under the heading "Statutory Liability" herein. You will then be notified that payment is due within 30 days. Failure to pay the penalty within that time frame may result in further liability, referral of the matter to the Attorney General, and/or may void the offer to participate in this Expedited Payment Program.
2. If, however, significant comments are received in opposition to the settlement, this offer may be withdrawn. If the San Diego Water Board enforcement staff's offer is withdrawn, Enniss, Inc. will be advised of that withdrawal, and its waiver pursuant to the Acceptance and Waiver (Exhibit E) will also be treated as withdrawn. After the San Diego Water Board enforcement staff's offer and Enniss, Inc.'s waiver are deemed withdrawn, the unresolved violations will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing before the San Diego Water Board or the State Water Board.

Any questions about the NOV, this conditional offer, and/or the Acceptance and Waiver, should be directed to Ms. Whitney Ghoram at 858-467-2967 or [wghoram@waterboards.ca.gov](mailto:wghoram@waterboards.ca.gov).



Matthew Rodriguez  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
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Edmund G. Brown, Jr.  
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(858) 467-2952 • Fax (858) 571-6972  
<http://www.waterboards.ca.gov/sandiego>

## EXHIBIT A

### ***Enforcement for Failure to Submit an Annual Report***

You have until March 23, 2012, to act or face more penalties.  
Questions: Contact Ms. Whitney Ghoram (858) 467-2967 or  
[wghoram@waterboards.ca.gov](mailto:wghoram@waterboards.ca.gov)

This is a plain language summary of the attached **Notice of Violation and Enforcement Settlement Offer to Participate in an Expedited Payment Program for Failure to Submit the 2010-2011 Annual Industrial Storm Water Report, Order No. 97-03-DWQ, NPDES CAS000001.**

Enniss, Inc. is required to submit the Annual Report for coverage under Order No. 97-03-DWQ. The San Diego Water Board sent you a Notice of Violation on September 29, 2011 urging you to submit the Annual Report to avoid enforcement. To date, we have not received your Annual Report. Consequently, we are taking a monetary penalty enforcement action. However, instead of pursuing a formal enforcement complaint with higher penalties, we are offering you the opportunity to participate in an Expedited Payment Program to resolve the failure to submit the report.

**You have three options to respond:**

1. **Accept the Expedited Payment Program offer** by submitting your Annual Report and agreeing to pay a settlement of \$1,000. This is the fastest and most certain way to get closure on this enforcement action. If you choose this option, you must **submit your Annual Report by March 23, 2012**, and **sign and submit the Acceptance and Waiver form**, attached to the Enforcement Settlement Offer letter, by **March 23, 2012**. The form provides submittal instructions. Final closure on this action is only possible after ultimate submission of the settlement amount.
2. **Contest the failure to submit the report** by submitting in writing the basis of your challenge with supporting evidence. For example, you have evidence that you previously submitted your Annual Report. If you choose this option, you must **submit your challenge by March 23, 2012**.

We will review your challenge, and if we agree with you, we will notify you in writing that you are no longer considered in violation of the permit and our enforcement action has been terminated. However, if we do not agree with you, we will prepare a formal enforcement complaint at a higher dollar amount than the settlement offer of \$1,000. To avoid the latter, we urge you to contact Whitney Ghoram (see above) as soon as possible so we can assist you if you have a valid challenge.

3. **Reject the Expedited Payment Program offer** by not responding or submitting your rejection in writing by **March 23, 2012**. In either case, we will prepare a formal enforcement complaint at a higher dollar amount than the settlement offer of \$1,000. You must also submit your Annual Report. The date of submittal or failure to submit the Annual Report will affect the recommended penalty amount.

***California Environmental Protection Agency***





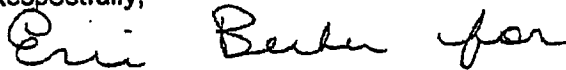
Enniss Inc  
Notice of Violation

- 2 -

September 29, 2011

If you have any questions pertaining to the submission of the Annual Report, and or the issuance of this NOV, please contact Tony Felix at (858) 636-3134, or by email at [tfelix@waterboards.ca.gov](mailto:tfelix@waterboards.ca.gov). If you feel you have received this NOV in error, please contact our office immediately.

Respectfully,



David Barker, P.E.  
Supervising Water Resources Control Engineer  
Surface Water Basins Branch

DTB:esb:pab

SMARTS:

Violation ID	845539
Enforcement ID	406484

(E) Applicable water quality objectives and criteria established in accordance with the regional board basin plans, statewide plans, and federal regulations.

(F) Reports and studies regarding source contribution of pollutants in runoff not based on direct water quality measurements.

(d) The requirements prescribed pursuant to this section shall be included in all storm water permits for regulated municipalities and industries that are reissued following development of the requirements described in subdivision (c). Those permits shall include these provisions on or before July 1, 2008. In a year in which the Legislature appropriates sufficient funds for that purpose, the state board shall make available to the public via the Internet a summary of the results obtained from storm water monitoring conducted in accordance with this section.

**§ 13383.6. School educational materials required by municipal stormwater permits**

On and after January 1, 2007, if a regional board or the state board issues a municipal stormwater permit pursuant to Section 402(p) of the Clean Water Act (33 U.S.C. Sec. 1342(p)) that includes a requirement to provide elementary and secondary public schools with educational materials on stormwater pollution, the permittee may satisfy the requirement, upon approval by the regional board or state board, by contributing an equivalent amount of funds to the Environmental Education Account established pursuant to subdivision (a) of Section 71305 of the Public Resources Code.

**§ 13383.7. Guidance on quantifiable effectiveness of municipal storm water programs**

(a) No later than July 1, 2009, and after holding public workshops and soliciting public comments, the state board shall develop a comprehensive guidance document for evaluating and measuring the effectiveness of municipal stormwater management programs undertaken, and permits issued, in accordance with Section 402(p) of the Clean Water Act (33 U.S.C. Sec. 1342(p)) and this division.

(b) For the purpose of implementing subdivision (a), the state board shall promote the use of quantifiable measures for evaluating the effectiveness of municipal stormwater management programs and provide for the evaluation of, at a minimum, all of the following:

- (1) Compliance with stormwater permitting requirements, including all of the following:
  - (A) Inspection programs.
  - (B) Construction controls.
  - (C) Elimination of unlawful discharges.

(D) Public education programs.

(E) New development and redevelopment requirements.

(2) Reduction of pollutant loads from pollution sources.

(3) Reduction of pollutants or stream erosion due to stormwater discharge.

(4) Improvements in the quality of receiving water in accordance with water quality standards.

(c) The state board and the regional boards shall refer to the guidance document developed pursuant to subdivision (a) when establishing requirements in municipal stormwater programs and permits.

**§ 13383.8. Stormwater management task force**

(a) The state board shall appoint a stormwater management task force comprised of public agencies, representatives of the regulated community, and nonprofit organizations with expertise in water quality and stormwater management. The task force shall provide advice to the state board on its stormwater management program that may include, but is not limited to, program priorities, funding criteria, project selection, and interagency coordination of state programs that address stormwater management.

(b) The state board shall submit a report, including, but not limited to, stormwater and other polluted runoff control information, to the Ocean Protection Council no later than January 1, 2009, on the way in which the state board is implementing the priority goals and objectives of the council's strategic plan.

**§ 13384. Hearings**

The state board or the regional boards shall ensure that the public, and that any other state, the waters of which may be affected by any discharge of pollutants or dredged or fill material to navigable waters within this state, shall receive notice of each application for requirements or report of waste discharge or application for a dredged or fill material permit or report of dredged or fill material discharge and are provided an opportunity for public hearing before adoption of such requirements or permit.

**§ 13385. Civil liability**

(a) ~~Any~~ person who violates any of the following shall be liable civilly in accordance with this section:

- (1) Section 13375 or 13376.
- (2) ~~Any~~ waste discharge ~~requirements~~ requirement or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(2) For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(i)(1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(2) For the purposes of this section, a "period of six consecutive months" means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

(A) An act of war.

(B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(D)(i) The operation of a new or reconstructed wastewater treatment unit during a defined period of adjusting or testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not

to exceed 30 days for any other wastewater treatment unit, if all of the following requirements are met:

(I) The discharger has submitted to the regional board, at least 30 days in advance of the operation, an operations plan that describes the actions the discharger will take during the period of adjusting and testing, including steps to prevent violations and identifies the shortest reasonable time required for the period of adjusting and testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit.

(II) The regional board has not objected in writing to the operations plan.

(III) The discharger demonstrates that the violations resulted from the operation of the new or reconstructed wastewater treatment unit and that the violations could not have reasonably been avoided.

(IV) The discharger demonstrates compliance with the operations plan.

(V) In the case of a reconstructed wastewater treatment unit, the unit relies on a biological treatment process that is required to be out of operation for at least 14 days in order to perform the reconstruction, or the unit is required to be out of operation for at least 14 days and, at the time of the reconstruction, the cost of reconstructing the unit exceeds 50 percent of the cost of replacing the wastewater treatment unit.

(ii) For the purposes of this section, "wastewater treatment unit" means a component of a wastewater treatment plant that performs a designated treatment function.

(2)(A) Except as provided in subparagraph (B), a violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i), and the date by which compliance is required to be achieved and, if the final date by which compliance is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress towards compliance will be measured and the date by which the discharger will be in compliance with each interim requirement.

(ii) (i) For purposes of the upgrade described in subclause (iii) of clause (iv) of subparagraph (B), the time schedule shall not exceed 10 years in length.

(ii) Following a public hearing and upon a showing that the discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation, the regional board may extend the time schedule for an additional period not exceeding five years in length, if the discharger demonstrates that the additional time is necessary to comply with the effluent limitation. This subclause does not apply to a time schedule described in subclause (i).

(iii) If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both of the following:

(i) Effluent limitations for the pollutant or pollutants of concern.

(ii) Actions and milestones leading to compliance with the effluent limitation.

(D) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement a pollution prevention plan pursuant to Section 13263.3.

(k)(1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:

(A) The compliance project is designed to correct the violations within five years.

(B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.

(C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

(2) For the purposes of this subdivision, "a publicly owned treatment works serving a small community" means a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population

density in the service area of the publicly owned treatment works.

(1) (1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

(2) For the purposes of this section, a "supplemental environmental project" means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

(3) This subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs.

(m) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any liability or penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any liability or penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person's penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(n) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, moneys collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (5) of subdivision (a) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects

**§ 13399.27. Reports**

On or before February 1, 2000, and on each February 1 thereafter, the state board, after any necessary investigation, shall prepare, and make available to the public, a report that includes both of the following:

(a) A list of those persons that were notified of their duty to comply with applicable general storm water NPDES permits pursuant to Section 13399.30 and a description of the responses received to those notifications, including the filing of notices of intent to obtain coverage or notices of nonapplicability, returned mail and no response, appeals of filing or permitting requirements pursuant to this chapter, site inspections, enforcement actions taken, and penalties assessed therefor.

(b) A list of those dischargers identified pursuant to Section 13399.31 that, during the previous calendar year, failed to submit an annual report or construction certification required by a regional board, and any penalties assessed therefor.

**§ 13399.30. Identification of dischargers**

(a)(1) Each year the regional boards shall undertake reasonable efforts to identify dischargers of storm water that have not obtained coverage under an appropriate storm water NPDES permit.

(2) Any person, including a person subject to waste discharge requirements under Section 1342(p) of Title 33 of the United States Code, that discharges, proposes to discharge, or is suspected by a regional board or the state board of discharging storm water associated with industrial activity that has not obtained coverage under an appropriate storm water NPDES permit, shall submit to the regional board, within 30 days from the date on which a notice is sent by the regional board, the appropriate notice of intent to obtain coverage or a notice of nonapplicability that specifies the basis for not needing to obtain coverage under an NPDES permit.

(b) If a person to which a notice is sent pursuant to subdivision (a) fails to submit the appropriate notice of intent to obtain coverage or the required notice of nonapplicability to the regional board within 30 days from the date on which that notice is sent, the executive officer of the regional board shall send a second notice to that discharger.

(c)(1) If a person to which a notice is sent pursuant to subdivision (b) fails to submit the required notice of nonapplicability to the regional board within 60 days from the date on which the notice pursuant to subdivision (a) was sent, the regional board shall impose the penalties described in subdivision (b) of Section 13399.33.

(2) If a person to which a notice is sent pursuant to subdivision (b) fails to submit the required notice of intent to obtain coverage to the regional board within 60 days

from the date on which the notice pursuant to subdivision (a) was sent, the regional board shall impose the penalties described in subdivision (a) of Section 13399.33.

**§ 13399.31. Notice of noncompliance**

(a) Each year the regional board shall conduct a review of the annual reports and construction certifications submitted in accordance with the requirements of an applicable NPDES permit and Section 1342(p) of Title 33 of the United States Code and shall identify the dischargers that have failed to submit that annual report or construction certification required by the regional board.

(b) The regional board shall notify each discharger that is identified pursuant to subdivision (a) with regard to its noncompliance and the penalties therefor.

(c) If a discharger to which a notice is sent pursuant to subdivision (b) fails to submit the annual report or construction certification required by the regional board to the regional board within 30 days from the date on which that notice is sent, the executive officer of the regional board shall send a second notice to that discharger.

(d) If a discharger to which a notice is sent pursuant to subdivision (c) fails to submit the annual report or construction certification required by the regional board to the regional board within 60 days from the date on which the notice is sent pursuant to subdivision (b), the regional board shall impose the penalties described in subdivision (c) of Section 13399.33.

**§ 13399.33. Penalties**

Except as provided in Section 13399.35, the regional board shall do all of the following with regard to a discharger that is subject to the requirements prescribed in accordance with Section 1342(p) of Title 33 of the United States Code:

(a)(1) With regard to a discharger of storm water associated with industrial activity that fails to submit the required notice of intent to obtain coverage in accordance with Section 13399.30, impose civil liability administratively in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof, unless the regional board makes express findings setting forth the reasons for its failure to do so, based on the specific factors required to be considered pursuant to paragraph (2).

(2) In determining the amount of the penalty imposed under this section, the regional board shall consider the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefits or savings resulting from the violation, and other matters as justice may require. These considerations shall be balanced against the need for the



Matthew Rodriguez  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA



Edmund G. Brown, Jr.  
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353  
(858) 467-2952 • Fax (858) 571-6972  
<http://www.waterboards.ca.gov/sandiego>

## EXHIBIT E

### ACCEPTANCE OF CONDITIONAL RESOLUTION AND WAIVER OF RIGHT TO HEARING; ORDER

Mr. Chad Enniss  
Enniss, Inc.  
PO Box 1769  
Lakeside, CA 92040  
WDID No. 9 371019954

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), Enniss, Inc. hereby accepts the "Offer to Participate in the San Diego Water Board's Expedited Payment Program for Failure to Submit the 2010-2011 Annual Industrial Storm Water Report" (Conditional Offer) and waives the right to a hearing before the San Diego Water Board to dispute the allegations of a violation described in the Notice of Violation (NOV) attached hereto as Exhibit A and incorporated herein by reference.

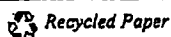
Enniss, Inc. agrees that the NOV attached hereto shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the San Diego Water Board to assert jurisdiction over the alleged violation through its Executive Officer. Enniss, Inc. agrees to perform the following:

1. Submit the 2010-2011 Annual Industrial Storm Water Report on or before **March 23, 2012** to:

California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123  
Attention: Application ID: 291369:wghoram, WDID:9 371019954

2. Pay administrative civil liability authorized by California Water Code section 13399.30, in the sum of ONE THOUSAND DOLLARS (\$1,000) (Expedited Payment Amount) by cashier's check or by certified check made payable to the State Water Resources Control Board, which shall be deemed payment in full of any administrative civil liability for the violation described in the NOV attached hereto as Exhibit A.

California Environmental Protection Agency



Mr. Chad Enniss  
Enniss, Inc.

February 23, 2012

unresolved violation(s) is likely to be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing before the San Diego Water Board or the State Water Board. For such a liability hearing, Enniss, Inc. understands that this Acceptance and Waiver endorsed by Enniss, Inc. shall be treated as a settlement communication and shall not be used as evidence in that hearing.

Enniss, Inc. understands that once this Acceptance and Wavier is formally executed by the Executive Officer of the San Diego Water Board, the full payment required by the deadline set forth below is a condition of this Acceptance and Wavier. Enniss, Inc. shall pay the Expedited Payment Amount of ONE THOUSAND DOLLARS (\$1,000) by a cashier's check or certified check for the full amount made payable to the "State Water Resources Control Board". Enniss, Inc. shall submit the payment to the San Diego Water Board no later than ten (10) calendar days after the date Enniss, Inc. receives written notice that the Executive Officer of the San Diego Water Board has formally endorsed this Acceptance and Waiver.

I hereby affirm that I am duly authorized to act on behalf of and to bind Enniss, Inc. in the making and giving of this Acceptance and Waiver.

Enniss, Inc.  
(Company)

By: \_\_\_\_\_  
(Signed Name)

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

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

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

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION  
13399.30.

Date: \_\_\_\_\_

By: \_\_\_\_\_

David W. Gibson  
Executive Officer  
California Regional Water Quality Control Board, San Diego Region

Attachment:

Exhibit A - Notice of Violation dated September 29, 2011


Enniss Inc  
Notice of Violation

- 2 -

September 29, 2011

If you have any questions pertaining to the submission of the Annual Report, and or the issuance of this NOV, please contact Tony Felix at (858) 636-3134, or by email at [tfelix@waterboards.ca.gov](mailto:tfelix@waterboards.ca.gov). If you feel you have received this NOV in error, please contact our office immediately.

Respectfully,



David Barker, P.E.  
Supervising Water Resources Control Engineer  
Surface Water Basins Branch

DTB:esb:pab

SMARTS:

Violation ID	845539
Enforcement ID	406484



**EXHIBIT C**

**Discharger Response to EPL Letter**

**March 7, 2012**



**ENNISS INC.**

12535 Vigilante Road - Lakeside

SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

P.O. Box 1769 - Lakeside, CA 92040  
Phone (619) 581-1101 - Fax (619) 443-9191

2012 MAR -9 P 4: 04

March 7, 2012

State Of California  
California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, California 92123-4340

Certified Mail #7009 0820 0001 9902 5606

Attention: Mr. James G. Smith, Assistant Executive Officer

Reference: Application ID: 291369:wghoram  
WDID:9 371019954

Dear Mr. Smith:

We are in receipt of your letter dated February 23, 2012 "OFFER TO PARTICIPATE IN AN EXPEDITED PAYMENT PROGRAM FOR FAILURE TO SUBMIT THE 2010-2011 ANNUAL INDUSTRIAL STORM WATER REPORT ORDER NO. 07-03-DWQ, NPDES NO. CAS000001", a copy of which is enclosed.

Also enclosed please find a copy of the report in question, which was prepared and previously submitted by Highfill Group Engineering.

- Highfill Group Engineering asserts that the report was submitted to the Board in a timely fashion on or before July 1, 2011, at the same time that reports for other Highfill clients were submitted. Highfill Group tells us that all reports that they submitted for other clients were received by the Board.
- Highfill Group Engineering states that a copy of the report was hand-delivered to your offices sometime in late December 2011, after Ms.

**EXHIBIT D**

**Withdrawal of EPL Offer**

**March 30, 2012**



Matthew Rodriguez  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region

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9174 Sky Park Court, Suite 100, San Diego, California 92123-4353  
(858) 467-2952 • Fax (858) 571-6972  
<http://www.waterboards.ca.gov/sandiego>

March 30, 2012

Mr. Chad Enniss  
Enniss Inc.  
PO Box 1769  
Lakeside, California 92040

**Certified Mail-Return Receipt Requested**  
7010 1060 0000 4952 9888

**In reply refer to:**

Application ID: 291369:wghoram  
WDID:9 371019954

**REJECTION OF EXPEDITED PAYMENT PROGRAM FOR FAILURE TO SUBMIT THE  
2010-2011 ANNUAL INDUSTRIAL STORM WATER REPORT, ORDER NO. 97-03-  
DWQ, NPDES NO. CAS000001**

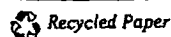
**ENNISS INC., 12535 VIGILANTE ROAD, LAKESIDE, CA 92040**

Mr. Enniss:

By letter dated March 7, 2012 you declined the offer to participate in the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Expedited Payment Program for Enniss Inc.'s failure to submit the 2010-2011 Annual Report (Annual Report) by the July 1, 2011 due date. In your response letter, you reported that the Annual Report was submitted to the San Diego Water Board sometime in late December 2011 and provided an unsigned copy of the Annual Report. San Diego Water Board staff have reviewed the Administrative Records for Enniss Inc. and concluded that there is no record of the Annual Report being submitted in December 2011. Therefore, the San Diego Water Board cannot confirm Enniss' alleged submittal of the Annual Report. Furthermore, neither Enniss nor its consultant, Highfill Group Engineering, has provided documentation to support the alleged timely submittal.

The San Diego Water Board settlement offer for Enniss Inc. to participate in the Expedited Payment Program is now deemed withdrawn. This offer was an opportunity for Enniss Inc. to resolve the violation for failure to submit the report by paying the minimum penalty. By declining the San Diego Water Board's settlement offer, Enniss Inc. should now expect that a formal enforcement action will be pursued for which it will receive notice of any deadlines associated with that action. In such an action, the liability amount sought and/or imposed may significantly exceed the \$1,000 mandatory minimum penalty required by law. Moreover, the San Diego Water Board staff costs incurred for enforcement are an additional factor which will be considered in assessing Enniss, Inc.'s liability amount.

***California Environmental Protection Agency***



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CHAD ENNISS  
 ENNISS INC.  
 P.O. Box. 1769  
 Lakeside, CA 92040

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
**X**

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
 (Transfer from service label)

7010 1060 0000 4952 9888

PS Form 3811, February 2004 3-3c

Domestic Return Receipt W. Charam

102595-02-M-1540



7010 1060 0000 4952 9888

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Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
<b>Total Postage &amp; Fees</b>		<b>\$3.40</b>

Postmark  
Here

Sent to  
**CHAD ENNISS / ENNISS INC.**  
 Street, Apt. No.,  
 or PO Box No. **P.O. Box 1769**  
 City, State, ZIP+4  
**LAKESIDE CA 92040**

**EXHIBIT E**

**Staff Cost Estimation**

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R9-2013-0051**

**STAFF COSTS TO OBTAIN COMPLIANCE:**

Staff Position	Task	Estimated Hours	Estimated Cost
Student Assistant	Drafting and Issuance of 1 <sup>st</sup> NOV (9/29/2011)	1	\$150
Senior Eng	Review and sign NOV	0.5	\$75
Sanitary Eng Associate	Site Inspection (12/20/2011) and 2 <sup>nd</sup> request for submittal of Annual Report	3	\$450
Sanitary Eng Associate	Drafting and Issuance of Expedited Payment Letter (EPL) dated 02/23/2012	8	\$1200
Senior Eng	Review case, edit EPL	2	\$300
Branch Manager	Review case, edit EPL	1	\$150
Asst Exec Officer	Review and Sign EPL	0.5	\$75
Sanitary Eng Associate	Review EPL Rejection Letter, database research for "missing report"	1	\$150
Sanitary Eng Associate	Drafting and issuance of EPL rejection response letter (03/30/2012)	1	\$150
Senior Eng	Review response letter, edit	0.5	\$75
Asst Exec Officer	Review response letter sign	0.5	\$75
Env Scientist (CAU)	Review Case, Draft ACL Complaint & Tech Analysis	10	\$1500
Senior Env. Scientist (CAU)	Review and edit Draft ACL Complaint	2	\$300
Branch Manager	Review Draft ACL Complaint	1	\$150
Asst Exec Officer	Review and Sign ACL Complaint	1	\$150
<b>TOTAL</b>			<b>\$4,950</b>

**NOTE: Staff costs are based on an average rate of \$150 per hour, as directed by the State Water Board Office of Enforcement**

# Administrative Civil Liability Complaint

## Fact Sheet

The State Water Resources Control Board and the Regional Water Boards are authorized to issue a complaint for civil liabilities under Water Code section 13323 for violations of the Water Code. This document describes generally the process that follows the issuance of a complaint.

The issuance of a complaint is the first step in the possible imposition of an order requiring payment of penalties. The complaint details the alleged violations including the appropriate Water Code citations, and it summarizes the evidence that supports the allegations. **If you receive a complaint, you must respond timely as directed. If you fail to do so, a default order may be issued against you.** The complaint is accompanied by a letter of transmittal, a waiver options form, and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

## Parties

The parties to a complaint proceeding are the State or Regional Water Board Prosecution Team and the person named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become a "designated party." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit comments. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (nine volunteer members) or before a panel. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by advisory staff, who provide advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the prosecution team nor the discharger or his/her representatives are permitted to communicate with the board members or the advisory team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Notice.



## Factors that must be considered by the Board

Except for Mandatory Minimum Penalties under Water Code Section 13385 (i) and (h), the Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (California Water Code Section 13327, 13385(e) and 13399). During the period provided to submit evidence (set forth in the Hearing Notice) and at the hearing, the discharger may submit information that it believes supports its position regarding the complaint. If the discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

### For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

### For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding your financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

## **Petitions**

If the Board issues an order requiring payment, the discharger may challenge that order by filing a petition for review with the State Board pursuant to Water Code section 13320. More information on the petition process is available at [www.waterboards.ca.gov/public\\_notices/petitions](http://www.waterboards.ca.gov/public_notices/petitions)

An order of the State Board, including its ruling on a petition from a regional board order, can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an order for payment of penalties becomes final, the regional or state board may seek an order of the superior court under Water Code Section 13328, if necessary, in order to collect payment of the penalty amount.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2012-0036**

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

I am duly authorized to represent the City of Oceanside (the City) in connection with Administrative Civil Liability Complaint No. R9-2012-0036 (hereinafter "Complaint"). I am informed that 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 City waives the hearing requirement and will pay the liability.)**
- a. I hereby waive any right the City may have to a hearing before the San Diego Water Board.
  - b. I certify that the City will remit payment for the civil liability imposed in the amount of **one million five hundred seventy two thousand eight hundred fifty dollars (\$1,572,850)** by check that references "ACL Complaint No. R9-2012-0036" made payable to the "State Water Resources Control Board." Payment must be received by the San Diego Water Board by **March 16, 2012**, or this matter will be placed on the San Diego Water Board's agenda for a hearing as initially proposed in the Complaint.
  - c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the San Diego Water Board receive significant new information or comments from any source (excluding the San Diego Water Board's Prosecution Team) during this comment period, the San Diego Water 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 San Diego Water Board, and that the San Diego Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the City 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 City to further enforcement, including additional civil liability.
- (OPTION 2: Check here if the City waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the City may have to a hearing before the San Diego Water 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 City will promptly engage the San Diego Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the City requests that the San Diego Water Board delay the hearing so that the City and the Prosecution Team can discuss settlement. It remains within the discretion of the San Diego Water 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 City 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 City may have to a hearing before the San Diego Water Board within 90 days after service of the complaint. By checking this box, the City requests that the San Diego Water Board delay the hearing and/or hearing deadlines so that the City may have additional time to prepare for the hearing. It remains within the discretion of the San Diego Water Board to approve the extension.

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(Print Name and Title)

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(Signature)

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(Date)

SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

PROPOSED DRAFT

HEARING PROCEDURE FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
NO. R9-2013-0051  
ISSUED TO

ENNISS INC.  
FOR VIOLATION OF STATE BOARD ORDER NO. 97-03-DWQ, NPDES NO.  
CAS000001

SCHEDULED FOR AUGUST 14, 2013

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 of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) sections 13399.33(2)(c) and (d) (Water Code) against the Enniss Inc. (Discharger) for violation of reporting requirements established by State Water Board Order No. 97-03-DWQ, NPDES No. CAS000001. The Complaint proposes that administrative civil liability in the amount of \$5,950 be imposed as authorized by Water Code Section 13399. Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the San Diego Water Board during its meeting of **August 14, 2013**, in San Diego.

**Purpose of Hearing**

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the San Diego Water Board will consider whether to adopt, modify, or reject the proposed assessment.

The public hearing on **August 14, 2013**, will commence as announced in our San Diego Water Board meeting agenda. The meeting will be held at the San Diego Water Board offices located at 9174 Sky Park Court, Suite 100, San Diego, CA. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the San Diego Water Board's web page at: [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego).

## **Hearing Procedures**

The hearing will be conducted in accordance with this hearing procedure. This proposed draft version of the hearing procedure has been prepared by the Prosecution Team and is subject to revision and approval by the San Diego Water Board's Advisory Team. A copy of the procedures governing an adjudicatory hearing before the San Diego Water Board may be found at Title 23 of the California Code of Regulations, § 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 Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the San Diego Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

**THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY CATHERINE HAGAN, SENIOR STAFF COUNSEL, NO LATER THAN JULY 19, 2013, OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.**

## **Hearing Participation**

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the San Diego Water Board, staff or others, at the discretion of the San Diego Water Board.

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

- (1) San Diego Water Board Prosecution Staff
- (2) Enniss Inc.

### **Requesting Designated Party Status**

Persons who wish to participate in the hearing as a designated party, and are not already be listed above, shall request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5 p.m. on **July 5, 2013**, to Catherine Hagan, Senior Staff Counsel, at the address set forth above. 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 San Diego Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by 5 p.m. on **July 15, 2013**. The parties will be notified by 5 p.m. on **July 26, 2013** as to whether the request has been granted or denied.

### **Contacts**

#### **Advisory Staff:**

Catherine Hagan  
Senior Staff Counsel  
Office of Chief Counsel  
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#### **Prosecution Staff:**

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Chiara Clemente  
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**Discharger:**

Enniss Inc.

Mr. Chad Enniss  
Enniss Inc.  
PO Box 1769  
Lakeside, CA 92040

**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 San Diego Water Board (Prosecution Staff) have been separated from those who will provide advice to the San Diego Water Board (Advisory Staff). Members of the Advisory Staff are: Catherine Hagan, Senior Staff Counsel, and David Gibson, Executive Officer. Members of the Prosecution Staff are: Laura Drabrandt, Staff Counsel, James Smith, Assistant Executive Officer, Jeremy Haas, Environmental Program Manager, Chiara Clemente, Senior Environmental Scientist and Christopher Means, Environmental Scientist.

### **Ex Parte Communications**

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

### **Hearing Time limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have 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 ten days after all of the evidence has been received **July 31, 2013**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the San Diego Water 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 San Diego Water Board to consider. Evidence and exhibits already in the public files of the San Diego Water 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. (Discharger only) 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 San Diego Water Board), the Discharger should



submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

6. (Discharger only) If the Discharger would like to propose a Supplemental Environmental Project (SEP) in lieu of paying some or all of the civil liability in accordance with the State Water Board's Water Quality Enforcement Policy, the Discharger shall submit a detailed SEP proposal including a specific implementation timetable.

The Prosecution Team shall submit two hard copies of the information to Catherine Hagan, Senior Staff Counsel, so that it is received no later than 5 p.m. on **July 26, 2013**.

The remaining designated parties shall submit 20 hard copies and one electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that they are received no later than 5 p.m. on **July 31, 2013**.

In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

In accordance with Title 23, California Code of Regulations, Section 648.4, the San Diego Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the San Diego Water 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 San Diego Water 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 at or before the hearing 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, no later than 5 p.m. on **July 31, 2013**.

### **Evidentiary Objections**

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5 p.m. on **August 2, 2013** to the Advisory Team with a copy to all other designated parties. 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 San Diego Water Board office at 9174 Sky Park Court, Suite 100, San Diego, CA 92123. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Board Chair. Many of these documents are also posted on-line at [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego). Although the web page is updated regularly, to assure access to the latest information, you may contact Catherine Hagan, Senior Staff Counsel.

Questions concerning this proceeding may be addressed to Catherine Hagan, Senior Staff Counsel.

**IMPORTANT DEADLINES**

These draft hearing procedures become final without issuance by the Advisory Team if no objections to the procedures were timely submitted and the Advisory Team does not issue revised hearing procedures on or before **July 1, 2013**.

June 14, 2013	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team
June 24, 2013	Objections due on proposed Hearing Procedure
July 1, 2013	Advisory Team issues Hearing Procedure
July 5, 2013	Deadline for submission of request for designated party status
July 15, 2013	Deadline for opposition to request for designated party status.
July 15, 2013	Discharger's deadline for waiving right to hearing
July 26, 2013	Prosecution Team's deadline for submission of evidence, testimony and witness lists.
July 26, 2013	Advisory Team issues decision on requests for designated party status, if any.
July 31, 2013	Remaining Designated Parties' Deadline for submission of all information required under "Evidence and Policy Statements," above
July 31, 2013	All Designated Parties' deadline for submission of request for pre-hearing conference
August 2, 2013	All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections
August 14, 2009	Hearing

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DAVID W. GIBSON  
Executive Officer

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DATE