

Los Angeles Regional Water Quality Control Board

January 24, 2019

Mr. Joseph Cruz
Director of General Services
City of Gardena
1717 West 162nd Street
Gardena, CA 90247
Email: jcruz@cityofgardena.org

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7018 1130 001 5911 4639

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2019-0005, CITY OF GARDENA, VIOLATIONS OF THE LA COUNTY MS4 PERMIT

Enclosed is Complaint No. R4-2019-0005 (Complaint) issued pursuant to California Water Code (Water Code) section 13323 in the amount of \$714,985 in administrative civil liability against the City of Gardena (City). The Los Angeles Regional Water Quality Control Board (Regional Board) Prosecution Team alleges that the City violated the monitoring requirements of the *Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges Within the Coastal Watersheds of Los Angeles County, Except those Discharges Originating from the City of Long Beach MS4* (NPDES Permit CAS004001; Order R4-2012-0175) (LA County MS4 Permit or Permit).

Also enclosed is a copy of the Regional Board "Hearing Procedures for Administrative Civil Liability Complaint No. R4-2019-0005" (Hearing Procedures) and the Administrative Civil Liability Fact Sheet.

The City may waive its right to a hearing as indicated on the attached "Waiver Form for Administrative Civil Liability Complaint No. R4-2019-0005." The City has three options to waive its right to a hearing:

- Pay the proposed administrative civil liability and waive the right to a hearing (Option 1 on the Waiver Form);
- Ask that the hearing be postponed to facilitate settlement negotiations (Option 2 on the Waiver Form); or
- Ask that the hearing be postponed for other reasons and provide a written justification for the postponement (Option 3 on the Waiver Form).

If the Prosecution Team does not receive a signed waiver by **5:00 p.m. on February 24, 2019**, a hearing before the Regional Board will be held regarding this Complaint April 24, 2018. The hearing will be governed by the attached Hearing Procedures, which have been approved by the Regional Board's Executive Officer for use in adjudicating matters such as this one. Any objections to the Hearing Procedures must be received by Sophie Froelich, Attorney, whose contact information is listed in the Hearing Procedures, by **5:00 p.m. on February 4, 2019**.

An agenda containing the date, time, location, and specific procedures of the hearing will be sent to you prior to the hearing date.

If the City chooses to sign the wavier and pay the proposed administrative civil liability, this will be considered a tentative settlement of the violations. The settlement will be considered final pending a 30-day public comment period. Interested parties may comment on the proposed action during this period by submitting written comments to the Regional Board staff person listed below. Should the Regional Board receive new information or comments during this comment period, the Assistant Executive Officer may withdraw the Complaint, return payment, and issue a new complaint. If the Regional Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

Persons or organizations who wish to participate in the hearing as a **Designated Party** must request designated party status by submitting a request in writing so that it is received no later than **5:00 p.m. on February 8, 2019**. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses, etc.), along with a statement explaining why the Regional Board Prosecution Team and the Discharger do not adequately represent the person's or organization's interest.

Interested Persons include any person or organization that is interested in the outcome of the hearing, but who has not been designated as a Designated Party. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, and monitoring data), but may present written and/or oral non-evidentiary comments and policy statements. Interested Persons may not cross-examine witnesses and are not subject to cross-examination. Written non-evidentiary policy statements from Interested Persons must be received by **5:00 p.m. on February 25, 2019**.

If you have any questions, please contact Prosecution Team contact Wendy Wyels, Wendy.Wyels@waterboards.ca.gov or (916) 323-0595.

Sincerely,


Hugh Marley
Assistant Executive Officer

Enclosures: Administrative Civil Liability Complaint No. R4-2019-0005
Attachment A and Attachments 1-4
Waiver Form
Hearing Procedures

cc list on next page

cc w/ enc:

City of Gardena representatives [via US Mail]

Gerald Greene, CWE Corp
1561 East Orangethorpe Avenue, Suite 240
Fullerton, California 92831

Advisory Team [via email only]

Ms. Deborah Smith, Los Angeles Regional Water Quality Control Board
Ms. Renee Purdy, Los Angeles Regional Water Quality Control Board
Ms. Sophie Froelich, Office of Chief Counsel, State Water Resources Control Board
Ms. Adriana Nunez, Office of Chief Counsel, State Water Resources Control Board

Prosecution Team [via email only]

Mr. Hugh Marley, Los Angeles Regional Water Quality Control Board
Mr. Russ Colby, Los Angeles Regional Water Quality Control Board
Mr. Ivar Ridgeway, Los Angeles Regional Water Quality Control Board
Ms. Erum Razzak, Los Angeles Regional Water Quality Control Board
Ms. Wendy Wyels, Office of Enforcement, State Water Resources Control Board
Ms. Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board
Ms. Catherine Hawe, Office of Enforcement, State Water Resources Control Board

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R4-2019-0005

IN THE MATTER OF

CITY OF GARDENA

Failure to Complete Baseline Monitoring Pursuant to Order R4-2012-0175

This Administrative Civil Liability Complaint (Complaint) is issued by the Assistant Executive Officer of the Los Angeles Regional Water Quality Control Board (Regional Board) to the City of Gardena (City) pursuant to California Water Code (Water Code) sections 13385 and 13268, which authorize the imposition of civil liability, Water Code section 13323, which authorizes the Executive Officer to issue this Complaint, and Water Code Division 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case, the Assistant Executive Officer. This Complaint is based on evidence that the City of Gardena failed to comply with the monitoring requirements of the *Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges Within the Coastal Watersheds of Los Angeles County, Except those Discharges Originating from the City of Long Beach MS4* (NPDES Permit CAS004001; Order R4-2012-0175).

The Assistant Executive Officer of the Los Angeles Regional Water Quality Control Board alleges the following:

BACKGROUND

1. The City of Gardena is located within Los Angeles County, about 11 miles southwest of downtown Los Angeles. The City covers an area of approximately 6 square miles, and at the time of the 2010 US Census, had a population of 58,829 people. The annual precipitation is approximately 14 inches. The City's municipal separate storm sewer system (MS4) discharges into one receiving water: the Dominguez Channel.
2. On November 8, 2012, the Regional Board adopted Order R4-2012-0175, *Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges Within the Coastal Watersheds of Los Angeles County, Except those Discharges Originating from the City of Long Beach MS4* (LA County MS4 Permit or Permit). This Permit was later amended by State Water Resources Control Board Order WQ 2015-0075 and Regional Board Order R4-2012-0175-A01. The City of Gardena is one of the 84 incorporated cities named as a Permittee under the LA County MS4 Permit, and discharges from the City's MS4 are regulated by the Permit.
3. The Monitoring and Reporting Program (MRP; Attachment E) of the LA County MS4 Permit lists specific "baseline" monitoring and reporting requirements which must be completed by each Permittee. Alternatively, the Permit gives Permittees the option to individually develop and implement an integrated monitoring program (IMP), upon written approval of the Regional Board Executive Officer. The City submitted a proposed IMP and a revised proposed IMP. On October 20, 2016, the Regional Board Executive Officer issued a letter

(the "monitoring directive") informing the City that the IMP continued to be deficient and therefore the City must comply with the LA County MS4 Permit's baseline monitoring and reporting requirements within 30 days. To assist the City, the monitoring directive includes two tables detailing the specific monitoring locations, analytes, and sampling frequency for the City's baseline monitoring and reporting program. The monitoring directive was subsequently modified on January 6, 2017.

4. Since issuance of the Regional Board's October 20, 2016 monitoring directive, the City should have submitted four semi-annual reports containing the results of monitoring conducted per the requirements of the LA County MS4 Permit.
5. The first required monitoring report was the June 2017 semi-annual report. This semi-annual report was to contain the results of the City's monitoring completed between November 19, 2016 (when monitoring was to begin) and December 31, 2016. During the wet weather, the City should have sampled for a total of 508 constituents and completed an aquatic toxicity assessment. Instead, the City analyzed a total of 16 constituents. In summary, between November and December 2016, the City completed less than 3% of the required baseline monitoring.
6. The second required monitoring report was the December 2017 semi-annual report. This semi-annual report was to contain the results of the City's monitoring completed between January 1, 2017 and June 30, 2017. During the dry weather, the City should have sampled for 163 constituents during two sampling events plus conducted aquatic toxicity testing. However, the City did not monitor during the dry weather. During the wet weather, the City should have sampled for 188 constituents plus conducted aquatic toxicity testing, sediment testing, and fish tissue testing. Instead, the City analyzed a total of 16 constituents during the wet weather. In summary, between January and June 2017, the City completed 4% of the required baseline monitoring.
7. The third required monitoring report was the June 2018 semi-annual report. This semi-annual report was to contain the results of monitoring completed between July 1, 2017 and December 31, 2017. During the dry weather, the City should have sampled one monitoring event, analyzing for 12 constituents and completing an aquatic toxicity test. However, the City did not complete any dry weather monitoring. Between July and December 2017, the City completed 0% of the required baseline monitoring.
8. The fourth required monitoring report was the December 2018 semi-annual report. This semi-annual report was to contain the results of monitoring completed between January 1, 2018 and June 30, 2018. During the dry weather, the City should have sampled for a total of 12 constituent; however, the City did not do any dry weather monitoring. During the wet weather, the City should have sampled for 262 constituents and completed two aquatic toxicity tests. Instead, the City analyzed 25 samples, of which only 17 were from the correct locations. In summary, between January and June 2018, the City completed less than 6% of the required baseline monitoring.
9. On September 6, 2018, the Prosecution Team issued to the City Order R4-2018-0121, a *California Water Code Section 13267 Investigative Order for Technical Reports* (Investigative

Order). The Investigative Order lists the deficiencies and inaccuracies identified by Board staff in the City's monitoring reports submitted after August 2016, and requires the City to submit updated, complete, and accurate reports by October 16, 2018. The City responded on October 15, 2018, stating that as of May 10, 2018, it had terminated its contract with the consultant who had failed to conduct the required sampling and subsequently prepared four materially deficient monitoring reports. Because the consultant had contracted directly with the analytical laboratory, the City was unable to obtain the original laboratory reports and therefore cannot submit corrected monitoring reports. The City informed the Regional Board on September 11, 2018 that it hired a new consultant, that it began monitoring as required by the January 6, 2017 monitoring directive, and that the first complete sampling and monitoring report would be the City's June 2019 semi-annual report.

LEGAL AND REGULATORY CONSIDERATIONS

10. The LA County MS4 Permit was issued pursuant Clean Water Act section 402 and implementing regulations adopted by the US EPA and chapter 5.5, division 7 of the Water Code (commencing with section 13370), including Water Code section 13376. The Permit serves as an NPDES permit for point source discharges from the Permittees' MS4s to surface waters, including the City. The Permit also serves as waste discharge requirements (WDRs) pursuant to article 4, chapter 4, division 7 of the Water Code (commencing with Section 13260).
11. Provision IV.B.1 of the LA County MS4 Permit requires that the Permittees (including the City) either comply with the Monitoring and Reporting Program (MRP) found in Attachment E of the Permit or, upon approval of a Watershed Management Program, implement a customized monitoring program. Not only was the City's Watershed Management Plan not approved, its proposed monitoring program was similarly not approved by the Regional Board, and therefore the City was required to comply with the MRP found in Attachment E.
12. Attachment E of the LA County MS4 Permit specifies the minimum wet weather and dry weather receiving water and outfall monitoring, including a list of constituents to be monitored. Attachment E also specifies that semi-annual monitoring reports shall be submitted. To assist the City, Regional Board staff summarized the monitoring program specific to the City in its October 20, 2016 monitoring directive and again in its January 6, 2017 revised monitoring directive.

Water Code and Clean Water Act

13. Water Code Section 13385, subdivision (a) states in relevant part:
A person who violates any of the following shall be liable civilly in accordance with this section:
 - (1) Section 13375 or 13376.
 - (2) A waste discharge requirement ... issued pursuant to this chapter [chapter 5.5].
 - (3) A requirement established pursuant to Section 13383.
14. Water Code section 13385, subdivision (c) states in relevant part:
Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

15. Water Code section 13268, subdivision (a)(1) states in relevant part:
Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267... is guilty of a misdemeanor, and may be liable civilly in accordance with subdivision (b).
16. Water Code section 13268, subdivision (b)(1) states in relevant part:
Civil liability may be administratively imposed by a regional board ... in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
17. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of civil liability, the Regional Board shall take into consideration the nature, circumstances, 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 the 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 violation, and other matters as justice may require.

Water Quality Enforcement Policy

18. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 which adopted the 2010 Water Quality Enforcement Policy (2010 Enforcement Policy). The 2010 Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The 2010 Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing an administrative civil liability as outlined in Water Code section 13385, subdivision (e).
19. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the 2017 Water Quality Enforcement Policy (2017 Enforcement Policy). The 2017 Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017.
20. The Prosecution Team developed the proposed administrative civil liability based on both the 2010 and 2017 Enforcement Policies. Because the alleged violations for Violation 1 took place while the 2010 Enforcement Policy was still in effect it was used to develop the administrative civil liability for Violation 1. The 2017 Enforcement Policy was in effect during the time that alleged violations for Violations 2-4 took place and therefore it was used to develop the administrative civil liabilities for those three violations.

California Environmental Quality Act

21. Issuance of this Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, §21000 et seq), in accordance with California Code of Regulations, title 14, section 15321, subdivision (a)(2).

ALLEGED VIOLATIONS

22. **Violation 1:** The Prosecution Team alleges that the City violated the LA County MS4 Permit by failing to complete the baseline monitoring program from November 19 through December 31, 2016. This failure to complete the required sampling and analysis resulted in the submission of a materially deficient and incomplete June 2017 semi-annual monitoring report.
23. **Violation 2:** The Prosecution Team alleges that the City violated the LA County MS4 Permit by failing to complete the baseline monitoring program from January through June 2017. This failure to complete the required sampling and analysis resulted in the submission of a materially deficient and incomplete December 2017 semi-annual monitoring report.
24. **Violation 3:** The Prosecution Team alleges that the City violated the LA County MS4 Permit by failing to complete the baseline monitoring program from July through December 2017. This failure to complete the required sampling and analysis resulted in the submission of a materially deficient and incomplete June 2018 semi-annual monitoring report.
25. **Violation 4:** The Prosecution Team alleges that the City violated the LA County MS4 Permit by failing to complete the baseline monitoring program from January through June 2018. This failure to complete the required sampling and analysis resulted in the submission of a materially deficient and incomplete December 2018 semi-annual report.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

26. The Prosecution Team proposes an administrative civil liability of \$714,985 for Violations 1-4, as detailed in Attachment A to this Complaint. This proposed administrative civil liability was derived using the penalty methodology in the 2010 and 2017 Enforcement Policies. The proposed administrative civil liability takes into account the factors cited in Water Code section 13385, subdivision (e), such as the City's culpability, history of violations, ability to pay, and other factors as justice may require.
27. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional administrative civil liability for violations which have not yet been assessed or for violations that may subsequently occur.

MAXIMUM STATUTORY LIABILITY

28. Pursuant to Water Code section 13385, subdivision (c), the statutory maximum administrative civil liability for each violation in Violations 1-4 is \$10,000 per day of violation.
29. Violation 1 describes the City's failure to complete the required baseline sampling and analysis for the June 2017 semi-annual monitoring period. This mandatory monitoring, accompanied by the complete monitoring report required by the LA County MS4 Permit, remains outstanding for a total of 561 days (from June 30, 2017 through January 11, 2019). The statutory maximum liability for Violation 1 is \$5,610,000 [(10,000/day) x 561 days].
30. Violation 2 describes the City's failure to complete the required baseline sampling and analysis for the December 2017 semi-annual monitoring period. This mandatory monitoring,

accompanied by the complete monitoring report required by the LA County MS4 Permit, remains outstanding for a total of 393 days (from December 15, 2017 through January 11, 2019). The statutory maximum liability for Violation 2 is \$3,930,000 [(10,000/day) x 393 days].

31. Violation 3 describes the City's failure to complete the required baseline sampling and analysis for the June 2018 semi-annual monitoring period. This mandatory monitoring, accompanied by the complete monitoring report required by the LA County MS4 Permit, remains outstanding for a total of 196 days (from June 30, 2018 through January 11, 2019). The statutory maximum liability for Violation 3 is \$1,960,000 [(10,000 day x 196 days)].
32. Violation 4 describes the City's failure to complete the required baseline sampling and analysis for the December 2018 semi-annual monitoring period. This mandatory monitoring, accompanied by the complete monitoring report required by the LA County MS4 Permit, remains outstanding for a total of 28 days (from December 15, 2018 through January 11, 2019). The statutory maximum liability for Violation 4 is \$280,000 [(10,000/day) x 28 days)].
33. The proposed administrative civil liability considers the statutory maximum liability for each violation.

MINIMUM LIABILITY

34. Both the 2010 and 2017 Enforcement Policies require the Regional Board to recover, at a minimum, the economic benefit plus 10%. The economic benefit for all four violations is approximately \$54,919. The minimum liability that may be imposed is the economic benefit plus 10%, which is equal to \$60,411. The proposed administrative civil liability is above the minimum liability amount.

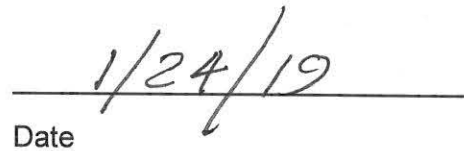
THE CITY OF GARDENA IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Board proposes an administrative civil liability in the amount of \$714,985. The amount of the proposed administrative civil liability is based upon a review of the factors cited in Water Code section 13385, subdivision (e), as well as the 2010 and 2017 Enforcement Policies.
2. A hearing on this matter will be conducted by the Regional Board at a hearing scheduled on April 24, 2019, unless the City of Gardena does any of the following by the February 25, 2019 deadline to submit the Waiver Form, as described in the Hearing Procedures.
 - a. The City of Gardena waives the right to a hearing by completing the attached Waiver Form (checking the box next to Option 1) and returning it to the Regional Board, along with payment for the proposed administrative civil liability of \$714,985; or
 - b. The Regional Board agrees to postpone any necessary hearing after the City of Gardena requests to engage in settlement discussions by checking the box next to Option 2 on the attached Waiver Form and returning it to the Regional Board; or

- c. The Regional Board agrees to postpone any necessary hearing after the City of Gardena requests a delay by checking the box next to Option 3 on the attached Waiver Form and returning it to the Regional Board along with a letter describing the items to be discussed.
3. If a hearing is held, it will be governed by the attached Hearing Procedures. During the hearing, the Regional Board will hear testimony and arguments and affirm, reject, or modify the proposed administrative civil liability, or determine whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The Assistant Executive Officer reserves the right to amend the proposed amount of administrative civil liability to conform to the evidence presented.



Hugh Marley
Assistant Executive Officer



Date

Attachment A: Penalty Calculation Methodology
Waiver Form
Hearing Procedures

Attachment A - Specific Factors Considered in Determining Liability

City of Gardena: Failure to Comply with Baseline Monitoring Pursuant to Order R4-2012-0175

On November 8, 2012, the Los Angeles Regional Water Quality Control Board (Regional Board) adopted the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit (Order R4-2012-0175) (LA County MS4 Permit or Permit). This Permit was later amended by State Water Resources Control Board Order WQ 2015-0075 and Regional Board Order R4-2012-0175-A01. Discharges from the City of Gardena's (City's) municipal separate storm sewer system (MS4) are regulated by the LA County MS4 Permit. Among other items, the Permit requires that the City submit semi-annual and annual reports containing analytical and other information related to implementation and compliance with the permit.

Attachment E of the LA County MS4 Permit lists specific "baseline" monitoring and reporting requirements which must be completed by each Permittee. Alternatively, the Permit allows Permittees the option to individually develop and implement an integrated monitoring program (IMP), upon written approval of the Regional Board Executive Officer. The City submitted a proposed IMP and a revised proposed IMP. On October 20, 2016, the City was informed that neither its original nor its revised IMP met the requirement for an IMP and was formally notified that it must comply with the Permit's baseline monitoring and reporting requirements within 30 days. To assist the City, the Regional Board's monitoring directive includes two tables detailing the specific monitoring locations, analytes, and sampling frequency for the City's baseline monitoring and reporting program. On January 6, 2017, in response to the City's request, the Regional Board's Executive Officer issued minor modifications to the monitoring and reporting program. This revised monitoring directive also includes two tables with the revised monitoring locations and analytes.

The City was to comply with the monitoring program as of November 19, 2016. Since that time, the City should have submitted four semi-annual and two annual reports. The City submitted most of these reports; however, the reports are materially deficient in that they evidence a significant absence of the required sampling and analysis at the required locations, at the required frequency, or for the required analytes. Each of these materially deficient reports is discussed below.

Factors required to be considered in determining the amount of administrative civil liability pursuant to California Water Code section 13385, subdivision (e) and the State Water Resources Control Board's Enforcement Policy are discussed for each violation. Violations that occurred prior to October 5, 2017 are considered under the 2010 Enforcement Policy¹, while violations that occurred after October 5, 2017 are considered under the 2017 Enforcement Policy.²

The following table summarizes the dates and activities pertinent to this discussion of violations.

¹ https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

²

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

Attachment A/Table 1: Chronology of Timelines

Date	Item	Comments
November 8, 2012	Regional Board adopts the LA County MS4 Permit	Became effective on December 28, 2012
October 20, 2016	Regional Board directs the City to follow baseline monitoring within 30 days ("monitoring directive")	
November 19, 2016	City to begin baseline monitoring	
December 14, 2016	City submits 2015-2016 Annual Report	No analytical data
January 6, 2017	Regional Board makes minor modifications to the City's baseline monitoring program	The revised monitoring directive is found as Attachment 1 to this document (Attachment A Penalty Methodology analysis)
April 7, 2017	In response to multiple staff requests, City submits December 2016 semi-annual report	Report was four months late. Contains results from January-March 2016, prior to the monitoring directive to begin baseline monitoring. Therefore, the adequacy and completeness of this monitoring and of this report is not being analyzed as part of the proposed liability.
June 15, 2017	City submits June 2017 semi-annual report	Report was to include monitoring from July-December 2016, but instead has results from December 2016-February 2017. Insufficient monitoring resulted in a materially deficient report. (Violation 1)
December 15, 2017	City submits 2016-2017 Annual Report	No analytical data
December 26, 2017	City declines to submit a December 2017 semi-annual report	Report was to include sampling from January-June 2017. No data; insufficient monitoring resulted in a materially deficient report. (Violation 2)
June 14, 2018	City submits June 2018 semi-annual report	Report was to include monitoring from July-December 2017 but instead has results for January-

		March 2018. Insufficient monitoring resulted in a materially deficient report. (Violation 3)
December 17, 2018	City submits December 2018 semi-annual report	Report was to include sampling from January-June 2018. Data is the same as that contained in the June 2018 semi-annual report; insufficient monitoring resulted in a materially deficient report. (Violation 4)
December 17, 2018	City submits 2017-2018 Annual Report	No analytical data

Annual Reports

The 2015-2016 Annual Report was to describe the City’s compliance with the LA County MS4 Permit for the period of July 2015 through June 2016. The City submitted its 2015-2016 annual report on December 16, 2016. Regional Board staff reviewed the annual report and, in a letter dated July 14, 2017, asked the City for additional information and clarification to numerous items. Although the City responded, it did not provide any of the requested information or clarifications. Because the period that the annual report covered was prior to when the City was directed to comply with the baseline monitoring program, this Complaint does not evaluate the adequacy or completeness of the monitoring and associated 2015-2016 annual report as a separate violation category for purposes of administrative civil liability.

The 2016-2017 Annual Report was to describe the City’s compliance with the Permit for the period of July 2016 through June 2017. The report was submitted on December 15, 2017. It follows a similar format as the 2015-2016 report. Although there is a brief discussion of constituent monitoring during 2016-2017, no analytical data is provided. The report does not address the comments and clarifications that Regional Board staff requested for the previous year’s Annual Report. This Complaint does not evaluate the adequacy or completeness of the monitoring and associated 2016-2017 annual report as a separate violation category for purposes of administrative civil liability.

The 2017-2018 Annual Report was to describe the City’s compliance with the Permit for the period of July 2017 through June 2018. The report was submitted on December 17, 2018, and describes the changes that have been made, and the City’s attempt to return to compliance, since the City retained a new consultant in the fall of 2018. The City characterizes this Annual Report as “transitional” as it is based on limited data provided by the prior consultant. This Complaint does not evaluate the adequacy or completeness of the monitoring and associated 2017-2018 annual report as a separate violation category for purposes of administrative civil liability.

December 2016 Semi-Annual Report

In its October 20, 2016 letter, the Regional Board directed the City to comply with the LA County MS4 Permit’s baseline monitoring and reporting requirements within 30 days, or by November

19, 2016. The first monitoring report due after that time was the December 2016 semi-annual report, which was to contain the results of monitoring completed between January and June 2016. On April 7, 2017, in response to multiple email inquiries by staff, the City submitted a report which contained the results from three sampling events conducted in January, February, and March 2016. Because the City was not required to begin baseline monitoring until November 2016, this Complaint does not consider whether the sampling events complied with the requirements of the LA County MS4 Permit.

**Violation 1:
Failure to complete required sampling and analysis
resulting in the submission of a materially deficient and incomplete
June 2017 semi-annual monitoring report**

The City was directed to comply with the monitoring program as of November 19, 2016. The results of samples collected between that time and December 31, 2016 were to be submitted as part of the June 2017 semi-annual report. On June 15, 2017, the City submitted a semi-annual monitoring report. However, instead of containing results for samples collected in the second half of 2016, the report contained the results of samples collected in December 2016, January 2017, and February 2017. In determining compliance with the October 20, 2016 monitoring directive, the only samples collected for the relevant monitoring period are the December 2016 samples, and therefore are the only samples available to the Prosecution Team in its review of the June 2017 monitoring report. The samples collected in January and February 2017 are considered as part of the compliance review of the December 2017 semi-annual monitoring report, as discussed in Violation 2.

It is noted that the City's monitoring program was slightly modified per the Regional Board's January 6, 2017 letter; however, the original monitoring program described in the Board's October 20, 2016 monitoring directive is applicable for this semi-annual monitoring period. The October 20, 2016 monitoring directive contains Table 1, a listing of specific monitoring points, and Table 2, a listing of the frequency of sampling during wet weather and dry weather conditions and the constituents to be monitored at each location. For this monitoring period, the City's program consisted of three different locations from which samples are to be collected. Each water year (July through June) the City is to complete three sampling events during the wet weather and two sampling events during the dry weather³.

The baseline monitoring program became effective on November 19, 2016. Between this date and the end of December, there were six rainfall events⁴. A reasonable Permittee would have collected at least one set of wet weather samples by the end of December 2016. Due to the number of storms, the Prosecution Team would not have expected that dry weather samples would have been collected during this period.

Attachment A/Table 2, below, describes the required monitoring program for the period of mid-November through December 2016. During that time, the City should have completed one wet

³ It is noted that the "non-storm water" samples listed in Table 1 of the October 20, 2016 monitoring directive are not included in this penalty calculation. If they were included, then the City would be required to conduct an additional two sampling events in the dry season (for a total of four).

⁴ LA County Department of Public Works, storm summary reports.

weather sampling event. The table also shows the samples that were actually collected by the City during this period, in the right-hand column. The sample locations (R1, FS3, FS4) are taken from Table 1 of the October 20, 2016 monitoring directive.

**Attachment A/Table 2:
 Failure to Comply with Monitoring Program and
 Submit a Complete June 2017 Monitoring Report**

Constituent	Between Nov 19 and Dec 31, 2016, City should have sampled during <u>one wet event</u> at these locations	Between Nov 19 and Dec 31, 2016, these samples were collected by City during <u>one wet event</u>.
Table E-2 (139 analytes) ⁵	R1, FS3, FS4	
Aquatic Toxicity	R1	
Total Suspended Solids	R1, FS3, FS4	
Suspended sediment concentration	R1, FS3, FS4	
Flow	R1, FS3, FS4	
Hardness	R1, FS3, FS4	
pH	R1, FS3, FS4	
Dissolved Oxygen	R1, FS3, FS4	
Temperature	R1, FS3, FS4	
Electrical Conductivity	R1, FS3, FS4	
E. Coli	R1, FS3, FS4	
Copper	R1, FS3, FS4	R1, FS4 - 12/16/16
Lead	R1, FS3, FS4	R1, FS4 - 12/16/16
Zinc	R1, FS3, FS4	R1, FS4 - 12/16/16
PCBs	R1, FS3, FS4	R1, FS4 - 12/16/16
PAHs	R1, FS3, FS4	
DDT	R1, FS3, FS4	R1, FS4 - 12/16/16
Chlordane	R1	R1, FS4 - 12/16/16
Dieldrin	R1	R1, FS4 - 12/16/16
Ammonia	R1, FS3, FS4	
Benzo(a)pyrene	R1, FS3, FS4	R1, FS4 - 12/16/16
Benzo(a)anthracene	R1, FS3, FS4	
Chrysene	R1, FS3, FS4	
Phenanthrene	R1, FS3, FS4	
Pyrene	R1, FS3, FS4	
Municipal Action Level (13 analytes)	FS3, FS4	
TOTAL NUMBER OF SAMPLES	508	16

⁵ Table E-2 is found in Attachment E (the Monitoring and Reporting Program) of Order R4-2012-0175. It contains a list of 139 constituents. Sections VI.C.e and VI.D.d of Attachment E states that the parameters in Table E-2 shall be sampled in the first year of the monitoring program, during the first significant rain event of the year and during the critical dry weather event. If a parameter is detected, then it shall be added to the monitoring program at the station(s) where it was detected.

As illustrated in Attachment A/Table 2, the City's monitoring program for the second half of 2016 was extremely deficient. During the wet weather, the City should have sampled for a total of 508 constituents and completed an aquatic toxicity assessment. Instead, the City analyzed for 16 constituents. **Between November and December 2016, the City completed less than 3% of the required baseline monitoring.** The failure to monitor as required, and the corresponding failure to submit a complete June 2017 semi-annual monitoring report, is a violation of the LA County MS4 Permit and is subject to administrative civil liability under Water Code section 13385, subdivision (a)(3).

Violation 1 is analyzed under the 2010 Enforcement Policy. Step 1 (Potential for Harm for Discharge Violations) and Step 2 (Assessment for Discharge Violations) are not applicable, as Violation 1 is an alleged non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations: 0.55

The "per day" factor is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of deviation from the applicable requirements.

a. **Potential for Harm: Moderate**

The 2010 Enforcement Policy states that a violation is to be characterized as having either a Minor, Moderate, or Major potential for harm to beneficial uses. The failure to adequately monitor wet weather and dry weather discharges from the City pursuant to the LA County MS4 Permit poses a **Moderate** harm to beneficial uses. The 2010 Enforcement Policy defines a Moderate factor as "...The characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm."

As stated on page F-122 of the Fact Sheet of the LA County MS4 Permit the "purposes of receiving water monitoring are to measure the effects of storm water and non-storm water discharges from the MS4 to the receiving water, to identify water quality exceedances, to evaluate compliance with TMDL WLAs and receiving water limitations, and to evaluate whether water quality is improving, staying the same, or declining." With respect to outfall monitoring, page F-123 of the Permit states that the "purpose of outfall monitoring is to characterize the storm water discharges ... within each sub watershed. Outfall monitoring is also conducted to assess compliance with WQBELs... Storm water outfall monitoring is linked to receiving water monitoring."

The fact that the City sampled less than 3% of the required constituents has led to a total failure to comply with the specified monitoring program and has prevented an assessment of the impacts of wet weather and dry weather discharges on the receiving water, Dominguez Channel. Neither the Regional Board nor the City is able to assess the City's compliance (or lack thereof) with water quality objectives due to the lack of data. Without full knowledge of the constituents in the discharge, the City cannot begin to take steps to reduce any constituents of concern in its discharges. Therefore, the failure to follow the monitoring program and submit a complete semi-annual monitoring

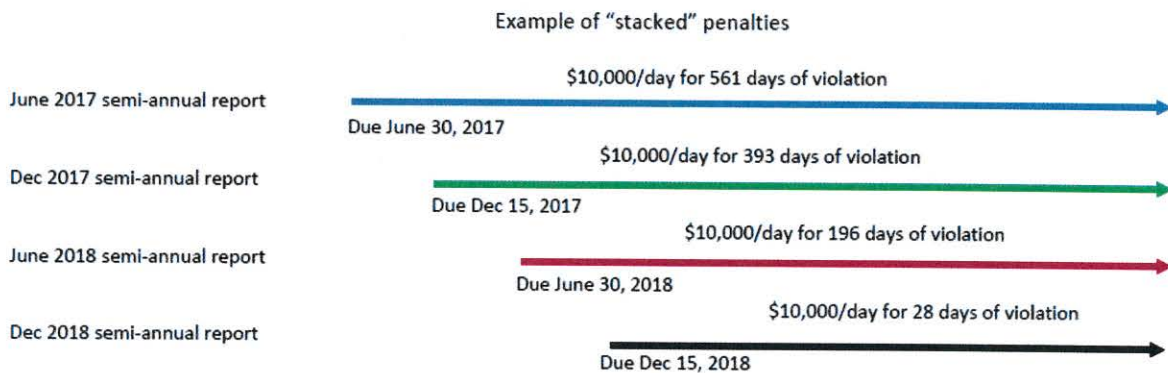
report is appropriately characterized as having a Moderate potential for harm to beneficial uses.

b. Deviation from Requirement: Major

The Prosecution Team characterizes Violation 1 as a **Major** deviation from requirement. The 2010 Enforcement Policy defines a Major deviation as “the requirement was rendered ineffective...” As shown in Attachment A/Table 2, the City collected less than 3% of the samples required during this monitoring period. The City’s extremely minimal monitoring was no different than if it had not monitored at all. The wholesale failure to comply with the monitoring program has resulted in little to no knowledge of the impacts of the City’s discharges to the Dominguez Channel.

Using Table 3 in the 2010 Enforcement Policy, the Per Day Factor of 0.55 is assigned. The Per Day Factor is multiplied by the days of violation and the statutory maximum per day penalty.

Days of Violation: The June 2017 semi-annual monitoring report was due between June 15 and June 30, 2017⁶. As of January 11, 2019⁷, a complete June 2017 semi-annual monitoring report containing all of the required sampling and analysis remains outstanding. The missing and/or deficient components of the report have not been submitted to the Regional Board resulting in a cumulative total of 561 days of violation. Because the City failed to conduct sampling and analysis of many of the constituents during the required monitoring period of September through December 2016, resulting in the submission of a materially deficient and incomplete report, this type of alleged violation (along with Violations 2-4) could continue in perpetuity because the sampling, analysis, and ultimate reporting cannot be recreated for the corresponding monitoring period. This would result in administrative civil liabilities that begin to “stack” and accrue as depicted below.

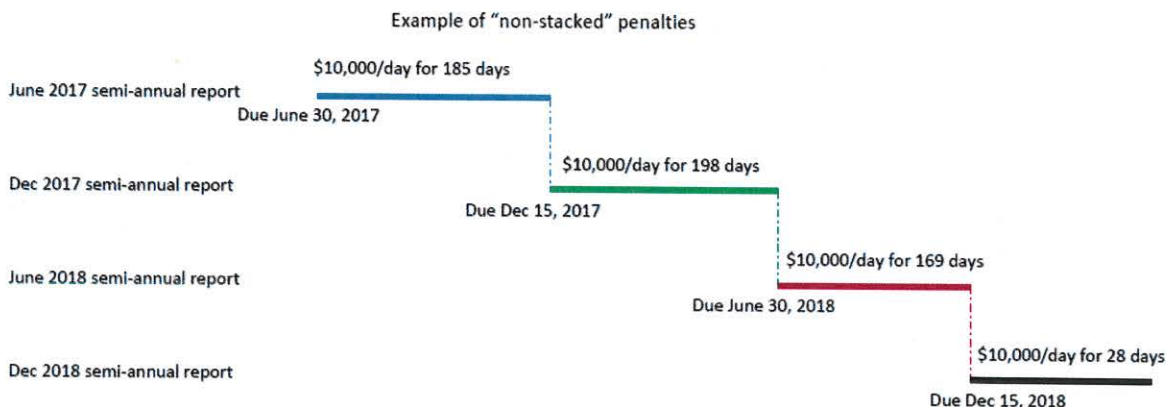


However, for purposes of determining this proposed administrative civil liability in this case, the Prosecution Team recommends modifying the number of days of violation as shown below so that the number of days of violation equates to the number of days between the dues date of the

⁶ Declaration of Ivar Ridgeway, January 10, 2019 as Attachment 2.

⁷ January 11, 2019 was the originally anticipated issuance date of this Administrative Civil Liability Complaint.

June 2017 semi-annual report and the due date of the next semi-annual report; December 31, 2017. Using this approach, the number of days of violation between the June 30, 2017 due date and the December 15, 2017 due date for the next report is 185 days.



The 2010 Enforcement Policy states that for certain violations that are assessed a civil liability on a per-day basis, the number of days may be collapsed if one of three express findings is made. For this case, the Prosecution Team finds that the City’s failure to adequately monitor has not resulted in a discrete economic benefit that can be measured on a daily basis. The Prosecution Team has elected to collapse the days of violation as described in the Policy: the first day of violation is counted, plus an assessment for each 5-day period of violation until the 30th day, plus an assessment for each 30 days of violation thereafter⁸. By using the methodology described, the Prosecution Team has collapsed the days of violation from 185 days to 12 days.

Statutory Maximum Penalty: The LA County MS4 Permit was issued pursuant to the Water Board’s authority under Water Code section 13376. The associated Monitoring and Reporting Program is authorized pursuant to Water Code section 13383. Water Code section 13383 subdivision (c)(1), sets forth an administrative liability of \$10,000 per day of violation for the failure to comply with a permit issued pursuant to section 13383.

$$\text{Initial Liability Amount} = (\text{Statutory Maximum Liability}) \times (\text{Per Day Factor}) \times (\text{Days of Violation}) = \$10,000/\text{day} \times 0.55 \times 12 \text{ days} = \$66,000$$

Step 4. Adjustment Factors

Additional factors are considered and can modify the amount of the initial liability. These factors are culpability, cleanup and cooperation, and history of violations.

a. Culpability: 1.2

The 2010 Enforcement Policy’s culpability multiplier ranges between 0.5 and 1.5 with a lower multiplier for accidental incidents and a higher multiplier for intentional or negligent behavior.

The LA County MS4 Permit provides Permittees with the option to propose their own monitoring and reporting program (an “IMP”) instead of completing the baseline

⁸ For example, a violation lasting 99 days would accrue a total of 9 days of violation, based on a per-day assessment for days 1, 5, 10, 15, 20, 25, 30, 60, and 90.

monitoring and reporting contained in the Permit. The City proposed an IMP, and submitted several drafts to the Regional Board. Although the IMP wasn't approved and the City was required to complete the baseline monitoring in Attachment E of the LA County MS4 Permit. The fact that the City submitted an IMP shows that it was familiar with the Permit and the required monitoring. It is also clear that the City received the Regional Board's October 20, 2016 monitoring directive, as the City responded on November 21, 2016 with questions and concerns. In addition, Regional Board staff took the extra step of explicitly describing how that monitoring applies to the City. Enclosure 2 to the monitoring directive contains Table 1, a listing of the six locations which the City must monitor, and Table 2, a listing of the specific constituents and frequency of their monitoring. While the Permit's monitoring program is complicated because it applies to all 84 Permittees and multiple TMDLs, Board staff made the effort to tailor the general program to that required of the City. The City should have understood its monitoring requirements, and if not, asked for clarification from Regional Board staff. The City is fully culpable for its failure to adequately monitor, and therefore a Culpability factor of 1.2 is appropriate.

b. History of Violations: 1.0

According to the 2010 Enforcement Policy, where there is a history of repeat violations, a minimum multiplier of 1.1 should be used.

On August 3-4, 2016, the U.S. EPA completed an audit of the City of Gardena's compliance with two elements of the LA County MS4 permit. As described in the U.S. EPA's October 13, 2016 report, the inspectors found significant concerns regarding the City's oversight of the MS4 program, and a lack of effectiveness of both the City's Industrial/Commercial Facilities program and the Illicit Connection/Illicit Discharge Elimination program. Although the U.S. EPA identified numerous "areas of concern", it does not appear that the City has thus far made any progress in addressing these areas. However, because the Water Board has not yet taken formal enforcement action for failure to adequately implement the MS4 permit, the U.S. EPA audit does not influence the History of Violations factor.

The Regional Board has not previously issued Orders to the City for alleged violations. Therefore, the History of Violations factor is 1.0.

c. Cleanup and Cooperation- 0.9

This factor reflects the extent to which the City has voluntarily cooperated in returning to compliance and correcting environmental damage. The multiplier for this factor ranges from 0.75 to 1.5, with a lower multiplier being applied when there is a high degree of cleanup and cooperation, and a higher multiplier when this is absent.

On September 6, 2018, the Prosecution Team issued Order R4-2018-0121 (Investigative Order) to the City. The Investigative Order lists the deficiencies and inaccuracies found in the monitoring reports submitted after August 2016. The City responded on October 15, 2018, stating that as of May 10, 2018, it had terminated its contract with the consultant who had failed to conduct the required sampling and subsequently prepared four materially deficient monitoring reports. The City informed the Regional Board on September 11, 2018 that it had hired a new

consultant, that it began monitoring as required by the January 6, 2017 monitoring directive, and that the first complete sampling and monitoring report would be the City's June 2019 semi-annual report. Gardena's new consultant has been proactive in communicating with the Water Board regarding monitoring events. Because the City recognized the inadequacies of its monitoring program and made the change to consultants prior to notification by the Water Board, a Cleanup and Cooperation factor of 0.9 is

Step 5. Total Base Liability for Violation 1

The Initial Liability is multiplied by each of the three adjustment factors described in Step 4.
Total Base Liability = Initial Liability x Culpability x Cleanup and Cooperation x History of Violations
= \$66,000 x 1.2 x 1.0 x 0.9 = \$71,280

Steps 6 through 10.

These last steps apply to the combined Total Base Liability amounts for all violations, and are discussed later in this document.

**Violation 2:
Failure to complete required sampling and analysis
resulting in the submission of a materially deficient and incomplete
December 2017 semi-annual monitoring report**

The results for samples collected between January 1 and June 30, 2017 were to be submitted in the December 2017 semi-annual report. The City did not submit a semi-annual report by December 15, 2017; therefore, on December 26, 2017, Regional Board staff emailed the City asking it to submit its monitoring data. The City's consultant replied that day, implying that a semi-annual report had been submitted as part of the annual report. However, a review of the 2016-2017 Annual Report finds that it does not contain any analytical data.

As stated in the Violation 1 discussion, the City conducted two sampling events between January 1 and June 30, 2017. These results were erroneously reported in the June 2017 semi-annual monitoring report. Even though the City did not submit a December 2017 semi-annual monitoring report, the Prosecution Team has elected to consider that the two sampling events that took place between January and June 2017 as part of the December 2017 semi-annual monitoring report.

In response to the City's questions and concerns, the Regional Board issued a revised monitoring directive (Attachment 1) on January 6, 2017. Revisions include a change to the receiving water monitoring station, coordination with the Harbor Toxics TMDL monitoring, and corresponding changes to the list of constituents and sampling frequencies. The City is still required to complete three sampling events during the wet weather and two sampling events during the dry weather. However, not all locations or constituents need to be analyzed during each monitoring event.

During the first half of the water year (July-December 2016; discussed in Violation 1), the City conducted one wet weather sampling event. Therefore, the City should have sampled during two more wet weather events during the second half of the water year (January-June 2017). There were 10 significant rainfall events during this time⁹, so the City had adequate opportunity to sample. With respect to dry weather sampling, Violation 1 assumes that the City was unable to complete a dry weather sampling event due to the number of storms in November and December 2016. Therefore, the City should have completed both dry weather sampling events during the first half of the year, as is assumed for this Violation 2 discussion.

Attachment A/Table 3, below, describes the required monitoring program for the period of January through June 2017. During that time, the City should have completed two wet weather and two dry weather sampling events. The right-hand column of the table shows the samples that were actually collected by the City during this period.

⁹ LA County Department of Public Works, storm summary reports.

**Attachment A/Table 3:
Failure to Comply with Monitoring Program
and Submit a December 2017 Monitoring Report**

Constituent	Between January and June 2017, City should have sampled during <u>wet events</u> at these locations. The number of required monitoring events is shown two or three)	Between January and June 2017, City should have sampled during <u>two dry events</u> at these locations	Between January and June 2017, these samples were collected by the City.
Table E-2 (139 constituents)	(FS3, FS4- two events) ¹⁰	S28- one event	
Aquatic Toxicity	S28 – one event	S28- one event	
Total Suspended Solids	S28, FS3, FS4 – two events	S28 – two events	
Flow	S28, FS3, FS4 – two events	S28 – two events	
Hardness	S28, FS3, FS4 – two events	S28 – two events	
pH	S28, FS3, FS4 – two events	S28 – two events	
Dissolved Oxygen	S28, FS3, FS4 – two events	S28 – two events	
Temperature	S28, FS3, FS4 – two events	S28 – two events	
Electrical Conductivity	S28, FS3, FS4 – two events	S28 – two events	
E. Coli	S28, FS3, FS4 – two events	S28 – two events	
Copper, total recoverable	S28 – two events (water) FS3, FS4 – one event (water and suspended sediment)	S28 – two events (water)	R1, FS4-wet event, 1/9/17 R1, FS4-wet event, 2/17/17
Lead, total recoverable	S28 – two events (water) FS3, FS4 – one event (water and suspended sediment)	S28 – two events (water)	R1, FS4-wet event, 1/9/17 R1, FS4-wet event, 2/17/17
Zinc, total recoverable	S28 – two events (water) FS3, FS4 – one event (water and suspended sediment)	S28 – two events (water)	R1, FS4-wet event, 1/9/17 R1, FS4-wet event, 2/17/17

¹⁰ To simplify this liability discussion, it is assumed that none of the Table E-2 constituents were detected in the first wet weather monitoring event, other than the constituents that the City is already required to analyze per the October 2016 monitoring directive. In order to fully comply with the Permit, the City must still complete the Table E-2 sampling since it has not yet been done, and additional constituents may need to be added to the monitoring program.

Constituent	Between January and June 2017, City should have sampled during <u>wet events</u> at these locations. The number of required monitoring events is shown two or three)	Between January and June 2017, City should have sampled during <u>two dry events</u> at these locations	Between January and June 2017, these samples were collected by the City.
Cadmium, total recoverable	FS3, FS4 – one event (water and suspended sediment)	-	
PCBs	FS3, FS4- one event (water and suspended sediment)	-	R1, FS4-wet event, 1/9/17 R1, FS4-wet event, 2/17/17 (water only)
PAHs	FS3, FS4- one event (water and suspended sediment)	-	
Total DDT	FS3, FS4- one event (water and suspended sediment)	-	R1, FS4-wet event, 1/9/17 R1, FS4-wet event, 2/17/17 (water only)
Chlordane	FS3, FS4- one event (water and suspended sediment)	-	R1, FS4-wet event, 1/9/17 R1, FS4-wet event, 2/17/17 (water only)
Dieldrin	FS3, FS4- one event (water and suspended sediment)	-	R1, FS4-wet event, 1/9/17 R1, FS4-wet event, 2/17/17 (water only)
Toxaphene	FS3, FS4- one event	-	
Ammonia	S28, FS3, FS4- two events	S28- two events	
Benzo(a)pyrene	FS3, FS4- one event (water and suspended sediment)	-	R1, FS4-wet event, 1/9/17 R1, FS4-wet event, 2/17/17 (water only)
Benzo(a)anthracene	FS3, FS4- one event (water and suspended sediment)	-	
Chrysene	FS3, FS4- one event (water and suspended sediment)		
Phenanthrene	FS3, FS4- one event (water and suspended sediment)	-	

Constituent	Between January and June 2017, City should have sampled during <u>wet events at these locations</u> . The number of required monitoring events is shown two or three)	Between January and June 2017, City should have sampled during <u>two dry events at these locations</u>	Between January and June 2017, these samples were collected by the City.
Pyrene	FS3, FS4- one event (water and suspended sediment)	-	
Municipal Action Level (13 constituents)	FS3, FS4- two events	-	
Sediment ¹¹ (13 constituents)	R1- one event	-	
Fish tissue (5 constituents)	R1 – one event	-	
TOTAL NUMBER OF SAMPLES	188	163	16

As shown above, the City’s monitoring program for the first half of 2017 was extremely deficient. During the dry weather, the City should have sampled for 163 constituents during two sampling events plus conducted aquatic toxicity testing. However, the City did not monitor during the dry weather. During the wet weather, the City should have sampled for 188 constituents plus conducted aquatic toxicity testing, sediment testing, and fish tissue testing. Instead, the City analyzed a total of 16 constituents during the wet weather. **Between January and June 2017, the City completed 4% of the required baseline monitoring.** The failure to monitor as required, and the corresponding failure to submit a complete December 2017 semi-annual monitoring report, is a violation of the LA County MS4 Permit and is subject to administrative civil liability under Water Code section 13385, subdivision (a)(3).

Violation 2 is analyzed under the 2017 Enforcement Policy. Step 1 (Potential for Harm for Discharge Violations) and Step 2 (Assessment for Discharge Violations) are not applicable, as Violation 2 is an alleged non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations: 0.55

The “per day” factor is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of deviation from the applicable requirements.

a. Potential for Harm: Moderate

The discussion of the Potential for Harm for Violation 1 applies to this violation also.

b. Deviation from Requirement: Major

The Prosecution Team characterizes Violation 2 as a **Major** deviation from requirement. The 2017 Enforcement Policy defines a Major deviation as “the requirement was rendered ineffective...” As shown in Attachment A/Table 3, the City

¹¹ Sediment and fish tissue are to be sampled once every two years.

completed only 4% of the required baseline monitoring during this semi-annual period. No aquatic toxicity, sediment testing, fish tissue testing, or benthic macroinvertebrate bioassays were completed. The failure to comply with the monitoring program has resulted in little to no knowledge of the impacts of the City's wet weather and dry weather discharges to the Dominguez Channel.

Using Table 3 in the 2017 Enforcement Policy, the Per Day Factor of 0.55 is assigned. The Per Day Factor is then multiplied by the days of violation and the statutory maximum per day penalty.

Days of Violation: The December 2017 semi-annual monitoring report was due December 15, 2017. As of January 11, 2019, a complete semi-annual monitoring report has not been submitted. Therefore, there are 393 days of violation. However, for purposes of determining this proposed administrative civil liability, the Prosecution Team is recommending that the Regional Board consider the number of days of violation to be the corresponding number of days between the due date of the December 2017 semi-annual report due date and the due date of the June 2018 semi-annual report (i.e., December 15, 2017 to June 30, 2018), or 198 days of violation, as further discussed and depicted in Violation 1, above.

The 2017 Enforcement Policy states that for certain violations that are assessed a civil liability on a per-day basis, the number of days may be collapsed if one of three express findings is made. For this case, the Prosecution Team finds that the City's failure to adequately monitor has not resulted in a discrete economic benefit that can be measured on a daily basis. The Prosecution Team has elected to collapse the days of violation as described in the 2017 Policy: the 30 days of violation are counted, plus an assessment for each 5-day period of violation until the 60th day, plus an assessment for each 30 days of violation thereafter¹².

By using the methodology described, the Prosecution Team has collapsed the days of violation from 198 days to 40 days.

Statutory Maximum Penalty: The statutory maximum per day liability, as found in Water Code section 13385, subdivision (c)(1), is \$10,000 per day of violation.

Initial Liability Amount = (Statutory Maximum Liability) x (Per Day Factor) x (Days of Violation) = \$10,000/day x 0.55 x 40 days = \$220,000

Step 4. Adjustment Factors

Three additional factors (culpability, history of violations, and cleanup and cooperation) are considered and can modify the amount of the initial liability.

a. Culpability: 1.2

Under the 2017 Enforcement Policy, the discharger's Culpability ranges between 0.75 and 1.5 with a higher multiplier for intentional misconduct and gross negligence and a lower multiplier for more simple negligence. The test for whether a discharger is negligent is what a reasonable and prudent person would have done or not done under

¹² For example, a violation lasting 90 days would accrue a total of 37 days of violation, based on a per-day assessment for days 1-30, 35, 40, 45, 50, 55, 60, and 90.

similar circumstances. The discussion of this factor for Violation 1 applies to this violation. It is appropriate to assign a Culpability factor of 1.2.

b. History of Violations: 1.0

Where a discharger has no prior History of Violations, this factor should be neutral. However, where the discharger has prior violations within the last five years, a multiplier of 1.1 should be used. The discussion of this factor for Violation 1 applies to this violation. It is appropriate to assign a History of Violations factor of 1.0.

c. Change and Cooperation: 0.9

Under the 2017 Enforcement Policy, the discharger's Cleanup and Cooperation ranges between 0.75 and 1.5 using the lower multiplier where there is exceptional cleanup and cooperation compared to what can be reasonably expected and a higher multiplier where there is not. A reasonable and prudent response to a violation or a timely response to a Regional Board order should receive a neutral adjustment as it is assumed a reasonable amount of cooperation is the warranted baseline. Adjustments above 1.0 reflects situations where the discharger's response falls below the normally-expected response. The discussion of this factor for Violation 1 applies to this violation. It is appropriate to assign a Cleanup and Cooperation factor of 0.9.

Step 5. Total Base Liability for Violation 2

The Initial Liability is multiplied by each of the three adjustment factors described in Step 4.

Total Base Liability = Initial Liability x Culpability x Cleanup and Cooperation x History of Violations

$$= \$220,000 \times 1.2 \times 1.0 \times 0.9 = \$237,600$$

Steps 6 through 10.

These last steps apply to the combined Total Base Liability amounts for all violations, and are discussed later in this document, after the Total Base Liability has been determined for each of the remaining violations.

Violation 3:

**Failure to complete required sampling and analysis resulting
in the submission of a materially deficient and incomplete
June 2018 semi-annual monitoring report**

The results of samples collected between July 1 and December 31, 2017 were to be submitted in the June 2018 semi-annual report. The City submitted a monitoring report on June 14, 2018 but it did not contain any sampling results from the relevant monitoring period. Instead, the City submitted sampling results for samples collected between January and March 2018. These results should have been submitted as part of the December 2018 semi-annual report (discussed in Violation 4, below) and are therefore not considered in this discussion of Violation 3.

The water year (July through June) began over again during this period. During the water year, the City is to complete three sampling events during the wet weather and two sampling events during the dry weather. It is reasonable to assume that the City should have collected a dry weather sample sometime between July 1 (when the annual requirement was "reset") and the

beginning of the rainy period, which is usually October or November. It is also reasonable to assume that a wet weather sample would have been collected in November or December; however, there were no significant storm events during this period¹³ so no wet weather samples could be collected. The left hand column of Attachment A/Table 4, below, depicts the analyses, locations, and number of samples for the dry weather monitoring event that should have been conducted.

**Attachment A/Table 4
 Failure to Comply with Monitoring Program and
 Submit a Complete June 2018 Monitoring Report**

Constituent	Between July and December 2017, City should have sampled during <u>one dry event</u> at this location	Between July and December 2017, the City did not sample.
(Table E-2 ¹⁴)	S28	
Aquatic Toxicity	S28	
Total Suspended Solids	S28	
Flow	S28	
Hardness	S28	
pH	S28	
Dissolved Oxygen	S28	
Temperature	S28	
Electrical Conductivity	S28	
E. Coli	S28	
Copper, total recoverable	S28 (water only)	
Lead, total recoverable	S28 (water only)	
Zinc, total recoverable	S28 (water only)	
Ammonia	S28	
TOTAL NUMBER OF SAMPLES	12	0

During the dry weather, the City should have sampled completed one monitoring event, analyzing for 12 constituents and completing an aquatic toxicity test. However, the City did not complete any dry weather monitoring. **Between July and December 2017, the City completed 0% of the required baseline monitoring.** The failure to monitor as required, and the corresponding failure to submit a complete June 2018 semi-annual monitoring report, is a violation of the LA County MS4 Permit and is subject to administrative civil liability under Water Code section 13385, subdivision (a)(3).

Violation 3 is analyzed under the 2017 Enforcement Policy. Step 1 (Potential for Harm for Discharge Violations) and Step 2 (Assessment for Discharge Violations) are not applicable, as Violation 3 is an alleged non-discharge violation.

¹³ LA County Department of Public Works, storm summary reports.

¹⁴ To simplify this liability discussion, it is assumed that none of the Table E-2 constituents were detected, other than the constituents that the City is already required to analyze per the October 2016 monitoring directive. To comply with the Permit, the City must still complete the Table E-2 sampling since it has not yet been done, and additional constituents may need to be added to the monitoring program.

Step 3. Per Day Assessment for Non-Discharge Violations: 0.55

The “per day” factor is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of deviation from the applicable requirements.

a. Potential for Harm: *Moderate*

The discussion of the Potential for Harm for Violation 1 applies to this violation also.

b. Deviation from Requirement: *Major*

The Prosecution Team characterizes Violation 3 as a **Major** deviation from requirement. As shown in Attachment A/Table 4, the City should have completed at least one, if not two, dry weather sampling events during this half of the water year. However, the City did not sample at all. The wholesale failure to comply with the monitoring program has resulted in little to no knowledge of the impacts of the City’s discharges to the Dominguez Channel.

Using Table 3 in the 2017 Enforcement Policy, the Per Day Factor of 0.55 is assigned. The Per Day Factor is multiplied by the days of violation and the statutory maximum per day penalty.

Days of Violation: The June 2017 semi-annual monitoring report was due between June 15 and June 30, 2018¹⁵. As of January 11, 2019, a complete semi-annual monitoring report has not been submitted. Therefore, there are 196 days of violation. However, for purposes of determining this proposed administrative civil liability, the Prosecution Team is recommending that the Regional Board consider the number of days of violation to be the corresponding number of days between the due date of the June 2018 semi-annual report due date and the due date of the December 2018 semi-annual report, December 15, 2018, or 169 days of violation as further discussed in Violation 1, above. The Prosecution Team has elected to collapse the days of violation as described in the Policy and Violation 2, and has collapsed the days from 169 days to 39 days.

Statutory Maximum Penalty: The statutory maximum per day liability, as found in Water Code section 13385, subdivision (c)(1), is \$10,000 per day of violation.

Initial Liability Amount = (Statutory Maximum Liability) x (Per Day Factor) x (Days of Violation) = \$10,000/day x 0.55 x 39 days = \$214,500

Step 4. Adjustment Factors

Three additional factors (culpability, history of violations, and cleanup and cooperation) are considered and can modify the amount of the initial liability. The discussion of these factors for Violation 1 apply to this violation also. It is appropriate to assign a Culpability of 1.2, a History of Violations of 1.0, and a Cleanup and Cooperation of 0.9.

Step 5. Total Base Liability for Violation 3

The Initial Liability is multiplied by each of the three adjustment factors described in Step 4.
Total Base Liability = Initial Liability x culpability x cleanup and cooperation x history of violations
= 214,500 x 1.2 x 1.0 x 0.9 = \$231,660

¹⁵ Declaration of Ivar Ridgeway, January 10, 2019 as Attachment 2.

Steps 6 through 10.

These last steps apply to the combined Total Base Liability amounts for all violations, and are discussed later in this document, after the Total Base Liability has been determined for each of the remaining violations.

Violation 4: Failure to complete required sampling and analysis resulting in the submission of a materially deficient and incomplete December 2018 semi-annual monitoring report

The results of samples collected between January 1 and June 30, 2018 were to be submitted in the December 2018 semi-annual report. On December 17, 2017, the City submitted its December 2018 semi-annual report. It contains the same data that was submitted in the June 2018 semi-annual report. Water Board staff are aware that in the fall of 2018, the City changed consultants and that the new consultant has begun implementing the required monitoring program. However, because the December 2018 semi-annual report covers a time prior to retention of the new consultant, it continues to be materially deficient and incomplete.

The City conducted one sampling event in January 2018 and two sampling events in March 2018. These results were erroneously reported in the June 2018 semi-annual monitoring report. However, as stated in the Violation 3 discussion, these three samples will be considered as part of the compliance review for the December 2018 semi-annual report because they were collected during the time relevant to this reporting period.

During each water year the City is to complete three sampling events during the wet weather and two sampling events during the dry weather. For the first half of the water year (July-December 2017), there were no significant storm events so the City could not collect any wet weather samples. A review of the January through June 2018 rainfall data¹⁶ finds that there were four significant rain events, and therefore the City had the opportunity to conduct the three wet weather sampling events needed to comply with its permit. However, the City collected samples from only two wet weather events.

Violation 3 assumes that the City would have completed one dry weather sampling event during the first half of the water year. Therefore, the City should have completed its second dry weather sampling event during the second half of the water year. The City reported that it collected "ambient" (i.e., dry weather) samples on March 5, 2018. However, the Prosecution Team contends that this date does not qualify as dry weather. Section VI.D.b of Attachment E of the LA County MS4 Permit defines "dry weather" several ways, including (a) not less than three days after a rain event of 0.1 inch or greater within the watershed, and (b) as defined by the TMDL for the watershed. March 5, 2018 does not qualify as dry weather under either of these definitions because (a) because the previous storm ended on March 3 at 11:00 pm and therefore March 5 was less than three days after a rain event, and (b) the Dominguez Channel TMDL defines dry weather as the period of April 1 to October 31. The Prosecution Team also contends that the March 5, 2018 monitoring event does not qualify as wet weather monitoring pursuant to the

¹⁶ LA County Department of Public Works, storm summary reports. Storms occurred from January 8-9, March 1-3, March 10-11, and March 20-23, 2018.

definitions found in Section VI.C of Attachment E of the Permit. Therefore, the results from the March 5, 2018 monitoring event have no applicability to the Permit and will not be discussed further.

Attachment A/Table 5, below, describes the expected monitoring program for the period of January through June 2018. The table also shows the samples that were collected by the City during this period.

**Attachment A/Table 5:
Failure to Comply with Monitoring Program
and Submit a Complete December 2018 Monitoring Report**

Constituent	Between January and June 2018, City should have sampled during <u>wet events</u> at these locations. The number of required monitoring events is shown (one, two, three)	Between January and June 2017, City should have sampled during <u>one dry event</u> at these locations	Between January and June 2018, these samples were collected by the City.
(Table E-2 ¹⁷)	(S28- one event) (FS3, FS4- three events)	-	
Aquatic Toxicity	S28 – two events	-	
Total Suspended Solids	S28, FS3, FS4 – three events	S28- one event	
Flow	S28, FS3, FS4 – three events	S28- one event	
Hardness	S28, FS3, FS4 – three events	S28- one event	FS4 – 1/9/18
pH	S28, FS3, FS4 – three events	S28- one event	
Dissolved Oxygen	S28, FS3, FS4 – three events	S28- one event	
Temperature	S28, FS3, FS4 – three events	S28- one event	
Electrical Conductivity	S28, FS3, FS4 – three events	S28- one event	
E. Coli	S28, FS3, FS4 – three events	S28- one event	
Copper, total recoverable	S28 – three events (water) FS3, FS4 – two events (water and suspended sediment)	S28- one event (water)	FS4 – 1/9/18 R1, FS4 -3/2/18 (water only)

¹⁷ To simplify this liability discussion, it is assumed that none of the Table E-2 constituents were detected, other than the constituents that the City is already required to analyze per the October 2016 monitoring directive. To comply with the Permit, the City must still complete the Table E-2 sampling since it has not yet been done, and additional constituents may need to be added to the monitoring program.

Constituent	Between January and June 2018, City should have sampled during <u>wet events</u> at these locations. The number of required monitoring events is shown (one, two, three)	Between January and June 2017, City should have sampled during <u>one dry event</u> at these locations	Between January and June 2018, these samples were collected by the City.
Lead, total recoverable	S28 – three events (water) FS3, FS4 – two events (water and suspended sediment)	S28 – one event (water)	FS4 – 1/9/18 R1, FS4 -3/2/18 (water only)
Zinc, total recoverable	S28 – three events (water) FS3, FS4 – two events (water and suspended sediment)	S28 – one events (water)	FS4 – 1/9/18 R1, FS4 -3/2/18 (water only)
Cadmium, total recoverable	FS3, FS4 – two events (water and suspended sediment)	-	
PCBs	FS3, FS4 – two events (water and suspended sediment)	-	FS4 – 1/9/18 R1, FS4 -3/2/18
PAHs	FS3, FS4 – two events (water and suspended sediment)	-	
Total DDT	FS3, FS4 – two events (water and suspended sediment)	-	FS4 – 1/9/18 R1, FS4 -3/2/18
Chlordane	FS3, FS4 – two events (water and suspended sediment)	-	FS4 – 1/9/18 R1, FS4 -3/2/18
Dieldrin	FS3, FS4 – two events (water and suspended sediment)	-	FS4 – 1/9/18 R1, FS4 -3/2/18
Toxaphene	FS3, FS4- two events	-	
Ammonia	S28, FS3, FS4- three events	S28- one event	
Benzo(a)pyrene	FS3, FS4 – two events (water and suspended sediment)	-	FS4 – 1/9/18 R1, FS4 -3/2/18
Benzo(a)anthracene	FS3, FS4 – two events (water and suspended sediment)	-	
Chrysene,	FS3, FS4 – two events (water and suspended sediment)		

Constituent	Between January and June 2018, City should have sampled during <u>wet events</u> at these locations. The number of required monitoring events is shown (one, two, three)	Between January and June 2017, City should have sampled during <u>one dry event</u> at these locations	Between January and June 2018, these samples were collected by the City.
Phenanthrene	FS3, FS4 – two events (water and suspended sediment)	-	
Pyrene	FS3, FS4 – two events (water and suspended sediment)	-	
Municipal Action Level (13 constituents)	FS3, FS4- three events	-	
TOTAL NUMBER OF SAMPLES	262	12	17 from correct locations

As shown above, the City’s monitoring program for the first half of 2018 was extremely deficient. During the dry weather, the City should have sampled for a total of 12 constituents; however, the City did not do any dry weather monitoring. During the wet weather, the City should have sampled for 262 constituents and completed two aquatic toxicity tests. Instead, the City analyzed 25 samples, of which only 17 were from the correct locations. **Between January and June 2018, the City completed less than 6% of the required baseline monitoring.** The failure to monitor as required, and the corresponding failure to submit a complete June 2017 semi-annual monitoring report, is a violation of the LA County MS4 Permit and is subject to administrative civil liability under Water Code section 13385, subdivision (a)(3).

Violation 4 is analyzed under the 2017 Enforcement Policy. Step 1 (Potential for Harm for Discharge Violations) and Step 2 (Assessment for Discharge Violations) are not applicable, as Violation 4 is an alleged non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations: 0.55

The “per day” factor is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of deviation from the applicable requirements.

a. Potential for Harm: *Moderate*

The discussion of the Potential for Harm for Violation 1 applies to this violation also.

b. Deviation from Requirement: *Major*

The Prosecution Team characterizes Violation 4 as a **Major** deviation from requirement. As shown in Attachment A/Table 5, the City completed only two of the required four wet weather sampling events; however, samples were collected at less than half the monitoring locations, and analyzed for only a few of the required. No aquatic toxicity monitoring was conducted, and neither of the two dry weather sampling events were completed. The City complied with less than 6% of the required baseline monitoring during this semiannual period. The total failure to comply with the

monitoring program has resulted in little to no knowledge of the impacts of the City's discharges to the Dominguez Channel.

Using Table 3 in the 2017 Enforcement Policy, the Per Day Factor of 0.55 is assigned. The Per Day Factor is multiplied by to determine the initial liability amount.

Days of Violation: The City submitted the December 2018 semi-annual monitoring report on December 17, 2018. However, as discussed above, this report contains the same data that the City reported in the June 2018 semi-annual report with most of the required samples from specified sampling locations missing. A complete December 2018 semi-annual report with all of the required monitoring completed remains outstanding as of January 11, 2019. Therefore, there are 28 days of violation. The 2017 Enforcement Policy allows the days of violation to be collapsed under certain conditions, and only if there are more than 30 days of violation. For this violation, it is not possible to collapse the days.

Statutory Maximum Penalty: The statutory maximum per day liability, as found in Water Code section 13385, subdivision (c)(1), is \$10,000 per day of violation.

Initial Liability Amount = (Statutory Maximum Liability) x (Per Day Factor) x (Days of Violation) = \$10,000/day x 0.55 x 28 days = \$154,000

Step 4. Adjustment Factors

Three additional factors (culpability, history of violations, and cleanup and cooperation) are considered and can modify the amount of the initial liability. The discussion of these factors for Violation 1 apply to this violation also. It is appropriate to assign a Culpability of 1.2, a History of Violations of 1.0, and a Cleanup and Cooperation of 0.9.

Step 5. Total Base Liability for Violation 4

The Initial Liability is multiplied by each of the three adjustment factors described in Step 4. Total Base Liability = Initial Liability x culpability x cleanup and cooperation x history of violations = \$154,000 x 1.2 x 1.0 x 0.9 = \$166,320

Steps 6 through 10.

These last steps apply to the combined Total Base Liability amounts for all violations, and are discussed later in this document, after the Total Base Liability has been determined for each of the remaining violations.

Combined Total Base Liability

The Combined Total Base Liability is the sum of the total base liabilities for Violations 1-4:

Violation 1: \$71,280

Violation 2: \$237,600

Violation 3: \$231,660

Violation 4: \$166,320

Combined Total Base Liability = \$706,860

Steps 6 through 10 are now applied to the Combined Total Base Liability.

Step 6: Ability to Pay and Continue in Business

The 2017 Enforcement Policy states that if the Water Boards have sufficient financial information to assess the violator's ability to pay the Total Base Liability amount, then the liability may be adjusted to address the ability to pay or to continue in business. The Water Code requires that the Regional Board consider ability to pay when imposing administrative civil liabilities. However, as discussed in Step 7, administrative civil liabilities should be imposed at levels that do not allow violators to obtain a competitive advantage over dischargers that voluntarily incur the costs of regulatory compliance whether or not the violator is able to continue in business after incurring the liability. As discussed further in Step 7, the liability shall not be less than the economic benefit derived from the violations.

To conduct the ability to pay analysis, the following documents were analyzed by the Prosecution Team's financial expert Industrial Economics, Inc. (IEc):¹⁸ the City's Annual Financial Reports for the fiscal years 2015-2017, the City's Annual Budget for the fiscal years 2018-2019, the City's Strategic Plan for the period of 2016 to 2021, the City's Bond Prospectus for its Series 2014 Bonds, the most recent bond rating reports, and news articles regarding the City's planned "Civic Center Improvement Project."

To evaluate the City's ability to pay the Combined Total Base Liability of \$714,985 (which includes considerations under Step 8, as discussed below), IEc reviewed the financial condition of the City and determines that the City is able to pay the proposed liability from a combination of its ongoing net income, unrestricted fund balance or cash holdings, or by taking on additional debt. IEc found that the City is in strong financial health, with cumulative revenues exceeding expenditures over the last three years and assets far exceeding liabilities as of fiscal year 2017, indicating that the City can take on additional debt. Most significantly is the City's unrestricted fund balance of \$23.5 million, a sign of strong liquidity. IEc did note in its analysis that a substantial part of this unrestricted fund balance has been committed to a project called "Civic Center Improvement Project" which will provide the City with a new police station and senior center. Excluding these funds from the unrestricted fund balance for purposes of this ability to pay analysis would place the remaining balance below a recommended Government Finance Officers Association guideline. However, the City's debt capacity indicates that it has the ability to take on the full proposed liability amount. The MUNIPAY model finds that financing this debt would not result in the City exceeding any recommended thresholds for the debt capacity metrics.

Step 7: Economic Benefit

The 2017 Enforcement Policy states that the economic benefit amount shall be estimated for every violation. Economic benefit is defined as the savings or monetary gain derived from the act or omission that constitutes the violation. The Enforcement Policy states that administrative civil liabilities should be imposed at levels which do not allow violators to obtain a competitive economic advantage over dischargers that voluntarily incur the costs of regulatory compliance. An administrative civil liability shall not be imposed below the economic benefit, as specified in Water Code section 13385. The Enforcement Policy provides that the minimum liability shall be the economic benefit, plus ten percent, absent exceptional circumstances.

¹⁸ See Memorandum from Industrial Economics, Inc. to Mayumi Okamoto and Catherine Hawe, January 10, 2019 as Attachment 3.

The violations described herein have associated avoided expenses that have significantly benefited the City and placed other permittees of the LA County MS4 Permit at a competitive disadvantage as those permittees that voluntarily incur the costs to comply with the requirements of the LA County MS4 Permit. As stated elsewhere in the Enforcement Policy, fair enforcement requires, at a minimum, adequate administrative civil liabilities to ensure that no competitive advantage is attained through non-compliance. The economic benefit is estimated by determining the cost savings for each violation and then calculating the present value of the economic benefit using the U.S. EPA's BEN computer program. Attachment 4 shows that the economic benefit for all four violations is \$54,919.

Step 8: Other Factors as Justice May Require

If the Regional Board believes that the liability determined using the above steps is inappropriate, then the amount may be adjusted under the provision for "other factors as justice may require" as long as express findings are made.

The Water Boards have incurred \$8,125 in staff costs to prepare this action. This represents 55.5 hours in reviewing the required monitoring program, reviewing the City's monitoring reports, issuing the Water Code section 13267 Order, reviewing the water quality limits, calculating the economic benefit, and preparing these enforcement documents. The amount was calculated using each person's hourly rate plus benefits and overhead. No attorneys' fees were included in this calculation. The Prosecution Team recommends that the costs of investigation and enforcement be included as part of the recommended final liability amount. Increasing the final proposed liability amount in this manner serves to create a more appropriate specific and general deterrent against future violations.

Step 9: Maximum and Minimum Liability Amounts

Water Code section 13385(c)(1) sets for the maximum liability and section 13385(e) sets the minimum liability for Violations 1-4, while Water Code section 13268(b)(1) sets the maximum liability amount for Violation 5. There is no statutory minimum liability under section 13268. The 2017 Enforcement Policy sets the minimum liability as the economic benefit plus 10%.

Maximum Liability

The total maximum liability in this case is the sum of the maximum liabilities for each violation.

Violation 1: \$10,000/day x 561 days = \$5,610,000

Violation 2: \$10,000/day x 393 days = \$3,930,000

Violation 3: \$10,000/day x 196 days = \$1,960,000

Violation 4: \$10,000/day x 28 days = \$280,000

Total maximum liability: \$11,780,000

Minimum Liability: \$ 60,411

The minimum liability per section 13385 is the economic benefit. The minimum liability per the 2017 Enforcement Policy is the economic benefit plus 10%. Therefore, the economic benefit plus 10% becomes the minimum liability for this enforcement action.

Step 10: Final Liability Amount

The final liability amount consists of the sum of the penalty for each violation, with any allowed adjustments, provided that the final liability is within the statutory maximum and minimum. The

Prosecution Team finds that a final liability of **\$714,985** is appropriate in this case and is within the maximum and minimum liability amounts.

Attachment 1: October 20, 2016 letter from Samuel Unger, Regional Board Executive Officer, to Mitchell Landsell, Gardena City Manager.

January 6, 2017 letter from Samuel Unger, Regional Board Executive Officer, to Mitchell Landsell, Gardena City Manager.

Attachment 2: Declaration of Ivar Ridgeway, January 10, 2019.

Attachment 3: Memorandum from Industrial Economics, Inc. to Mayumi Okamoto and Catherine Hawe, January 10, 2019.

Attachment 4: Economic Benefit calculation and Memorandum.

Attachment 1:

October 20, 2016 letter from
Samuel Unger, Regional Board Executive Officer,
to Mitchell Landsell, Gardena City Manager

January 6, 2017 letter from
Samuel Unger, Regional Board Executive Officer,
to Mitchell Landsell, Gardena City Manager



Los Angeles Regional Water Quality Control Board

October 20, 2016

Mr. Mitchell G. Lansdell
City Manager
1700 W. 162nd St., Room 112
P.O. Box 47003
Gardena, CA 90247

RESCISSION OF CONDITIONAL APPROVAL OF THE CITY OF GARDENA'S 2ND REVISED INTEGRATED MONITORING PROGRAM; DIRECTIVE TO COMMENCE BASELINE MONITORING PURSUANT TO THE MONITORING AND REPORTING PROGRAM AS SET FORTH IN ATTACHMENT E (LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT - NPDES PERMIT NO. CAS004001; ORDER NO. R4-2012-0175)

Dear Mr. Lansdell:

Attachment E of the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit (NPDES Permit No. CAS004001; Order No. R4-2012-0175) (hereafter, LA County MS4 Permit) sets forth the monitoring and reporting program requirements for Permittees. It allows permittees the option to individually develop and implement an integrated monitoring program (IMP) to address all of the monitoring requirements in the Permit and other monitoring obligations or requirements in a cost efficient and effective manner. An IMP must achieve the five Primary Objectives set forth in Part II.A of Attachment E and include the elements set forth in Part II.E of Attachment E of the LA County MS4 Permit. These programs must be approved by the Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board or Board).

On January 22, 2016, the Los Angeles Water Board approved, with conditions, the City of Gardena's (City's) 2nd revised IMP and directed the City to submit a final IMP that satisfied all of the conditions no later than February 22, 2016. The City submitted its final IMP on April 21, 2016. The Board has reviewed the City's final IMP and has determined that it does not satisfy all the conditions set forth in the Board's January 22, 2016 conditional approval letter. Therefore, the Board is rescinding its conditional approval of the City's IMP. Consequently, pursuant to Part VI.B.1 of the LA County MS4 Permit, the City must comply with the monitoring and reporting provisions in Attachment E, as described in detail below.

Summary of Board Review

On June 30, 2014, the City submitted its draft IMP for Los Angeles Water Board review. On January 16, 2015, the Los Angeles Water Board sent a letter to the City detailing the Board's comments on the draft IMP and identifying revisions that needed to be addressed prior to the

Board's approval of the City's IMP.¹ The City submitted its revised IMP on February 17, 2015. On August 10, 2015, the Los Angeles Water Board sent a second letter to the City detailing the Board's comments on the revised IMP and identifying remaining deficiencies that needed to be addressed prior to the Board's approval. The Los Angeles Water Board provided the City with the opportunity to submit a second revised IMP addressing the noted deficiencies. The City submitted its second revised IMP on September 23, 2015. After reviewing the City's second revised IMP, the Los Angeles Water Board sent a letter to the City on January 22, 2016 approving the City's IMP with conditions. The City was directed to submit a final IMP to the Los Angeles Water Board that satisfied all of the conditions in the letter and attachments no later than February 22, 2016. The City submitted its final IMP on April 21, 2016.

Rescission of Conditional Approval of IMP

As stated above, the Board reviewed the City's final IMP and determined that the submittal still does not meet the requirements for an IMP pursuant to Attachment E of the LA County MS4 Permit and does not satisfy all the conditions detailed in the Board's January 22, 2016 conditional approval letter. The Board, therefore, rescinds its January 22, 2016 conditional approval of the City's final IMP. No further opportunities to address the conditions of approval will be provided. A summary of the Board's comments, which identifies the conditions in the approval letter that have not been satisfied and other key deficiencies of the City's final IMP, is provided in **Enclosure 1**.

As the City does not have an approved IMP, the City is therefore immediately subject to the baseline monitoring and reporting requirements of the LA County MS4 Permit, as set forth in Attachment E and described below.

Directive to Commence Baseline Monitoring and Reporting as set forth in Attachment E

The City shall monitor and report pursuant to Attachment E of the LA County MS4 Permit, as described in **Enclosure 2** (Monitoring Requirements), **Enclosure 3** (Map of Monitoring Locations), and **Enclosure 4** (Aquatic Toxicity Monitoring Requirements). Enclosures 2, 3, and 4 contain the baseline monitoring requirements² specified in Attachment E of the LA County MS4 Permit. These baseline monitoring requirements include the elements set forth in Part II.E and further detailed in Parts V - XII: receiving water monitoring during wet and dry weather, stormwater outfall based monitoring, and non-stormwater outfall based screening and monitoring. The City is also required to maintain a database for tracking each new development and re-development subject to the requirements of Part VI.D.6 of the LA County MS4 Permit per Attachment E, Part X.

The monitoring locations in Table 1 of Enclosure 2 and in Figure 1 of Enclosure 3 were selected consistent with criteria in Attachment E, Parts VI – IX and XI – XII of the LA County MS4

¹ The City of Gardena's submittals and the Los Angeles Water Board's correspondence can be found at: http://www.swrcb.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/gardena/index.shtml

² Baseline monitoring requirements are those monitoring requirements set forth in Attachment E that a Permittee is subject to where the Permittee does not have an approved IMP or CIMP.

Permit.³ Enclosure 2 also identifies TMDL compliance monitoring that the City is required to conduct per Attachment E and Attachment N Part E (Dominguez Channel and Greater Harbor Waters Toxic Pollutants TMDL) of the LA County MS4 Permit.

Additionally, the City shall immediately implement a non-stormwater outfall-based screening and monitoring program, as required in Attachment E, Parts IX.A, IX.B, and IX.C-H of the LA County MS4 Permit. The non-stormwater outfall-based screening and monitoring program must use one of the following thresholds for field measurements to determine whether the non-stormwater discharge is significant:

1. Observed flow greater than a garden hose flow (>10 gpm), OR
2. Evidence that the non-stormwater discharge reaches the receiving water during dry weather and laboratory analysis for TSS, where the laboratory result shows that TSS exceeds the Reporting Limit of 2.0 mg/L⁴ in the non-stormwater discharge.

The City shall screen each of its MS4 outfalls at least 3 times in order to determine the presence of significant non-stormwater discharge. The City must complete the screening and on the basis of the screening, identify all of its MS4 outfalls that have significant non-stormwater discharges, no later than May 19, 2017. If the City detects significant non-stormwater discharges at an outfall two or more times, it shall monitor that outfall thereafter as per Attachment E, Part IX.G-H of the LA County MS4 Permit.

The City shall demonstrate compliance with Receiving Water Limitations pursuant to Part V.A.1 and all applicable interim and final water quality-based effluent limitations in Part VI.E and Attachment N (Part E) pursuant to Part VI.E.2.d.i.(1)-(3) and/or Part VI.E.2.e.i.(1)-(3) in the LA County MS4 Permit.

Accordingly, the City must commence monitoring as described herein (including Enclosures 2 through 4) within 30 days of the date of this letter. Please note that the City is responsible for complying with all LA County MS4 Permit reporting provisions included in:

- Attachment E, Parts XIV to XVIII;
- Attachment E, Part XIX.C, "Reporting Requirements for Dominguez Channel and Greater Harbors Waters WMA TMDLs;" and
- Attachment D, Parts IV, V, and VII.A.

Finally, the City is also responsible for complying with the requirements below pertaining to Annual Reporting.

Annual Reporting

Pursuant to Attachment E, Part XVIII of the LA County MS4 Permit, the City's Annual Report shall provide an Integrated Monitoring Report that summarizes all identified exceedances of:

³ Stormwater discharges from the MS4 may be monitored at outfalls or alternative access points such as manholes at the Permittee's jurisdictional boundary. The drainage(s) to the selected outfall(s) or alternative access point(s) must be representative of the land uses within the Permittee's jurisdiction. (Attachment E Part VIII.A of the LA County MS4 Permit)

⁴ See SWAMP 2015 Revised Freshwater Reporting Limits. Conventional Parameters in Freshwater: Aqueous Solids. http://www.waterboards.ca.gov/water_issues/programs/swamp/2015_revised_limits.shtml (Accessed on 10/14/16).

October 20, 2016

- o outfall-based stormwater monitoring data,
- o wet weather receiving water monitoring data,
- o dry weather receiving water monitoring data, and
- o non-stormwater outfall monitoring data

against all applicable receiving water limitations, water quality-based effluent limitations, non-storm water action levels, and aquatic toxicity thresholds as defined in Attachment E. All sample results that exceed one or more applicable thresholds shall be readily identified.

The Annual Report shall also include a Municipal Action Level (MAL) Assessment Report, which shall present the stormwater outfall monitoring data in comparison to the applicable MALs, and identify those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in discharges of stormwater from the MS4. Pursuant to Attachment G, Part VIII of the LA County MS4 Permit, Permittees are required to submit a MAL Action Plan with the Annual Report to the Los Angeles Water Board, for those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in any discharge of storm water from the MS4. The deadline for submitting the MAL Action Plan was December 15, 2015; therefore the City shall submit a Plan to the Los Angeles Water Board by June 15, 2017 as part of its semi-annual reporting of monitoring results per Attachment E, Part XIV.L.

Additionally, the City shall indicate which criterion (of those specified above) was used to determine a significant non-stormwater discharge in the Annual Report.

If you have any questions, please contact Ms. Erum Razzak of the Storm Water Permitting Unit by electronic mail at Erum.Razzak@waterboards.ca.gov or by phone at (213) 620-2095. Alternatively, you may also contact Mr. Ivar Ridgeway, Chief of the Storm Water Permitting Unit, by electronic mail at Ivar.Ridgeway@waterboards.ca.gov or by phone at (213) 620-2150.

Sincerely,



Samuel Unger, P.E.
Executive Officer

cc: John Felix, City of Gardena
Ray Tahir, TECS Environmental, Inc.

Enclosures: Enclosure 1 – Summary of Comments and Deficiencies
Enclosure 2 – Monitoring Requirements
Enclosure 3 – Map of Monitoring Requirements
Enclosure 4 – Memorandum from Executive Officer to LA County MS4
Permittees Clarifying Aquatic Toxicity Monitoring Requirements

Los Angeles Regional Water Quality Control Board

Enclosure 1 – Summary of Conditions of Approval Not Met and Other Deficiencies¹

City of Gardena's Final IMP

1. The only receiving water monitoring station proposed in the IMP is located upstream of, not in, the Dominguez Channel Estuary. As per Attachment K Table K-13 of the LA County MS4 Permit, the City is subject to the WLAs for Dominguez Channel Estuary. Therefore, Section 1.3 of the IMP must propose a TMDL compliance monitoring site for Dominguez Channel Estuary in proximity to the City's point of discharge.
2. As per the Dominguez Channel, Torrance Lateral, and Dominguez Channel Estuary Monitoring Plan in the Harbor Toxics TMDL, the IMP does not adequately provide details about the water column, sediment, and fish tissue monitoring for Dominguez Channel and Dominguez Channel Estuary. The IMP must include information on how the City would demonstrate compliance with the applicable TMDL requirements in the Harbor Toxics TMDL, including details on monitoring requirements for water, sediment, and fish tissue as set forth in the previous Los Angeles Water Board's (August 10, 2015) comment letter.
3. Although the IMP states that each of the field screening points is representative of land uses within the City's jurisdiction, there is insufficient justification for selection of the points.
4. Storm drain outfall catchment area (drainage area) maps for each major outfall within the City's jurisdiction are missing. The IMP must include storm drain outfall catchment areas for each major outfall, or if not currently available, provide a schedule for delineating the catchment areas and submitting the delineations to the Los Angeles Water Board. Section 1.12 contains inadequate non-stormwater outfall-based monitoring.
5. In Section 1.5, the screening frequency for identifying significant non-stormwater discharges is unclear.
6. The IMP is not specific on how a significant non-stormwater discharge will be determined. Greater specificity on thresholds for field measurements, including flow and water quality data that will be used to determine whether a non-stormwater discharge is significant (e.g., flow greater than a garden hose) is required. Monitoring for PCBs in sediment or water is insufficient as proposed. Monitoring should be reported as the summation of aroclors and a minimum of 40 (and preferably at least 50) congeners.
7. The IMP contains language stating that the City is not required to comply with certain required elements specified in Attachment E (i.e. receiving water limitations, wet weather WQBELs, and Action Levels). Note that while the permit provided an opportunity for Permittees to customize, within certain constraints, its monitoring program, the basic monitoring elements and the permit's compliance requirements, including those related to numeric limitations and action levels, are not customizable. Compliance will be determined as per the LA County MS4 Permit.

¹ This enclosure does not provide a comprehensive enumeration of all unaddressed conditions and deficiencies. Rather, it highlights the most significant of them.

8. Section 1.9 Toxicity Monitoring was not revised to align with or reference the clarification memo on toxicity monitoring issued in August 2015 (Enclosure 4). The figure just before Section 1.17 should also refer to the clarification memo.
9. Typographical errors, such as:
 - a. Tables and Sections were removed from the IMP, but the remaining tables/sections were not re-numbered accordingly.
 - b. Tables IV and V are missing totals for the drainage areas.
 - c. The description of the representative field screening points in Section 1.4, page 4, is not correct: "Four screening points have been selected for Dominguez Channel (above Vermont Avenue). Each located upstream of five outfalls." The final IMP proposed two screening points, not four.
 - d. Table IV – Land Use Breakdowns for HUC 12 Drainage Areas displays only one HUC 12 drainage area (Upper Dominguez Channel, 576 Acre), yet includes columns and data for two HUC 12 Drainage Areas.
 - e. Section 1.14 was not properly aligned with Section 1.5 to clarify the distinction between the two sections.
 - f. In Section 1.16, Item II. *Non-stormwater outfall based sampling Protocol*, the last two sentences inappropriately relate to flow monitoring for stormwater outfall monitoring.

Los Angeles Regional Water Quality Control Board

Enclosure 2 – Monitoring Requirements

City of Gardena

Enclosure 2 contains monitoring locations and monitoring requirements specified in Attachment E of the LA County MS4 Permit, including receiving water monitoring during wet and dry weather, stormwater outfall based monitoring, non-stormwater outfall based screening and monitoring, and aquatic toxicity monitoring. Enclosure 2 also identifies TMDL compliance monitoring that the City is required to conduct per Attachment E and Attachment N Part E (Dominguez Channel and Greater Harbor Waters Toxic Pollutants TMDL) of the LA County MS4 Permit. Furthermore, Attachment E Part VI.C–D, Part VIII.B, and Part IX.G of the LA County MS4 Permit require monitoring for 303(d) listed pollutants. Because the City of Gardena discharges to a 303(d) listed waterbody (Dominguez Channel and the Dominguez Channel Estuary), it must monitor these pollutants.

Table 1. City of Gardena Required Monitoring Locations¹

Station/Site ID	Description	Waterbody	Latitude	Longitude	Details
FS3	Stormwater - Outfall	Dominguez Channel	33.901836	-118.324964	S. Normandie Ave
FS4	Stormwater - Outfall	Dominguez Channel	33.872029	-118.298876	Western & Artesia Blvd
R1	Receiving Water / TMDL	Dominguez Channel/Dominguez Channel Estuary	33.871472	-118.290794	Vermont Ave.

¹ All of the monitoring locations in Table 1 (above) and Enclosure 3 (Map of Monitoring Locations) were selected consistent with criteria in Attachment E, Parts VI – IX of the LA County MS4 Permit. Some of the locations in Table 1 (FS3 and FS4) were also proposed by the City of Gardena in their final IMP submitted to the Los Angeles Water Board on April 21, 2016.

Table 2. City of Gardena Monitoring Requirements

Constituent	Annual Frequency (number wet events/number dry events)		
	Dominguez Channel Watershed ²		
	Receiving Water ³ and TMDL ⁴	Stormwater ⁵	Non- Stormwater ⁶
	R1	FS3/FS4	
Pollutants identified in Attachment E Table E-2 of the LA County MS4 Permit	3/2 ⁷	3/0 ⁸	9
Aquatic Toxicity ¹⁰	2/1 ¹¹	12	13
Total Suspended Solids (TSS)	3/2	3/0	
Suspended-Sediment Concentration (SSC) ¹⁴	3/2	3/0	
Flow	3/2	3/0	0/4
Hardness	3/2	3/0	
pH	3/2	3/0	
Dissolved Oxygen	3/2	3/0	
Temperature	3/2	3/0	
Specific/Electrical Conductivity	3/2	3/0	
<i>E. coli</i>	3/2	3/0	0/4
Copper	3/2	3/0	0/4
Lead	3/2	3/0	0/4
Zinc	3/2	3/0	0/4

² In addition to Attachment N Part E.2.a.ii, samples of non-stormwater collected from outfalls during flow conditions less than the 90th percentile of annual flow rates must demonstrate that the acute and chronic hardness dependent water quality criteria (for copper, lead, and zinc) provided in the California Toxics Rule (CTR) are achieved (see Attachment N Part E.3.a.ii, footnote 6 of the LA County MS4 Permit).

³ Monitoring shall occur as per Attachment E Part VI.B-C of the LA County MS4 Permit. Dry weather monitoring will occur in July, the historically driest month.

⁴ Monitoring for the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL for Dominguez Channel and Dominguez Channel Estuary will occur at monitoring site R1.

⁵ Monitoring and sampling shall occur as per Attachment E Part VIII.B-C of the LA County MS4 Permit.

⁶ Sampling shall occur as per Attachment E Part IX.H of the LA County MS4 Permit.

⁷ Wet weather receiving water Table E-2 constituents monitoring requirements per Attachment E Part VI.C.1.e and dry weather receiving water Table E-2 constituents monitoring requirements per Attachment E Part VI.D.1.d of the LA County MS4 Permit.

⁸ Other parameters in Table E-2 identified as exceeding the lowest applicable water quality objective in the nearest downstream receiving water monitoring station per Part VI.C.1.e (Attachment E Part VIII.B.1.d) of the LA County MS4 Permit.

⁹ Other parameters in Table E-2 identified as exceeding the lowest applicable water quality objective in the nearest downstream receiving water monitoring station per Part VI.D.1.d (Attachment E Part IX.G.1.e) of the LA County MS4 Permit.

¹⁰ Aquatic toxicity shall be monitored in accordance with Part XII of Attachment E, and as detailed in the Los Angeles Regional Board August 7, 2015, Memorandum titled "Clarification Regarding Follow-up Monitoring Requirements in Response to Observed Toxicity in Receiving Waters Pursuant to the Monitoring & Reporting Program (Attachment E) of the Los Angeles County MS4 Permit (Order No. R4-2012-0175)".

¹¹ Minimum wet weather receiving water monitoring requirements per Attachment E Part VI.C.1.d.vi, and minimum dry weather receiving water monitoring requirements per Attachment E Part VI.D.1.c.vi of the LA County MS4 Permit.

¹² Minimum storm water outfall based monitoring requirements per Attachment E Part VIII.B.1.c.vi of the LA County MS4 Permit.

¹³ If the discharge exhibits aquatic toxicity, then a TIE shall be conducted per Attachment E Part IX.G.1.d. of the LA County MS4 Permit.

¹⁴ Pursuant to Attachment E, Part III.G.1 of the LA County MS4 Permit, Suspended Sediment Concentration (SSC) shall be analyzed per American Society for Testing and Materials (ASTM) Standard Test Method D-3977-97.

Constituent	Annual Frequency (number wet events/number dry events)		
	Dominguez Channel Watershed ²		
	Receiving Water ³ and TMDL ⁴	Stormwater ⁵	Non- Stormwater ⁶
	R1	FS3/FS4	
PCBs ¹⁵	3/2	3/0	0/4
PAHs	3/2	3/0	0/4
DDTs ¹⁶	3/2	3/0	0/4
Chlordane	2/1		
Dieldrin	2/1		
Ammonia	3/2	3/0	0/4
Benzo[a] Pyrene (3,4-Benzopyrene -7-d)	3/2	3/0	0/4
Benzo[a] Anthracene	3/2	3/0	0/4
Chrysene (C1-C4)	3/2	3/0	0/4
Phenanthrene	3/2	3/0	0/4
Pyrene	3/2	3/0	0/4
Municipal Action Levels (MALs) ¹⁷		3/0	
Non-Stormwater Action Levels (ALs) ¹⁸			0/4
Sediment Monitoring	¹⁹		
Fish Tissue Monitoring	²⁰		

¹⁵ High Resolution (EPA 1668); monitoring for PCBs in sediment or water should be reported as the summation of aroclors and a minimum of 40 (and preferably at least 50) congeners. See Table C8 in the state's Surface Water Ambient Monitoring Program's Quality Assurance Program Plan (page 72 of Appendix C).

¹⁶ High Resolution (EPA 1699); DDTs include DDT, DDE, DDD, and Total DDT.

¹⁷ Municipal action level monitoring pursuant to Attachment G Part VIII of the LA County MS4 Permit.

¹⁸ Non-stormwater action level monitoring pursuant to Attachment G Part III of the LA County MS4 Permit.

¹⁹ Refer to Table 3. Sediment and Fish Tissue Monitoring Requirements.

²⁰ Ibid.

Table 3. Sediment and Fish Tissue Monitoring Requirements²¹

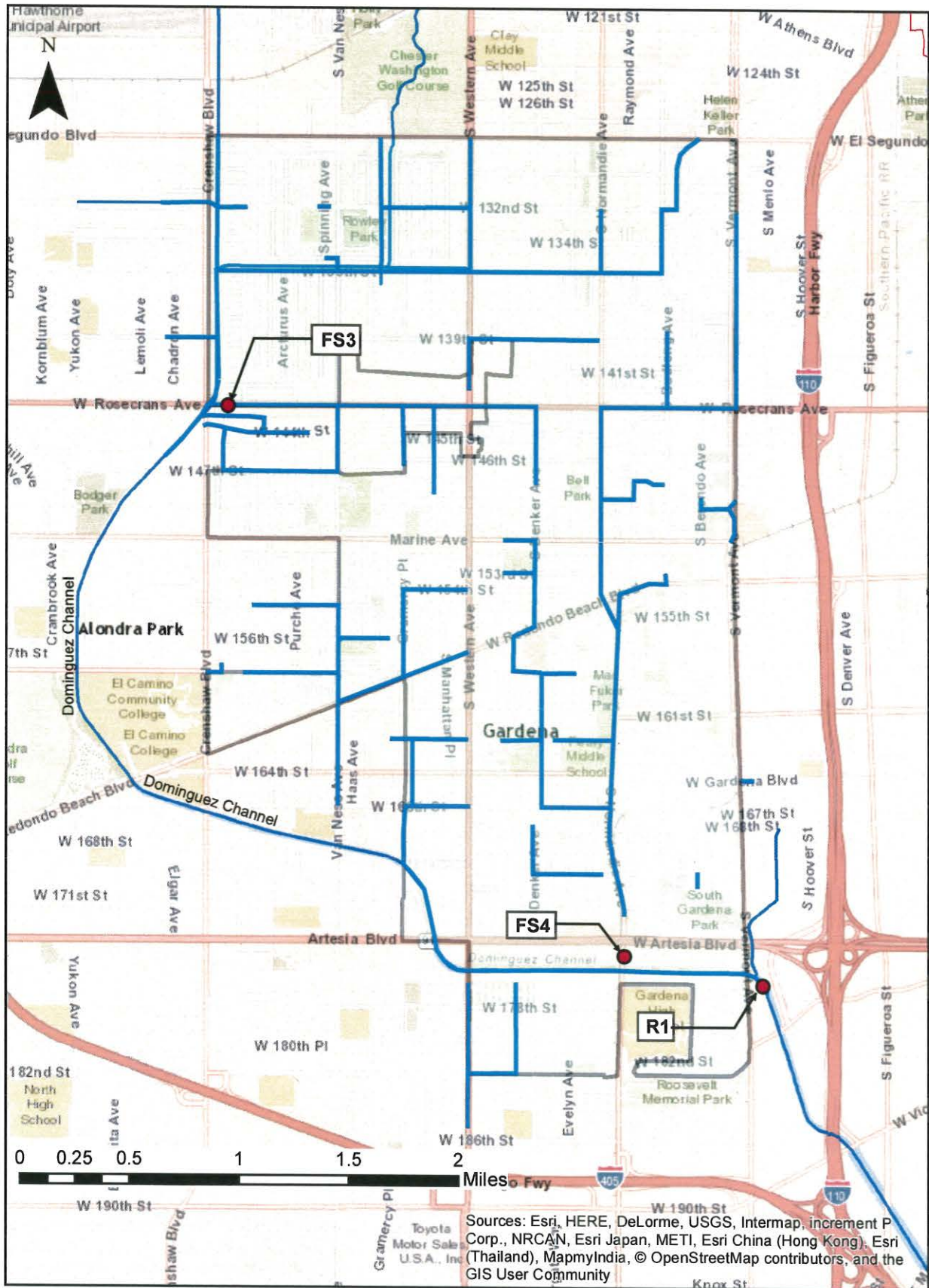
Parameter	Frequency
Sediment Monitoring²²	
Copper	Once every 2 years
Lead	
Mercury	
Zinc	
Cadmium	
PAHs	
Chlordane	
DDD, total	
DDE, total	
DDT, total	
PCBs, total	
Total Organic Carbon (TOC)	
Grain Size	
Sediment Toxicity	
Benthic Community	
Fish Tissue	
Chlordane	Once every 2 years
Dieldrin	
Toxaphene	
DDT	
PCBs ²³	

²¹ Sediment and fish tissue monitoring requirements pursuant to Attachment N, Part E of the LA County MS4 Permit.

²² Pursuant to Attachment N, Part E.4.d.iv of the LA County MS4 Permit, samples shall be collected in accordance with SWAMP protocols and for analysis of general sediment quality constituents and the full chemical suite as specified in the State Water Board's Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality (SQO).

²³ See footnote 15.

Enclosure 3 - Map of Monitoring Locations



Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

Figure 1. City of Gardena Monitoring Stations



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

TO: Los Angeles County MS4 Permittees and City of Long Beach

FROM: Samuel Unger, P.E.
Executive Officer *Samuel Unger*

DATE: August 7, 2015

SUBJECT: CLARIFICATION REGARDING FOLLOW-UP MONITORING REQUIREMENTS IN RESPONSE TO OBSERVED TOXICITY IN RECEIVING WATERS PURSUANT TO THE MONITORING & REPORTING PROGRAM (ATTACHMENT E) OF THE LOS ANGELES COUNTY MS4 PERMIT (ORDER NO. R4-2012-0175)

The Los Angeles County MS4 Permit, Attachment E requires chronic aquatic toxicity monitoring in receiving waters during both wet and dry weather conditions to determine whether designated beneficial uses are fully supported. Further, Attachment E requires additional monitoring at MS4 outfalls where aquatic toxicity is present above a certain effect level in downstream receiving waters to determine whether MS4 discharges are causing or contributing to the aquatic toxicity. In this situation, outfall monitoring must either entail monitoring for specific pollutants identified in a toxicity identification evaluation (TIE) in the downstream receiving water, or for aquatic toxicity itself, where the specific pollutants could not be identified through the TIE conducted on the downstream receiving water.

In its comments on the draft Integrated Monitoring Programs (IMPs) and Coordinated Integrated Monitoring Programs (CIMPs) submitted per the Los Angeles County MS4 Permit, the Los Angeles Water Board provided clarification and recommendations to Permittees regarding aquatic toxicity monitoring, particularly pertaining to the requirement to conduct chronic toxicity tests in dry and wet weather conditions and requirements for conducting a TIE and outfall monitoring. Subsequently, on December 9, 2014, Board staff met with several Permittees regarding its comments. During this meeting it was apparent that further clarification was necessary regarding requirements for follow-up monitoring when aquatic toxicity is present in downstream receiving waters. This memo provides additional clarification and applies to all IMPs and CIMPs developed pursuant to Part VI.B of the Los Angeles County MS4 Permit and Part VII.B of the City of Long Beach MS4 Permit.

It is acknowledged, however, that this memo may not address every situation that is encountered. We encourage the Permittees to approach toxicity testing and the TIE and TRE procedures thoughtfully and thoroughly in the interest of identifying and eliminating any source(s) of toxicity in MS4 discharges as expeditiously as possible and to consult with Los Angeles Water Board staff if you need assistance or clarification.

CHARLES STRINGER, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/losangeles

If you have any questions regarding these clarifications, please contact Renee Purdy at Renee.Purdy@waterboards.ca.gov or Shirley Birosik at Shirley.Birosik@waterboards.ca.gov.

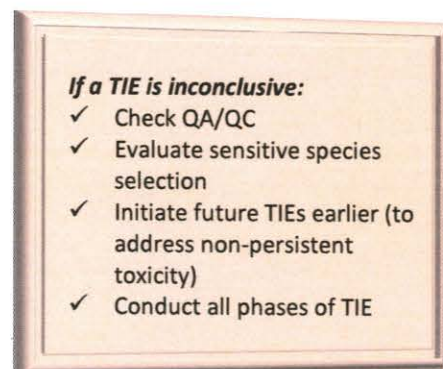
The memo addresses requirements for follow-up monitoring in four **receiving water** scenarios where toxicity is present:

- Toxicity is present, but not above the TIE trigger as defined in Attachment E, Part XII.I.1¹;
- Toxicity is present above the TIE trigger and the TIE identifies the constituent(s) causing the toxicity;
- Toxicity is present above the TIE trigger during wet weather, but the TIE is inconclusive; and
- Toxicity is present above the TIE trigger during dry weather, but the TIE is inconclusive.

The memo also addresses the several scenarios once **outfall** toxicity testing has been triggered. Attached to the memo are several simplified flowcharts to aid in understanding the process.

An inconclusive TIE is defined as a TIE for which the cause of toxicity cannot be attributed to a constituent or class of constituents (e.g., metals, insecticides, etc.) that can be targeted for monitoring even after conducting appropriate Phase I and Phase II TIE treatments. This outcome may result from either non-persistent toxicity such that the TIE treatments cannot be successfully completed on the toxic sample, or from the inability with available Phase I and Phase II TIE

An **inconclusive TIE** is one for which the cause of toxicity cannot be identified after the conclusion of TIE Phases I and II.



treatments to isolate the constituent or class of constituents causing the toxicity. If the TIE is inconclusive due to non-persistent toxicity, the Los Angeles Water Board expects that Permittees will proactively identify and implement actions during the subsequent upstream and/or outfall toxicity sampling event to improve the likelihood of a conclusive TIE, while also following the steps below. Where a TIE is inconclusive due to the inability to determine the constituent(s) causing the toxicity, Permittees should evaluate further steps to improve the TIE outcome including sensitive species selection, QA/QC, and the need to conduct Phases I through III of a TIE, among others.

¹ Permit references correspond to the Los Angeles County MS4 Permit (Order No. R4-2012-0175)

TRIGGERS FOR ADDING TOXICITY MONITORING TO UPSTREAM RECEIVING WATER MONITORING / OUTFALL MONITORING:

1. If toxicity is present as determined based on a fail of the Test of Significant Toxicity (TST) t-test as specified in the Permit (Attachment E, Part XII.G.4) during wet or dry weather, but not above the TIE trigger (which is defined as when the survival or sublethal endpoint demonstrates a ≥ 50 Percent Effect at the IWC as per Attachment E, Part XII.I.1), then:
 - a. Toxicity monitoring will be added to the next existing upstream receiving water site(s) during the same condition (wet or dry weather) for which toxicity was determined to be present. Monitoring for toxicity at the next existing upstream receiving water site(s) will occur during the next monitoring event that is at least 30 days following the original toxicity sample collection. Toxicity monitoring at individual receiving water sites will continue until (1) the deactivation criterion (i.e., two consecutive samples that pass the pass/fail TST t-test during the same condition) is met at the receiving water site or (2) a TIE is triggered and conclusively identifies the constituent or class of constituents causing toxicity, in which case the process outlined in Bullet 2 below is followed. OR
 - b. If there is no upstream receiving water monitoring site already established as part of the monitoring program, continue receiving water toxicity monitoring at the original site until (1) the deactivation criterion (i.e., two consecutive samples that pass the pass/fail TST t-test during the same condition) is met at the original receiving water site or (2) a TIE is triggered at the original site and conclusively identifies the constituent or class of constituents causing toxicity, in which case the process outlined in Bullet 2 below is followed. Also, conduct an evaluation similar to the TRE outlined in Attachment E, Part XII.J to identify, to the extent practicable, the source(s) of toxicity with the goal of identifying cause(s) of toxicity, paying particular attention to sources of potential constituent(s) causing toxicity (e.g., fipronil).
 - i. If there is no upstream receiving water monitoring site already established as part of the monitoring program and toxicity is present during dry weather, actions taken as part of the non-stormwater program (e.g., source identification and elimination or treatment of unauthorized non-stormwater discharges that are a source of pollutants) should be utilized to support the TRE.
 - ii. If there is no upstream receiving water monitoring site already established as part of the monitoring program and toxicity is present during wet weather, consider the following actions to support TRE: evaluating land uses and potential associated source(s) in the drainage area, evaluation of other permitted discharges, and evaluation of inspection activities. AND
 - c. If there is no upstream receiving monitoring site already established as part of the monitoring program and more than one occurrence of a fail of the TST t-test occurs at the original receiving water site within 3 years, then evaluate opportunities to conduct toxicity monitoring at upstream receiving water sites (either newly established or sites utilized by other monitoring programs), including tributaries.

2. If toxicity is present at a level exceeding the TIE trigger and the TIE identifies the constituent or class of constituents causing toxicity, then:
 - a. Do not add toxicity monitoring to upstream sites. AND
 - a. During the same condition, add the identified constituent or constituents within the class of constituents² to the monitoring site where toxicity was identified, the upstream receiving water site(s), and upstream outfall site(s) starting with the next monitoring event that is at least 45 days following the toxicity sample collection. Monitoring for the identified constituent(s) will continue until the deactivation criterion (i.e., two consecutive samples do not exceed Receiving Water Limitations (RWLs), Water Quality Based Effluent Limitations (WQBELs), or other appropriate threshold or guideline if there is no numeric RWL or WQBEL, for the identified constituents during the same condition) is met at the individual site. Where constituent(s) are identified in the outfall(s) above the RWL(s), WQBEL(s), or other appropriate threshold or guideline commence TRE at each corresponding outfall location per Attachment E, Part XII.J.
3. If toxicity is present at a level exceeding the TIE trigger during wet weather and the TIE is inconclusive, then:
 - a. Add toxicity monitoring to the next existing upstream receiving water site(s) during the next monitoring event that is at least 45 days following the original toxicity sample collection. Toxicity monitoring at individual receiving water site(s) will continue until (1) the deactivation criterion (i.e., two consecutive samples that pass the pass/fail TST t-test during the same condition) is met at the receiving water site or (2) a TIE is triggered and conclusively identifies the constituent or class of constituents causing toxicity, in which case the process outlined in Bullet 2 above is followed. AND
 - b. The second inconclusive TIE in 3 years during wet weather would trigger outfall toxicity testing at upstream outfall sites (i.e., (1) outfall sites located between the receiving water site and the nearest upstream receiving water site located on the same waterbody and (2) outfall sites located on tributaries that have a confluence with the waterbody where the confluence is located between the receiving water site and the nearest upstream receiving water site located on the same waterbody) following the process outlined below in “Steps Related Outfall Toxicity Testing” during the next monitoring event that is at least 45 days following the original toxicity sample collection. OR
 - c. As an alternative to the outfall monitoring described in Bullet 3.b., Permittees may propose an alternative approach any time after the first inconclusive TIE, which could include utilizing upstream receiving water sites (either newly established or sites utilized by other monitoring programs), including tributaries, additional outfall sites, and/or different outfall sites. However, the outfall monitoring approach described in Bullet 3.b. must be followed until Regional Water Board EO approval of the alternative approach.

² Using appropriate detection limits

4. If toxicity is present at a level exceeding the TIE trigger during dry weather and the TIE is inconclusive, then:
 - a. Add toxicity monitoring to the next existing upstream receiving water site(s) during the next monitoring event that is at least 45 days following the original toxicity sample collection. Toxicity monitoring at individual receiving water site(s) will continue until (1) the deactivation criterion (i.e., two consecutive samples that pass the pass/fail TST t-test during the same condition) is met at the receiving water site or (2) a TIE is triggered and conclusively identifies the constituent or class of constituents causing toxicity, in which case the process outlined in Bullet 2 above is followed during the next monitoring event that is at least 45 days following the original toxicity sample collection. AND
 - b. Add toxicity testing to upstream outfall sites (i.e., (1) outfall sites located between the receiving water site and the nearest upstream receiving water site located on the same waterbody and (2) outfall sites located on tributaries that have a confluence with the waterbody where the confluence is located between the receiving water site and the nearest upstream receiving water site located on the same waterbody) following the process outlined below in “Steps Related Outfall Toxicity Testing” during the next monitoring event that is at least 45 days following the original toxicity sample collection. OR
 - c. As an alternative to the outfall monitoring described in Bullet 4.b above, Permittees may propose an alternative approach any time after the first inconclusive TIE, which could include utilizing upstream receiving water sites (either newly established or sites utilized by other monitoring programs), including tributaries, additional outfall sites, and/or different outfall sites. However, the outfall monitoring approach described in Bullet 4.b above must be followed until Regional Water Board EO approval of the alternative approach.

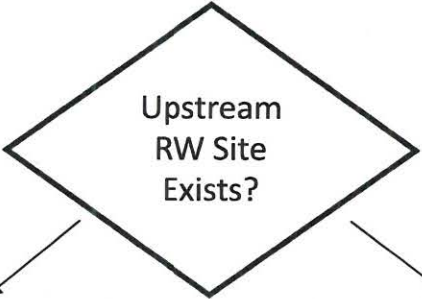
STEPS RELATED TO OUTFALL TOXICITY TESTING ONCE TRIGGERED:

1. If toxicity is not present as determined based on pass of the TST t-test as specified in the Permit, then continue toxicity testing during the same condition
2. (i.e. wet or dry weather) until (1) meeting the deactivation criterion (i.e., two consecutive samples that pass the pass/fail TST t-test during the same condition), or (2) a TIE conducted at the downstream receiving water site conclusively identifies the constituent or class of constituents causing toxicity, or (3) the discharge is eliminated.
3. If toxicity is present as determined based on fail of the TST t-test as specified in the Permit, but not above the TIE trigger, then continue toxicity testing during the same condition until (1) meeting the deactivation criterion (i.e., two consecutive samples that pass the pass/fail TST t-test during the same condition), or (2) a TIE conducted at a downstream receiving water site conclusively identifies the constituent or class of constituents causing toxicity, or (3) the discharge is eliminated. Concurrently conduct an evaluation similar to the TRE in Attachment E, Part XII.J to identify, to the extent practicable, the source(s) of toxicity with the goal of addressing cause(s) of toxicity, paying particular attention to sources of potential constituent(s) causing toxicity (e.g., fipronil).

- a. If toxicity is present in the non-stormwater discharge, actions taken as part of the non-stormwater program (e.g., source identification and elimination or treatment of unauthorized non-stormwater discharges that are a source of pollutants) should be utilized to support the TRE.
 - b. If toxicity is present in the stormwater discharge, consider the following actions to support the TRE: evaluating land uses and potential associated source(s) in the drainage area, evaluation of other permitted discharges, and evaluation of inspection activities.
4. If toxicity is present at a level exceeding the TIE trigger and the TIE identifies the constituent or class of constituents causing toxicity, then:
- a. Discontinue toxicity testing at the outfall. AND
 - b. Add the identified constituent or constituents within the identified class of constituents³ during the same condition starting with the next monitoring event that is at least 45 days following the toxicity sample collection and monitor for those constituents at the outfall until meeting the deactivation criterion for those constituents (i.e., two consecutive samples do not exceed RWLs, WQBELs, or other appropriate threshold or guideline if there is no numeric RWL or WQBEL, for identified constituents), while simultaneously performing a TRE for the constituent(s) causing toxicity per Attachment E, Part XII.J.
5. If toxicity is present at a level exceeding the TIE trigger and the TIE is inconclusive, then continue toxicity testing during the same condition until (1) meeting the deactivation criterion (i.e., two consecutive samples that pass the pass/fail TST t-test during the same condition), or (2) a TIE identifies the constituent or class of constituents causing toxicity (proceed with following the process outlined in Bullet 3, above), or (3) eliminate the discharge. Concurrently conduct an evaluation similar to the TRE in Attachment E, Part XII.J to identify, to the extent practicable, the source(s) of toxicity with the goal of addressing cause(s) of toxicity, paying particular attention to identifying sources of potential constituent(s) causing toxicity that may not have been evaluated in the TIE (e.g., fipronil).
- a. If the TIE is inconclusive in the non-stormwater discharge, actions taken as part of the non-stormwater program (e.g., source identification and elimination or treatment of unauthorized non-stormwater discharges that are a source of pollutants) should be utilized to support the TRE.
 - b. If the TIE is inconclusive in the stormwater discharge, consider the following actions to support the TRE: evaluating land uses and potential associated source(s) in the drainage area, evaluation of other permitted discharges, and evaluation of inspection activities.

³ Using appropriate detection limits

**Receiving Water Toxicity
Present but Does *NOT* Exceed
TIE Trigger**



No

Yes

Continue monitoring toxicity at existing site
Conduct TRE-like evaluation
Evaluate potential for upstream monitoring

Add toxicity testing under same conditions (wet/dry)

Receiving Water Toxicity Present and Exceeds TIE Trigger

TIE Identifies Pollutant(s)?

No

Yes

Wet or Dry Weather?

Dry

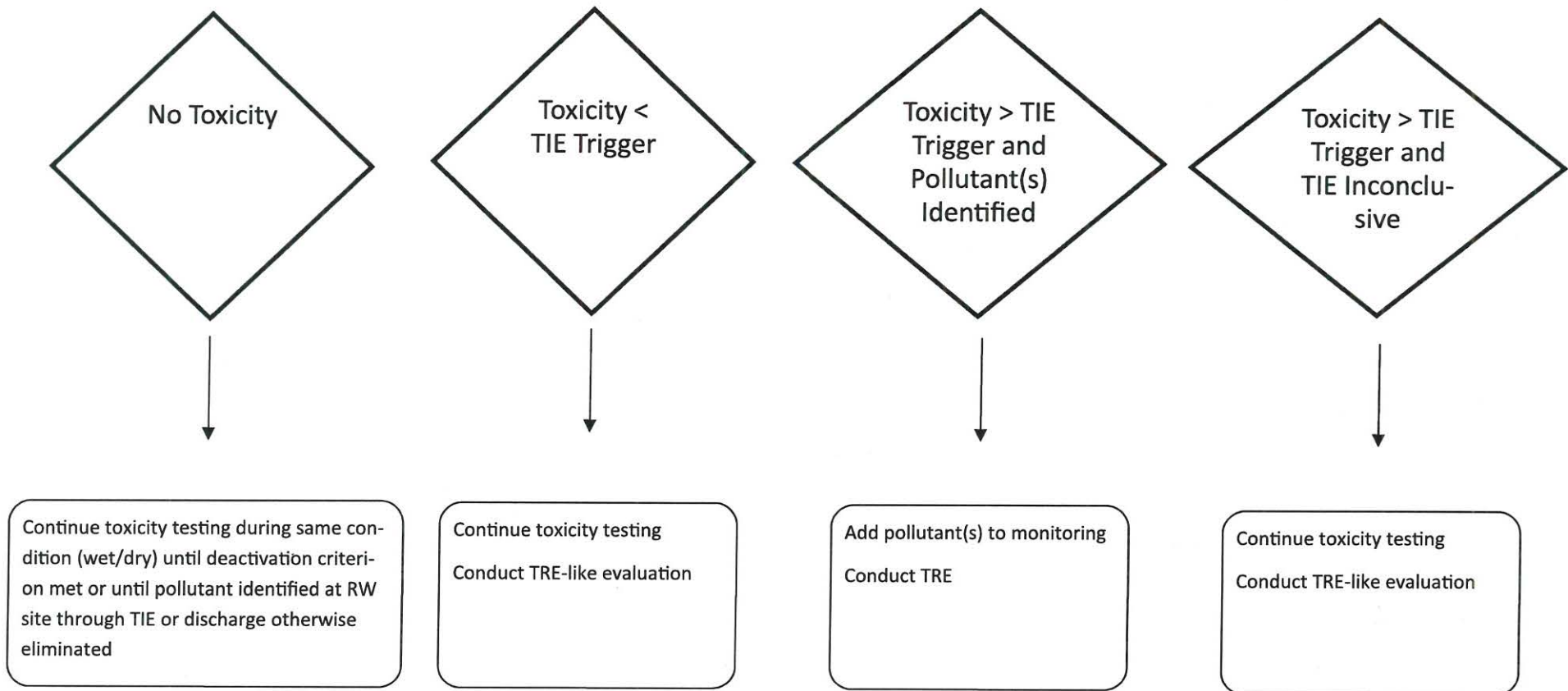
Wet

Add toxicity monitoring to upstream RW and outfall sites

Add toxicity monitoring to next existing upstream RW site
After 2nd inconclusive TIE add toxicity monitoring to outfall

Add Pollutant(s) to Monitoring at Receiving Water Sites and Outfall Sites
If > WQBEL/RWL, commence TRE

Outfall Toxicity Testing Once Triggered





Los Angeles Regional Water Quality Control Board

January 6, 2017

Mr. Mitchell G. Lansdell
City Manager
1700 W. 162nd St., Room 112
Gardena, CA 90247

RESPONSE TO THE CITY OF GARDENA'S NOVEMBER 21, 2016 LETTER AND MODIFICATION TO THE BASELINE MONITORING DIRECTIVE TO THE CITY OF GARDENA PURSUANT TO THE MONITORING AND REPORTING PROGRAM IN ATTACHMENT E (LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT - NPDES PERMIT NO. CAS004001; ORDER NO. R4-2012-0175)

Dear Mr. Lansdell:

In your letter dated November 21, 2016, you raised several questions and concerns regarding the Los Angeles Regional Water Quality Control Board's (Los Angeles Water Board or Board) rescission of conditional approval of the City of Gardena's (City's) Integrated Monitoring Program (IMP). Please see our responses to your letter in **Enclosure 1**.

In consideration of your letter and our phone call on December 19, 2016, the Board has agreed to revise the City of Gardena's baseline monitoring requirements as previously specified in our October 20, 2016 letter. The baseline monitoring program and modifications in response to the City's requests are provided in **Enclosure 2** and **Enclosure 3**. In summary, the Board has made the following modifications:

- As per the City's request, Mass Emission Station S28 shall be used as the City's receiving water monitoring station for the freshwater portion of Dominguez Channel.
- Monitoring location R1, located at the uppermost end of the Dominguez Channel Estuary, shall be used by the City only as a TMDL monitoring station for Dominguez Channel Estuary, where the City shall monitor sediment and fish tissue as per the Dominguez Channel and Greater Harbor Waters Toxic Pollutants TMDL (Harbor Toxics TMDL).
- Monitoring of pollutants in water and total suspended solids that is required to determine compliance with the Harbor Toxics TMDL shall be conducted at the designated outfall monitoring stations, i.e., ID # FS3 and FS4.
- Corresponding changes to the list of constituents that shall be monitored and the sampling frequencies at each of the monitoring sites S28, R1, FS3 and FS4.
- Regarding the City's non-storm water outfall monitoring program, the City shall screen all non-storm water outfalls and, as requested, take grab samples from a manhole immediately upstream of outfalls where there is flow observed in the manhole. At the time of screening, the City shall also note if the flap-gate at the outfall is open or closed. If open, the City shall estimate and record the approximate flow rate of the non-storm

January 6, 2017

water discharge and, if closed, the City shall record whether there is evidence of recent non-storm water discharge at the outfall (e.g., water/oil staining, algae growth, debris).

All other monitoring and directives as per the Board's October 20, 2016 letter remain the same.

If you have any questions, please contact Ms. Erum Razzak of the Storm Water Permitting Unit by electronic mail at Erum.Razzak@waterboards.ca.gov or by phone at (213) 620-2095. Alternatively, you may also contact Mr. Ivar Ridgeway, Chief of the Storm Water Permitting Unit, by electronic mail at Ivar.Ridgeway@waterboards.ca.gov or by phone at (213) 620-2150.

Sincerely,



Samuel Unger, P.E.
Executive Officer

cc: John Felix, City of Gardena
Ray Tahir, TECS Environmental, Inc.

Enclosures: Enclosure 1 – Response to Letter
Enclosure 2 – Modified Monitoring Requirements
Enclosure 3 – Modified Map of Monitoring Locations

Enclosure 1 - Los Angeles Water Board Response to November 21, 2016 Letter from the City of Gardena

Comment No.	Gardena's Comment	Los Angeles Water Board Response
1	<p>The City, in good faith, negotiated the terms of the IMP with your staff (Renee Purdy). We believed we had complied with your requests. It is our intention to conduct all monitoring that you have requested regardless of whether or not the results of that testing can be used for compliance purposes. We removed references to the City's legal challenge of several provisions of the MS4 Permit, including monitoring-related requirements. The City has agreed to evaluate water quality samples against RWLs and Action Levels taken from outfalls and receiving waters. The City has taken the position that it is only required to comply with outfall discharges measured against WQBELs, which are the same as total maximum daily load (TMDL) waste load allocations. It is not required to also comply with receiving water limitations (RWLs) in the Dominguez Channel. As explained below, the MS4 Permit allows compliance to be determined at the outfall. The City has also agreed previously to measure outfall discharges against Action Levels, but, again, not for compliance purposes. Under the Compliance Determination Section of the MS4 Permit (VI.E.2) there is no mention of Action Levels.</p>	<p>The Board appreciates the City's effort to prepare its final IMP to meet permit requirements. As stated in the Board's letter dated October 20, 2016, the final IMP still had deficiencies that resulted in the need to rescind the Executive Officer's conditional approval issued on January 22, 2016.</p> <p>While compliance with WQBELs set forth in Part VI.E and attachments L - R of the permit can be demonstrated at the outfall, the monitoring and reporting requirements set forth in Attachment E also require receiving water monitoring. Receiving water monitoring in conjunction with other data and information is used by the Los Angeles Water Board to determine compliance with the Receiving Water Limitation provisions of the permit. Compliance will be determined by Los Angeles Water Board based on an evaluation of monitoring data against receiving water limitations and WQBELs as per Parts V.A, VI.E.2.d.i.(1)-(3), VI.E.2.e.i.(1)-(3), or VI.E.3.e of the permit.</p> <p>With regards to action levels, Part III.A.4.c of the LA County MS4 Permit states the following: <i>"To evaluate monitoring data, the Permittee shall either use applicable interim or final water quality-based effluent limitations for the pollutant or, if there are no applicable interim or final water quality-based effluent limitations for the pollutant, use applicable action levels provided in Attachment G. Based on non-storm water outfall-based monitoring as implemented through the MRP, if monitoring data show exceedances of applicable water quality-based effluent limitations or action levels, the Permittee shall take further</i></p>

Comment No.	Gardena's Comment	Los Angeles Water Board Response
		<p><i>action to determine whether the discharge is causing or contributing to exceedances of receiving water limitations in Part V."</i></p> <p>Additionally, municipal action levels are derived from a nationwide database of monitoring data for pollutants in storm water. Attachment G of the LA County MS4 Permit states the following: <i>"Under this Order, the Municipal Action Levels (MALs) shall be utilized by Permittees to identify subwatersheds discharging pollutants at levels in excess of the MALs. Within those subwatersheds where pollutant levels in the discharge are in excess of the MALs, Permittees shall implement controls and measures necessary to reduce the discharge of pollutants."</i></p> <p>Hence, non-storm water action levels and municipal action levels act as triggers and observed exceedances are used differently than observed exceedances of a WQBEL or RWL.</p>
2	<p>The rescission letter indicated that the City would need to perform fish tissue and sediment monitoring in the estuary. You may recall that we could not, as an individual City, agree to performing these tasks. However, the City did offer to pay for a share of monitoring costs (which, by the way, appears to be an "optional study" according to the Dominguez Channel Harbor Toxics TMDL staff report) that the Dominguez Channel EWMP group had committed to in its Coordinated Integrated Monitoring Program (CIMP). According to the DC-EWMP group lead (the City of Los Angeles), Gardena would only be allowed to participate in the fish tissue/sediment study if it agreed to join the DC-EWMP group, a group that the City has elected not to join.</p> <p>In any case, any of the results from the DC-EWMP group's</p>	<p>The City is required to conduct fish tissue and sediment monitoring in the Dominguez Channel Estuary as it is a responsible party in the Harbor Toxics TMDL. See the Harbor Toxics TMDL, Attachment A to Resolution R11-008, on page 24 where it states that, <i>"[t]he Dominguez Channel responsible parties are each individually responsible for conducting water, sediment, and fish tissue monitoring."</i></p> <p>The geographic location of the Dominguez Channel Estuary outside of the City's jurisdiction is immaterial since the City's storm drain BI0074 discharges into the Dominguez Channel Estuary after comingling with discharges from other neighboring permittees and other City storm drains discharge to the Dominguez Channel</p>

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	<p>study would be applied to the City. Moreover, subsequent to that conversation with Ms. Purdy, the City learned that the estuary (the unlined portion below Vermont) is not located within the City of Gardena as Regional Board staff believed. It is actually located in the City of Los Angeles, as shown in the Google map below. The City's eastern boundary is Vermont Avenue. According to the 303(d) list for Dominguez Channel, the estuary is located "below" Vermont Avenue. This would seem to make it unnecessary to conduct studies or sample for any purpose in the estuary.</p>	<p>upstream of the estuary and, therefore, may impact receiving water quality, including pollutant levels in sediment and fish tissue, in the estuary. Attachment E Part II.E.1 of the permit states that, "[r]eceiving water monitoring shall be performed at...TMDL receiving water compliance points...and additional receiving water locations representative of the impacts from MS4 discharges."</p>
<p>3</p>	<p>Contrary to what was agreed upon earlier, the rescission letter specifies that the City must conduct monitoring in the receiving water for compliance purposes, in addition to outfall monitoring. To be clear, the City has opted for compliance at the outfall – not in the receiving water which is an MS4 Permit option, in accordance with Part VI.E.2.d.i.1 and Part VI.E.2.e.i.1. Therefore, there is no reason to conduct monitoring in the receiving water in addition to the outfall for compliance purposes and, as mentioned above, there appears to be no need to add a monitoring location in the Dominguez Channel estuary, since the City does not drain to it. Further, there should be no need to add another in-stream sampling location in the lined portion of the Dominguez Channel, above Vermont Avenue. As staff is aware, S-28 is the County's mass emission station, which Regional Board staff believes is located in Torrance. It is not. It is located in Gardena as the Google Map below illustrates.</p> <p>Nevertheless, the City added a receiving water monitoring location, near the County's mass emission station, S-28, (located in the lined portion of the channel above Vermont), despite the fact that this does not seem</p>	<p>See response to Comments #1 and 2.</p> <p>As requested, the City may use the location coinciding with the S-28 mass emission station to conduct receiving water monitoring in Dominguez Channel. No water column monitoring in the receiving water at R1 will be required. However, the City is required to monitor sediment and fish tissue at R1 (located at the uppermost end of the Dominguez Channel Estuary) as required by the Harbor Toxics TMDL. The City is required to conduct monitoring of pollutants in the water column and suspended sediment as required by the Harbor Toxics TMDL at the designated storm water outfall monitoring stations (i.e., FS3/FS4) discharging to Dominguez Channel and Dominguez Channel Estuary.</p>

Comment No.	Gardena's Comment	Los Angeles Water Board Response
	<p>necessary (see map attachment #1, Receiving Water Monitoring Locations). S-28 is the location of the County's auto-sampler used to collect samples during storm events. The Regional Board has denied the City's previous request to allow the use of monitoring data taken from S-28, probably because it believed it to be located in Torrance. The City asks the Regional Board to re-consider that request but, in the meantime, the City will grab stormwater samples from the overpass just a few feet west of S-28.</p>	
4	<p>The rescission letter mentions that the City has not proposed water column testing in the estuary. The City understands that this task is also being performed by DC-EWMP permittees. The City, therefore, sees no purpose or benefit to conduct separate water column testing in the channel and, as mentioned, the estuary is not located within the City of Gardena– it is within the City of Los Angeles. Nevertheless, should the Regional Board insist that the City conduct water column sampling in the estuary, it shall do so.</p>	<p>See response to Comment #3.</p>
5	<p>The rescission letter adds the condition of requiring the City to provide drainage areas maps. The City does not have such maps at this time showing the drainage areas to the two (2) water quality segments (reaches) for the Dominguez Channel (above and below Vermont Avenue). It should be mentioned, once again, that the City does not drain directly to the estuary – only to the unlined portion of the channel, above Vermont Avenue. The rescission letter mentions that if a map is not available the City can provide a schedule for completing it. The City intends to prepare a map showing the drainage area for the unlined portion of the channel above Vermont Avenue, using Los Angeles County's GIS Data Portal, which is based on previously-developed Los Angeles County Flood Control maps. The</p>	<p>See response to Comment #2.</p> <p>For clarification, the Board's October 20, 2016 letter contained no additional conditions per se. Rather, the letter contained directives to monitor according to the requirements of the permit and its monitoring and reporting program (Attachment E). Enclosure 1 of the Board's October 20, 2016 letter was simply a summarization of the conditions of the Executive Officer's approval that were not met and other deficiencies for the City's reference.</p> <p>Although the October 20, 2016 letter did not direct the City to provide any drainage maps, the City's proposed schedule to submit drainage maps to the Board by the end</p>

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	<p>City hopes to have this GIS map completed by the end of January of next year.</p>	<p>of January 2017 is acceptable.</p>
<p>6</p>	<p>The rescission letter is critical of the City's IMP for not specifying how significant non-stormwater discharges will be determined. The City is not sure what "significant" means as it relates to stormwater, since there is no definition of it. The example, cited in your letter, of using a garden hose flowing at 10 gallons per minute was suggested as a criterion. However, it would be difficult to visually determine flow volume at this rate. In the interest of simplicity, the City proposes to take samples from a manhole upstream of an outfall, which appears to be flowing (without specifically referring to a flow rate) and, where there is sufficient flow visualized from the manhole, do grab a sample. If this approach is not sufficient, perhaps Regional Board staff can offer suggestions. It is important to note that several of the City's outfalls, such as the one located near S-28, on the north side of the channel, is equipped with a flap-gate that minimizes the discharge of non-stormwater to the point of "no flow." In other words, it probably will be unlikely that the City will be able to collect non-stormwater samples from several of its outfalls.</p>	<p>As per the teleconference on December 19, 2016, the City's proposal to take grab samples from a manhole immediately upstream of outfalls when there is flow observed in the manhole is acceptable. If there is no non-storm water discharge seen at the outfall at the time of non-storm water outfall screening, the City can simply record it as "no flow". During the non-storm water discharge outfall screening events, the City shall also record if the flap-gate at the outfall is open or closed. If the flap gate is open, the City shall record the approximate flow rate of the non-storm water discharge. If the flap gate is closed, the City shall record if there is evidence of recent non-storm water discharge (e.g., water/oil staining, algae growth, debris).</p>
<p>7</p>	<p>The rescission letter requires, as a condition of approval, an explanation of how outfall monitoring points were chosen. The City drains into 11 outfalls. The City chose three (3) of them as being representative, as shown on Attachment #2. At the northeastern corner of the City is field screening point #3. It includes runoff from residential areas to the west and an industrial area to the east of it. Just below it is field screening point #2. It receives runoff also mostly from a residential area with some input from the City's industrial area. The outfalls below field screening point #2 are more residential and less industrial. Thus,</p>	<p>The rescission letter does not direct the City to provide justification for the selection of the field screening points; rather, it lists the lack of sufficient justification as a condition of approval in the January 22, 2016 letter that was not met.</p> <p>Note that the Board agreed with the City's proposed storm water monitoring at field screening points #3 and 4 and specified those locations as the City's storm water outfall monitoring locations in the monitoring directive.</p>

Comment No.	Gardena's Comment	Los Angeles Water Board Response
	<p>field screening points #2 and #3 provide a mix of residential and industrial uses, while the other outfalls below them are residential and are, therefore, not as representative. Field screening points #2 and #3 include runoff from areas that drain into the lined portion of the Dominguez Channel above Vermont Avenue. Most of the City's outfalls drain into this reach. Field screening point 1 captures runoff mostly from residential areas and some from industrial and commercial areas, providing a better mix of land use input. This field screening point is also above the only outfall that flows to the estuary (unlined portion of the channel) below Vermont Avenue. The City believes they are very representative. However, if the Regional Board disagrees, the City would welcome its explanation and asks that it select screening points it feels are more appropriate. It should be noted that the City intends to collect samples from the three (3) field screening points during each qualifying storm event.</p>	
8	<p>Issues such a[s] typos and others referenced in the Summary of the Board's review have been corrected under the previous iteration but will be reviewed again.</p>	<p>Comment noted. However, it is not necessary to address these since the City's monitoring requirements have been set forth in the Board's monitoring directives pursuant to Attachment E of the permit.</p>

Los Angeles Regional Water Quality Control Board

Enclosure 2 - Revised Monitoring Requirements

City of Gardena

Enclosure 2 contains monitoring locations and monitoring requirements specified in Attachment E of the LA County MS4 Permit, including receiving water monitoring during wet and dry weather, stormwater outfall based monitoring, non-stormwater outfall based screening and monitoring, and aquatic toxicity monitoring. Enclosure 2 also identifies TMDL compliance monitoring that the City is required to conduct per Attachment E and Attachment N Part E (Dominguez Channel and Greater Harbor Waters Toxic Pollutants TMDL) of the LA County MS4 Permit. Furthermore, Attachment E Part VI.C–D, Part VIII.B, and Part IX.G of the LA County MS4 Permit require monitoring for 303(d) listed pollutants. Because the City of Gardena discharges to a 303(d) listed waterbody (Dominguez Channel and the Dominguez Channel Estuary), it must monitor these pollutants.

Table 1. City of Gardena Required Monitoring Locations¹

Station/Site ID	Description	Waterbody	Latitude	Longitude	Details
FS3	Stormwater - Outfall / <u>TMDL - Outfall</u>	Dominguez Channel	33.901836	-118.324964	S. Normandie Ave
FS4	Stormwater - Outfall / <u>TMDL - Outfall</u>	Dominguez Channel	33.872029	-118.298876	Western & Artesia Blvd
<u>S28</u>	<u>Receiving Water - Mass Emission Station</u>	<u>Dominguez Channel</u>	<u>33.8729</u>	<u>-118.3114</u>	<u>Artesia Blvd & Dominguez Channel</u>
R1	Receiving Water / TMDL	Dominguez Channel /Dominguez Channel Estuary	33.871472	-118.290794	Vermont Ave.

¹ All of the monitoring locations in Table 1 (above) and Enclosure 3 (Map of Monitoring Locations) were selected consistent with criteria in Attachment E, Parts VI – IX of the LA County MS4 Permit. Some of the locations in Table 1 (FS3, ~~and~~ FS4, ~~and~~ S28) were also proposed by the City of Gardena in their final IMP submitted to the Los Angeles Water Board on April 21, 2016.

Table 2. City of Gardena Monitoring Requirements

Constituent	Annual Frequency (number wet events/number dry events)			
	Dominguez Channel Watershed ²			
	Receiving Water ³ and TMDL ⁴	TMDL ⁵	Stormwater ⁶	Non-Stormwater ⁷
	S28R1	R1	FS3/FS4	
Pollutants identified in Attachment E Table E-2 of the LA County MS4 Permit	1/13/2 ⁸		3/0 ⁹	0/4 ¹⁰
Aquatic Toxicity ¹¹	2/1 ¹²		13	14
Total Suspended Solids (TSS)	3/2		3/0	0/4
Suspended Sediment Concentration (SSC)¹⁵	3/2		3/0	
Flow	3/2		3/0	0/4
Hardness	3/2		3/0	0/4
pH	3/2		3/0	0/4
Dissolved Oxygen	3/2		3/0	0/4
Temperature	3/2		3/0	0/4
Specific/Electrical Conductivity	3/2		3/0	0/4
<i>E. coli</i>	3/2		3/0	0/4

² In addition to Attachment N Part E.2.a.ii, samples of non-stormwater collected from outfalls (sites FS3 and FS4) during flow conditions less than the 90th percentile of annual flow rates must demonstrate that the acute and chronic hardness dependent water quality criteria (for copper, lead, and zinc) provided in the California Toxics Rule (CTR) are achieved (see Attachment N Part E.3.a.ii, footnote 6 of the LA County MS4 Permit).

³ Monitoring shall occur as per Attachment E Part VI.B-C of the LA County MS4 Permit. Dry weather monitoring ~~will occur~~ shall be conducted in July, the historically driest month.

~~⁴ Monitoring for the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL for Dominguez Channel and Dominguez Channel Estuary will occur at monitoring site R1.~~

⁵ Monitoring for the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL for Dominguez Channel and Dominguez Channel Estuary shall be conducted at sites FS3 and FS4 for pollutants in the water column and in bulk sediment and at site R1 for pollutants in fish tissue and bed sediment.

⁶ Monitoring and sampling shall occur as per Attachment E Part VIII.B-C of the LA County MS4 Permit.

⁷ Sampling shall occur as per Attachment E Part IX.H of the LA County MS4 Permit.

⁸ Wet weather receiving water Table E-2 constituents monitoring requirements per Attachment E Part VI.C.1.e and dry weather receiving water Table E-2 constituents monitoring requirements per Attachment E Part VI.D.1.d of the LA County MS4 Permit.

⁹ Other parameters in Table E-2 identified as exceeding the lowest applicable water quality objective in the nearest downstream receiving water monitoring station per Part VI.C.1.e (Attachment E Part VIII.B.1.d) of the LA County MS4 Permit.

¹⁰ Other parameters in Table E-2 identified as exceeding the lowest applicable water quality objective in the nearest downstream receiving water monitoring station per Part VI.D.1.d (Attachment E Part IX.G.1.e) of the LA County MS4 Permit.

¹¹ Aquatic toxicity shall be monitored in accordance with Part XII of Attachment E, and as detailed in the Los Angeles Regional Board August 7, 2015, Memorandum titled "Clarification Regarding Follow-up Monitoring Requirements in Response to Observed Toxicity in Receiving Waters Pursuant to the Monitoring & Reporting Program (Attachment E) of the Los Angeles County MS4 Permit (Order No. R4-2012-0175)".

¹² Minimum wet weather receiving water monitoring requirements per Attachment E Part VI.C.1.d.vi, and minimum dry weather receiving water monitoring requirements per Attachment E Part VI.D.1.c.vi of the LA County MS4 Permit.

¹³ Minimum storm water outfall based monitoring requirements per Attachment E Part VIII.B.1.c.vi of the LA County MS4 Permit.

¹⁴ If the discharge exhibits aquatic toxicity, then a TIE shall be conducted per Attachment E Part IX.G.1.d- of the LA County MS4 Permit.

~~¹⁵ Pursuant to Attachment E, Part III.G.1 of the LA County MS4 Permit, Suspended Sediment Concentration (SSC) shall be analyzed per American Society for Testing and Materials (ASTM) Standard Test Method D-3977-97.~~

Constituent	Annual Frequency (number wet events/number dry events)			
	Dominguez Channel Watershed ²			
	Receiving Water ³ and TMDL ⁴	TMDL ⁵	Stormwater ⁶	Non-Stormwater ⁷
	S28R1	R1	FS3/FS4	
Copper, <u>total recoverable</u>	3/2		32/0 ¹⁶	0/41 ¹⁷
Lead, <u>total recoverable</u>	3/2		32/0 ¹⁸	0/41 ¹⁹
Zinc, <u>total recoverable</u>	3/2		32/0 ²⁰	0/41 ²¹
Cadmium, <u>total recoverable</u>			2/0 ²²	0/1 ²³
PCBs ²⁴	3/2		32/0 ²⁵	0/4
Total PAHs ²⁶	3/2		32/0 ²⁷	0/4
Total DDTs ²⁸	3/2		32/0 ²⁹	0/4
Chlordane ³⁰	2/1		2/0 ³¹	
Dieldrin	2/1		2/0 ³²	
Toxaphene			2/0	
Ammonia	3/2		3/0	0/4
Benzo[a] Pyrene (3,4-Benzopyrene -7-d)	3/2		32/0 ³³	0/4
Benzo[a] Anthracene	3/2		32/0 ³⁴	0/4
Chrysene (C1-C4)	3/2		32/0 ³⁵	0/4
Phenanthrene	3/2		32/0 ³⁶	0/4
Pyrene	3/2		32/0 ³⁷	0/4

¹⁶ Analyzed in the water column and suspended sediment.

¹⁷ Analyzed at FS3 and FS4 in the water column and suspended sediment.

¹⁸ Analyzed in the water column and suspended sediment.

¹⁹ Analyzed at FS3 and FS4 in the water column and suspended sediment.

²⁰ Analyzed in the water column and suspended sediment.

²¹ Analyzed at FS3 and FS4 in the water column and suspended sediment.

²² Analyzed in the water column and suspended sediment.

²³ Analyzed at FS3 and FS4 in the water column and suspended sediment.

²⁴ High Resolution (EPA 1668); monitoring for PCBs in sediment or water should be reported as the summation of aroclors and a minimum of 40 (and preferably at least 50) congeners. See Table C8 in the state's Surface Water Ambient Monitoring Program's Quality Assurance Program Plan (page 72 of Appendix C).

²⁵ Analyzed in the water column and suspended sediment.

²⁶ Total PAHs include but are not limited to: acenaphthene, anthracene, biphenyl, naphthalene, 2,6-dimethylnaphthalene, fluorene, 1-methylnaphthalene, 2-methylnaphthalene, 1-methylphenanthrene, phenanthrene, benzo(a)anthracene, benzo(a)pyrene, benzo(e)pyrene, chrysene, dibenz(a,h)anthracene, fluoranthene, perylene, and pyrene.

²⁷ Analyzed in the water column and suspended sediment.

²⁸ High Resolution (EPA 1699); DDT is defined as the sum of 2,4'-DDD, 2,4'-DDE, 2,4'-DDT, 4,4'-DDD, 4,4'-DDE, and 4,4'-DDT. DDTs include DDT, DDE, DDD, and Total DDT.

²⁹ Analyzed in the water column and suspended sediment.

³⁰ Chlordane is defined as cis-Chlordane (alpha-Chlordane), trans-Chlordane (gamma-Chlordane), oxychlordane, cis-nonachlor, and trans-nonachlor.

³¹ Analyzed in the water column and suspended sediment.

³² Analyzed in the water column and suspended sediment.

³³ Analyzed in the water column and suspended sediment.

³⁴ Analyzed in the water column and suspended sediment.

³⁵ Analyzed in the water column and suspended sediment.

³⁶ Analyzed in the water column and suspended sediment.

³⁷ Analyzed in the water column and suspended sediment.

Constituent	Annual Frequency (number wet events/number dry events)			
	Dominguez Channel Watershed ²			
	Receiving Water ³ and TMDL ⁴	TMDL ⁵	Stormwater ⁶	Non-Stormwater ⁷
	S28R1	R1	FS3/FS4	
Municipal Action Levels (MALs) ³⁸			3/0	
Non-Stormwater Action Levels (ALs) ³⁹				0/4
Sediment Monitoring	⁴⁰	⁴¹		
Fish Tissue Monitoring	⁴²	⁴³		

³⁸ Municipal action level monitoring pursuant to Attachment G Part VIII of the LA County MS4 Permit. The following constituents shall be analyzed: pH, TSS, COD, TKN, nitrate + nitrite as N, total phosphorus, total Cd, total Cr, total Cu, total Pb, total Ni, total Zn, total Hg. For those constituents that are also required to be sampled per the Harbor Toxics TMDL, the two wet weather events used to meet TMDL monitoring requirements may be used to fulfill two of the three MAL sampling events.

³⁹ Non-stormwater action level monitoring pursuant to Attachment G Part III of the LA County MS4 Permit. The following constituents shall be analyzed: pH, hardness, E. coli, total recoverable cyanide, total recoverable copper, total recoverable lead, total recoverable mercury, and total recoverable selenium. For those constituents that are also required to be sampled per the Harbor Toxics TMDL, the one dry weather event used to meet the TMDL monitoring requirement may be used to fulfill one of the four sampling events for each of the non-stormwater outfall/field screening points, FS3 and FS4.

⁴⁰ Refer to Table 3. Sediment and Fish Tissue Monitoring Requirements.

⁴¹ Refer to Table 3. Sediment and Fish Tissue Monitoring Requirements.

⁴² Ibid.

⁴³ Refer to Table 3. Sediment and Fish Tissue Monitoring Requirements.

Table 3. Sediment and Fish Tissue Monitoring Requirements⁴⁴

Parameter	Frequency
Sediment Monitoring ⁴⁵	
Copper	Once every 2 years
Lead	
Mercury	
Zinc	
Cadmium	
PAHs, total ⁴⁶	
Chlordane ⁴⁷	
DDDs, total Dieldrin	
DDE, total	
DDTs, total ⁴⁸	
PCBs, total ⁴⁹	
Total Organic Carbon (TOC)	
Grain Size	
Sediment Toxicity	
Benthic Community	
Fish Tissue ⁵⁰	
Chlordane	Once every 2 years
Dieldrin	
Toxaphene	
DDT	
PCBs ⁵¹	

⁴⁴ Sediment and fish tissue monitoring requirements pursuant to Attachment N, Part E of the LA County MS4 Permit.

⁴⁵ Pursuant to Attachment N, Part E.4.d.iv of the LA County MS4 Permit, samples shall be collected in accordance with SWAMP protocols and for analysis of general sediment quality constituents and the full chemical suite as specified in the State Water Board's Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality (SQO).

⁴⁶ Total PAHs include but are not limited to: acenaphthene, anthracene, biphenyl, naphthalene, 2,6-dimethylnaphthalene, fluorene, 1-methylnaphthalene, 2-methylnaphthalene, 1-methylphenanthrene, phenanthrene, benzo(a)anthracene, benzo(a)pyrene, benzo(e)pyrene, chrysene, dibenz(a,h)anthracene, fluoranthene, perylene, and pyrene.

⁴⁷ Chlordane is defined as cis-Chlordane (alpha-Chlordane), trans-Chlordane (gamma-Chlordane), oxychlordane, cis-nonachlor, and trans-nonachlor.

⁴⁸ DDT is defined as the sum of 2,4'-DDD, 2,4'-DDE, 2,4'-DDT, 4,4'-DDD, 4,4'-DDE, and 4,4'-DDT.

⁴⁹ High Resolution (EPA 1668); monitoring for PCBs in sediment or water should be reported as the summation of aroclors and a minimum of 40 (and preferably at least 50) congeners. See Table C8 in the state's Surface Water Ambient Monitoring Program's Quality Assurance Program Plan (page 72 of Appendix C). See footnote 22.

⁵⁰ The target species in the Dominguez Channel Estuary shall be selected based on residency, local abundance and fish size at the time of field collection. Tissues analyzed shall be based on the most common preparation for the selected fish species. The City shall provide justification for its selection of the target fish species and method of tissue preparation when reporting the results of the tissue sampling.

⁵¹ Total PCBs are defined as the sum of Congeners. See footnote 15.

Enclosure 3 - Modified Map of Monitoring Locations

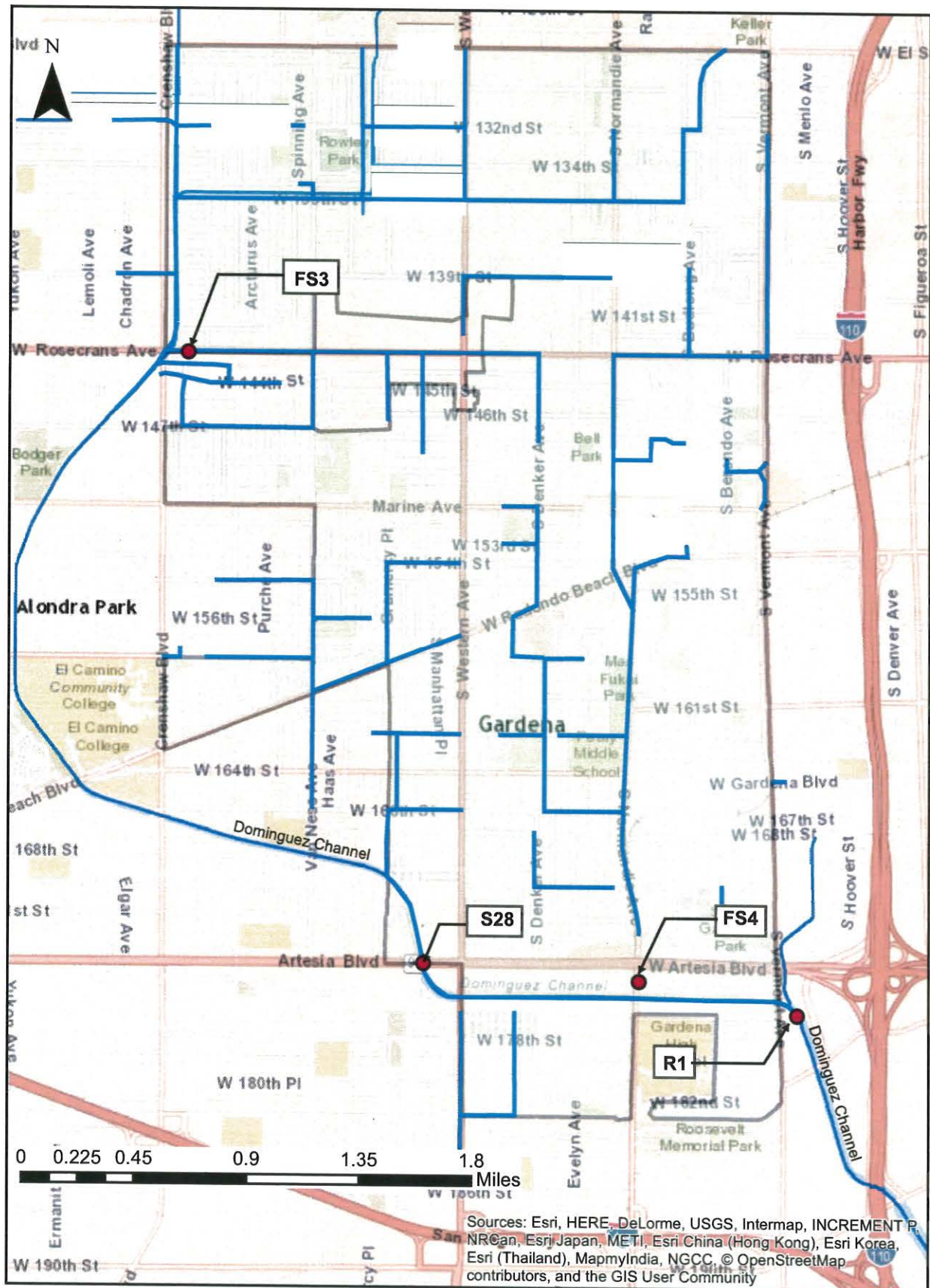


Figure 1. City of Gardena Monitoring Stations

Attachment 2:

Declaration of Ivar Ridgeway,
January 10, 2019

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9 Attorneys for Regional Water Quality Control Board,
10 Los Angeles Region, Prosecution Team

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BEFORE THE CALIFORNIA WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

In the Matter of:)
CITY OF GARDENA)
) ACLC No. R4-2019-0004
)
) DECLARATION OF IVAR RIDGEWAY

I, Ivar Ridgeway, declare as follows:

1. I am a Senior Environmental Scientist in the Municipal Storm Water Permitting Unit at the Regional Water Quality Control Board, Los Angeles Region (Regional Board) and have been in that position for the last 8 years. As a Senior Environmental Scientist, I supervised the drafting and implementation of Order No. R4-2012-0175 as amended by State Water Board Order WQ 2015-0075 and Los Angeles Water Board Order R4-2012-0175-A01, NPDES Permit No. CAS004001 (Los Angeles County MS4 Permit or Permit) including the Regional Board's efforts to help Permittees understand the requirements of the Permit.
2. I have personal knowledge of the requirements of the Los Angeles County MS4 Permit including monitoring and reporting requirements for Permittees as expressed in Attachment E of the Permit.

1 3. Attachment E.XIV.L of the Los Angeles County MS4 Permit requires Permittees to
2 submit “[r]esults of monitoring from each receiving water or outfall based monitoring
3 station conducted in accordance with the Standard Operating Procedure submitted under
4 Standard Provision 14 of this Monitoring and Reporting Program electronically to the
5 Regional Board's Storm Water site at MS4stormwaterRB4@waterboards.ca.gov, *semi-*
6 *annually*, highlighting exceedances of applicable Water Quality Based Effluent Limitations
7 (WQBELs), receiving water limitations, action levels, or aquatic toxicity thresholds for all
8 test results, with corresponding sampling dates per receiving water monitoring station.”
9 (Emphasis added.)
10

11 4. The semi-annual reporting period covers the following months in the calendar
12 year: a semi-annual report covering monitoring conducted during the months of
13 January through June is referred to as the December semi-annual report because it is
14 due in December; and a semi-annual report covering monitoring conducted during the
15 months of July through December is referred to as the June semi-annual report
16 because it is due in June.
17

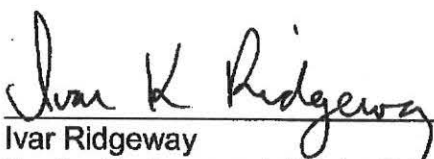
18 5. While the Los Angeles County MS4 Permit includes a specific date, December
19 15, that Permittees are required to submit their Annual Report, the Permit does not
20 include a specific date by which Permittees must submit their semi-annual monitoring
21 report. Since the Permit's adoption, Regional Board staff in the Municipal Storm Water
22 Permitting Unit advised Permittees to submit their semi-annual report on June 15 of
23 each year (exactly six months before the Annual Report due date) and again on
24 December 15 of each year concurrent with the Annual Report deadline in Attachment
25 E.XV. of the Los Angeles County MS4 Permit.
26
27

28 6. Some Permittees asked the Municipal Storm Water Permitting Unit staff if it was

1 possible to submit the June semi-annual monitoring report by June 30th if it was
2 necessary to achieve the required number of samples for that corresponding reporting
3 period. In the absence of a specified deadline in the Los Angeles County MS4 Permit,
4 Regional Board staff determined that submission by June 30th would be acceptable.
5 For purposes of this current matter, June 30th is the deadline used for the June semi-
6 annual report.
7

8 7. In summary, a semi-annual report is due by June 15th preferably, but no later
9 than June 30th of each year and another semi-annual report is due by December 15th
10 of each year.
11
12
13
14

15 Executed this 10th day of January , 2019, in Los Angeles, California.
16
17

18 
19 Ivar Ridgeway
20 Senior Environmental Scientist
21 Los Angeles Regional Water Quality Control
22 Board
23
24
25
26
27
28

Attachment 3:

Memorandum from Industrial Economics, Inc.,
to Mayumi Okamoto and Catherine Hawe,
January 10, 2019

MEMORANDUM | January 10, 2019

TO Mayumi Okamoto and Catherine Hawe, CA WRCB
FROM Katya Smirnova, Chris Smith, and Andrew Cahill, Industrial Economics, Incorporated
SUBJECT City of Gardena, California Ability to Pay Analysis

SUMMARY OF ANALYSIS

We reviewed the ability of the City of Gardena, California (Gardena, the City) to pay a proposed penalty of \$714,985 for failure to conduct monitoring pursuant to the LA County MS4 Permit Monitoring and Reporting Program. We reviewed the following documents in the course of our analysis:

- The City's Annual Financial Reports for the fiscal years 2015-2017.
- The City's Annual Budget for the fiscal years 2018-2019.
- The City's Strategic Plan for the period of 2016 to 2021.
- The City's Bond Prospectus for its Series 2014 Bonds of \$9,110,000.
- The most recent bond rating reports available from Moody's and Standard & Poor's (S&P), which are for City debt issued in 2006 and 2007.
- News articles discussing the City's planned "Civic Center Improvement Project."

We also collected and reviewed publicly available socio-demographic data for the City, the surrounding county, the state, and the nation.

We find that Gardena is able to pay the full proposed penalty from a combination of its ongoing net income, unrestricted fund balance or cash holdings, or by taking on additional debt. The City is in strong financial health, with cumulative revenues exceeding expenditures over the last three years and assets far exceeding liabilities as of FY2017, indicating that the City can take on additional debt. Most significantly, the City has an unrestricted fund balance of \$23.5 million. This unrestricted fund balance is over two times greater than the expenditure coverage level recommended by the Government Finance Officers Association (GFOA), a sign of strong liquidity.

At the same time, a substantial part of this unrestricted fund balance (likely the City's primary source of penalty payment) has been committed by the City to a project that appears warranted and legitimate. The "Civic Center Improvement Project" will provide the City with a new police station and senior center. Local news articles describe both of these components as badly needed, with the City currently housing police detectives in parking lot trailers and the City jail falling short of state standards.¹ As further detailed below, if we were to exclude the committed funds from the City's unrestricted fund balance for purposes of this ability to pay analysis, the remaining balance would fall

¹ <https://www.dailybreeze.com/2017/02/26/gardena-city-council-candidates-divided-over-uncertain-financial-future/>

below the GFOA's recommended two months' worth of expenses benchmark.² Thus, paying the proposed penalty from the City's unrestricted fund balance would be inconsistent with the GFOA's recommendation. Therefore, the Water Resources Control Board may want to consider priorities of how best to allocate the City's unrestricted fund balance and discuss them with the City. The City and the Water Resources Control Board may also need to consider the legal implications of relying on a committed fund balance for a penalty payment.

SOCIOECONOMIC STATUS

The City of Gardena is located in Los Angeles County, California. As of 2017, the City had 20,649 households and a population of 60,096.³ Gardena's population has grown modestly since 2010, when it totaled 58,668.⁴

In terms of income levels, the City's socioeconomic condition falls slightly short of the surrounding county, state, and nation. Gardena's 2017 Median Household Income (MHI) of \$50,807 is approximately 15 percent below the county median, 25 percent below the state median, and 10 percent below the national median. Its per capita income levels similarly trail these comparison communities. However, for other socioeconomic indicators, Gardena is more in line with the county, state, and nation. For example, its poverty levels and unemployment rate are roughly equal to the comparison communities. Exhibit 1 summarizes key socioeconomic data for Gardena relative to the surrounding county, state, and nation as of 2017.

EXHIBIT 1: SOCIOECONOMIC DATA FOR GARDENA, THE COUNTY, THE STATE, AND THE NATION

METRIC	CITY OF GARDENA, CA	LOS ANGELES COUNTY, CA	STATE OF CALIFORNIA	UNITED STATES
Median Household Income ^A	\$50,807	\$61,015	\$67,169	\$57,652
Per Capita Income ^A	\$24,665	\$30,798	\$33,128	\$31,177
Percentage of Families Below Poverty Level ^A	12.4%	13.1%	11.1%	10.5%
Unemployment Rate ^B	4.8%	4.7%	4.8%	4.4%

^A 2017 American Community Survey 5-Year data for the City of Gardena.
^B 2017 Annual Unemployment Data from the Bureau of Labor Statistics.

ABILITY TO PAY ANALYSIS

To evaluate Gardena's ability to pay a penalty related to stormwater monitoring violations, we reviewed the financial condition of the City's General Fund (the City's main operating fund), which is the financial segment of the City's government that is most likely to be responsible for the payment.⁵ Specifically, we review the recent financial condition of the General Fund, and we evaluate the Fund's ability to pay a

² <http://www.gfoa.org/fund-balance-guidelines-general-fund>.

³ 2017 American Community Survey 5-Year data for the City of Gardena, CA.

⁴ 2010 American Community Survey 5-Year data for the City of Gardena, CA.

⁵ We did not identify a proprietary enterprise fund dedicated to stormwater services, so we assume stormwater operations are accounted for under the City's General Fund.

penalty out of available fund balances. We also evaluate the City's ability to pay the proposed penalty using EPA's MUNIPAY model, which examines the City's General Fund and its Total Governmental Funds (i.e., the full accounting of all the City's governmental funds across the year). The Appendix to this memorandum provides an overview of key Income Statement and Balance Sheet metrics for the General Fund, and a screenshot of the MUNIPAY output.

GENERAL FUND

The General Fund is the main operating fund for a municipality and supports its day-to-day activities. This is the most likely source for penalty payment; most of the City's other funds are limited to specific activities and services.

- **Income and Expenses:** The General Fund's income and expenses, along with transfers to other funds, determine the net change to the General Fund balance.⁶ This balance needs to be positive to provide working capital to the municipality. For the last three fiscal years of FY2015 through FY2017, the City's General Fund has generated enough revenues to cover expenses, with cumulative revenues (\$161.5 million) exceeding cumulative expenses (\$155.0 million) by a total of \$6.5 million over three years. The City also added \$5.3 million in net other financing sources for this period. In other words, the City's General Fund balance has increased by a total of \$11.8 million over the last three years. This shows strong fiscal management by the City.
- **Assets and Liabilities:** As of FY2017, Gardena's General Fund assets (\$28.1 million) far exceeded its liabilities (\$3.6 million). This left the City with a total General Fund balance surplus of \$23.9 million. With the majority of these assets consisting of cash and investments (\$20.5 million), the City's General Fund is in a position of strong liquidity.
- **Expenditure Coverage Metrics:** As of FY2017, the General Fund had an unrestricted fund balance of \$23.5 million and a cash balance of \$20.5 million.⁷ These could cover 4.8 months and 4.2 months of anticipated expenses, respectively. Both of these metrics are well above the expenditure coverage standard recommended by the Government Finance Officers Association (GFOA). The GFOA recommends that the General Fund have enough unrestricted balance on hand to cover a minimum of two months of anticipated expenditures (approximately \$9.8 million for Gardena).⁸ This liquidity balance is necessary to provide a buffer for cases of revenue shortfalls or unforeseen

⁶ Net change in fund balance is revenue less expenses, net of other financing sources and uses (i.e., what would be called "net income" in corporate finance).

⁷ The total fund balance is broken up into five separate categories of fund balance: nonspendable, restricted, committed, assigned, and unassigned. Each category has different constraints on how the fund resources can be spent. For the last three categories (committed, assigned, and unassigned), the constraints on spending are imposed by the government itself. Thus, the sum of these three categories is considered the "unrestricted fund balance."

⁸ The GFOA recommendation applies to the unrestricted fund balance; we also apply the two months of expenditure coverage recommendation to the General Fund's cash balance to examine the expenditure coverage capabilities.

expenditures. Further, as we discuss below, the majority of this fund balance is committed by the City to a capital improvement project.

- **Civic Center Improvement Project:** While the City’s unrestricted fund balance as of FY2017 is strongly positive and exceeds the GFOA expenditure coverage standard, the majority of this balance (\$15 million) is “committed” to supporting a \$20.5 million “Civic Center Improvement Project” for the City. In this context, “committed” means that the funds are constrained by limitations that the government imposed upon itself (*i.e.*, the City Council passed a resolution in 2016 that committed \$15 million in fund balance towards this project).⁹ If Gardena were to spend this committed portion from the City’s unrestricted fund balance, the remaining balance would fall below the GFOA’s recommended expenditure coverage standard, making it inadvisable for the City to pay the proposed penalty from this source.

The civic center project envisions construction of a \$17.5 million police station and a \$3 million senior center. The police station funding will include \$15 million from the City’s unrestricted fund balance, \$2 million from civil asset forfeiture funds, and another \$500,000 million in funds from the local police foundation. Meanwhile, the senior center will be funded by \$3 million in local developer fees.¹⁰

The City Council approved the civic center project in 2016, but subsequently the project’s financing became a contested issue in City elections held in early 2017. City council and mayoral candidates generally agreed on the need for a new police station and senior center, given that the City’s current police station is “fast becoming obsolete,” with detectives “housed in trailers in the parking lot, and its jail [not meeting] state standards.”¹¹ However, the candidates differed on whether the project should be financed with \$15 million of the City’s fund balance, which would deplete the majority of the City’s unrestricted fund balance without a plan for replenishing it. We were unable to determine, based on publicly available information, whether the City was planning to proceed with the project after the new mayor and city council were elected in March 2017.¹²

MUNIPAY ANALYSIS

In addition to conducting our own analysis of the City’s General Fund, we also evaluate the City’s ability to pay using EPA’s MUNIPAY model, which examines the City’s General Fund and its Total Governmental Funds (which provide a full accounting of the City’s governmental funds and additional context for the City’s financial condition).

⁹ Gardena. Comprehensive Annual Financial Report for the Year Ending June 30, 2017. Page 90.

¹⁰ <https://www.dailybreeze.com/2016/03/06/gardena-may-approve-a-20-million-civic-center-upgrade/>

¹¹ <https://www.dailybreeze.com/2017/02/26/gardena-city-council-candidates-divided-over-uncertain-financial-future/>

¹² <https://www.dailybreeze.com/2017/03/08/election-2017-rachel-johnson-takes-razor-thin-gardena-mayoral-victory-two-newcomers-top-city-council-field/>

MUNIPAY also finds that Gardena has the financial capability to pay the full amount of the proposed penalty. Specifically, it concludes that while the City does not have sufficient immediately available funds, Gardena could fund the full penalty via debt that would be financed by increasing property taxes. MUNIPAY does caution, however, that the City has a negative unrestricted net position for governmental activities, which merits further review.

- **Expenditure Coverage Metric:** MUNIPAY's ability to pay analysis first tests whether a city has sufficient "available" fund balance to cover two months of expenditures. For this test, the model only considers assigned and unassigned fund balances (see footnote 6 above for definitions). This is more conservative than the GFOA recommendation, which includes committed funds in addition to assigned and unassigned funds.¹³ MUNIPAY finds that Gardena's assigned and unassigned fund balance (\$4.1 million) is insufficient to cover two months of anticipated expenditures (\$9.8 million).
- **Debt Capacity:** If a municipality's available fund balance is insufficient, MUNIPAY then analyzes the municipality's ability to fund a penalty through debt financed by property tax increases. For this second analysis, MUNIPAY considers how several debt capacity metrics would change if the City were to finance a penalty payment, and compares these to generally recommended threshold values for each metric. The metrics considered include the debt service ratio (i.e., the ratio of debt service payments to total revenues), the incremental property tax burden on the median home as a percent of median household income, and the ratio of the city's overall net debt relative to the market value of all property. After analyzing these ratios for Gardena, MUNIPAY concludes that the City has sufficient debt capacity to take on the full \$2.0 million penalty amount. The model finds that financing this debt would not result in the City exceeding any recommended thresholds for the debt capacity metrics.
- **Unrestricted Net Position for Governmental Activities:** MUNIPAY's ability to pay output does include a warning that Gardena has a negative unrestricted net position for governmental activities (-\$59.9 million). In other words, the City's assets are insufficient to cover its liabilities. Specifically, at the overall level of government activities, the City's total liabilities (\$146.6 million), combined with its deferred inflows of resources, restricted net position, and net position invested in capital assets (totaling \$42.5 million), significantly exceed its total assets and deferred outflows of resources (\$129.1 million). This deficit is largely driven by the city's unfunded long-term liabilities for other postemployment benefits (\$23.4 million) and aggregate net pension liabilities (\$70.4 million). In our experience, many other communities are similarly struggling with unfunded long-term liabilities for pensions and other post-employment benefits; nevertheless, it is of concern for Gardena.

¹³ Therefore, MUNIPAY does not consider the City's \$19.4 million in committed fund balance, \$15 million of which is committed to the Civic Center Improvement Project.

APPENDIX

EXHIBIT A-1: GARDENA'S GENERAL FUND (MILLIONS)

YEARS ENDING JUNE 30,	2015	2016	2017
Income Statement Metrics			
Revenues	\$52.8	\$53.4	\$55.2
Expenses	\$47.5	\$54.1	\$53.4
Revenues Net of Expenses	\$5.3	(\$0.6)	\$1.9
Revenues Net of Expenses and Other Financing	\$3.7	\$5.1	\$3.0
Balance Sheet Metrics			
Total Assets	\$19.0	\$24.4	\$28.1
Total Liabilities	\$3.1	\$3.1	\$3.6
Total Fund Balance	\$15.8	\$20.9	\$23.9
Restricted Fund Balance	\$0.5	\$0.4	\$0.3
Unrestricted Fund Balance	\$15.3	\$20.5	\$23.5
Cash Balance	\$12.3	\$17.4	\$20.5

EXHIBIT A-2: SCREENSHOT OF MUNIPAY OUTPUT - SUMMARY

AFFORDABILITY CONCLUSIONS for run = \$714,985 Penalty					
Gardena can afford the entire \$714,985 penalty expenditure.					
AFFORDABILITY SUMMARY					
Expenditure Priority	Amount Sought	Currently Enterpr. Fund	Available General Fund	Available Through Financing	Total Affordable Amount
Penalty	\$714,985	\$0	\$0	\$714,985	\$714,985
Compliance	\$0	\$0	\$0	\$0	\$0
Superfund	\$0	\$0	\$0	\$0	\$0
<i>Unrestricted Net Position for Governmental Activities is negative: -- further review of this value is recommended</i>					
Currently Available Details					
		Enterpr. Fund	General Fund		
Most Recent Balance		N/A	\$4,136,266		
Recommended Balance		N/A	\$9,827,756		
Available		\$0	\$0		
Financial Inputs					
General Fund, sum of Assigned + Unassigned balances:					\$4,136,266
Anticipated General Fund Expenditures Plus Net Transfers:					\$58,848,840
Median Household Income: (Year of Estimate)				(2017)	\$50,807
Unrestricted Net Position for Governmental Activities:					-\$59,929,081
Annual Debt Payments:		\$4,134,746	Total Revenues:		\$63,528,877
Direct Net Debt:		\$24,805,836	Overall Net Debt:		\$146,409,235
State Debt Limit:					Y
Amount of Limit: (millions)					\$213
Market Value of Taxable Property: (millions)					\$7,585
Median Home Value: (Year of Estimate)				(2017)	407,000
Run Parameters					
Maturity periods/schedule for Compliance, Superfund, Penalty					25, 5, 3
Interest Rate:					3.7%
Min General Fund balance as % of anticipated expenditures + transfers:					16.7%
Max debt service ratio:					25.0%
Max overall-net-debt:property-value ratio:					12.0%
Max property tax increase on median home as % of median income:					1.0%

EXHIBIT A-3: SCREENSHOT OF MUNIPAY OUTPUT - DETAIL

AFFORDABILITY DETAIL for run = \$714,985 Penalty									
City/Town/Village Criteria	Existing Values	Threshold Values	Projected Values		Projected Values		Projected Values	Projected Values	
			\$714,985 Sought Penalty	\$714,985 Affordable Penalty	\$714,985 Sought Compliance	\$714,985 Affordable Compliance	\$714,985 Sought Superfund	\$714,985 Affordable Superfund	
Debt service ratio	6.5%	25.0%	6.9%	6.9%	6.9%	6.9%	6.9%	6.9%	6.9%
Incremental property tax burden	N/A	1.00%	0.03%	0.03%	0.03%	0.03%	0.03%	0.03%	0.03%
Net debt re: state limit	\$24.8m	\$213.3m	\$25.5m	\$25.5m	\$25.5m	\$25.5m	\$25.5m	\$25.5m	\$25.5m
Overall net debt:property value	1.9%	12.0%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%

Attachment 4:

Economic Benefit Calculation and Memorandum

Economic Benefit Analysis

City of Gardena

Compliance Action	One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?					
June 2017 Sampling - Lab (A)	\$ 3,945	GDP	4/11/2019	N	1/1/2017	-	4/11/2019	3.70%	4,124
June 2017 Sampling - Lab (D)	\$ 5,763	GDP	4/11/2019	Y	1/1/2017	11/21/2018	4/11/2019	3.70%	227
June 2017 Sampling - Field	\$ 1,153	ECI	4/11/2019	N	1/1/2017	-	4/11/2019	3.70%	1,191
June 2017 Monitoring Report	\$ 1,334	ECI	4/11/2019	N	6/16/2017	-	4/11/2019	3.70%	1,363
December 2017 Sampling - Lab	\$ 14,221	GDP	4/11/2019	N	7/1/2017	-	4/11/2019	3.70%	14,715
December 2017 Sampling - Field	\$ 4,221	ECI	4/11/2019	N	7/1/2017	-	4/11/2019	3.70%	4,342
December 2017 Monitoring Report	\$ 4,315	ECI	4/11/2019	N	12/16/2017	-	4/11/2019	3.70%	4,391
June 2018 Sampling - Lab	\$ 2,240	GDP	4/11/2019	N	1/1/2018	-	4/11/2019	3.70%	2,291
June 2018 Sampling - Field	\$ 921	ECI	4/11/2019	N	1/1/2018	-	4/11/2019	3.70%	937
June 2018 Monitoring Report	\$ 827	ECI	4/11/2019	N	6/16/2018	-	4/11/2019	3.70%	836
December 2018 Sampling - Lab	\$ 11,265	GDP	4/11/2019	N	7/1/2018	-	4/11/2019	3.70%	11,421
December 2018 Sampling - Field	\$ 4,286	ECI	4/11/2019	N	7/1/2018	-	4/11/2019	3.70%	4,335
December 2018 Monitoring Report	\$ 4,728	ECI	4/11/2019	N	12/16/2018	-	4/11/2019	3.70%	4,746

Income Tax Schedule: Municipality

USEPA BEN Model Version: Version 5.8.0 (April 2018)

Analyst: Bryan Elder

Date/Time of Analysis: 1/4/19 11:33

Total Benefit: \$ 54,919

Assumptions:

- 1 Cost estimates for compliance actions provided by Prosecution Team - see 1/4/2019 Memorandum from Wendy Wyels.
- 2 Compliance costs are assumed to be avoided except for lab costs for constituents that were required to be sampled for the June 2017 Monitoring Report, but were actually sampled on 11/21/2018.
- 3 Compliance costs associated with laboratory analysis indexed using Gross Domestic Product (GDP).
- 4 Compliance costs associated with field sampling and report generation indexed using the Employment Cost Index (ECI).
- 5
Noncompliance dates are the day following the date the sampling should have been completed or the deliverable was due to the Water Boards.
- 6 Penalty payment date is assumed to be April 11, 2019.
- 7 The City of Gardena is considered a municipality for the purposes of BEN analysis.



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

TO: Mayumi Okamoto, Supervising Attorney, Office of Enforcement
Catherine Hawe, Attorney, Office of Enforcement

FROM: Wendy Wyels
Environmental Program Manager, Retired Annuitant
Office of Enforcement

DATE: January 4, 2019

SUBJECT: ***CITY OF GARDENA: RAW DATA TO USE IN ECONOMIC BENEFIT
CALCULATIONS***

The draft ACL lists four violations, all of which are described in detail in Attachment A. For these violations, the City received an economic benefit by not collecting and analyzing the appropriate number of samples. The City also received an economic benefit by submitting much shorter monitoring reports than it would have if the correct number of samples had been collected.

To calculate the cost of samples that were not collected, I used rates taken from California State University Long Beach Research Foundation, Agreement Number 13-013-140, Exhibit B, Attachment 1. The constituents to sample, locations, and number of sampling events are listed in Attachment A to the ACL. To determine the personnel costs, I used the 2018 Underground Storage Tank Cleanup Fund Cost Guidelines. Calculation tables, including the rates, are found on pages 2-11 of this memo. I gave the City credit for the analytical costs they incurred but did not give them credit for the field work or reporting since their efforts were so minimal.

Violation 1: Failure to Comply with Monitoring Program and Submit a Complete June 2017 Monitoring Report. The samples were to be collected by December 31, 2016 and the report was to be submitted by June 15, 2017.

Avoided costs for sampling: \$3,945
Delayed costs for sampling (between 12/31/16 and 11/21/18) of \$5,763
Avoided costs for field work: \$1,153
Avoided costs for report preparation: \$1,334

Violation 2: Failure to Comply with Monitoring Program and Submit a Complete December 2017 Monitoring Report. The samples were to be collected by June 30, 2017 and the report was to be submitted by December 15, 2017.

Avoided costs for sampling: \$14,221
Avoided costs for field work: \$4,221
Avoided costs for report preparation: \$4,315

Violation 3: Failure to Comply with Monitoring Program and Submit a Complete June 2018 Monitoring Report. The samples were to be collected by December 31, 2017 and the report was to be submitted by June 15, 2018.

FELICIA MARCUS, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Avoided costs for sampling: \$2,240
 Avoided costs for field work: \$921
 Avoided costs for report preparation: \$827

Violation 4: Failure to Comply with Monitoring Program and Submit a Complete December 2018 Monitoring Report. The samples were to be collected by June 30, 2018 and the report was to be submitted by December 15, 2018.

Avoided costs for sampling: \$11,265
 Avoided costs for field work: \$4,286
 Avoided costs for report preparation: \$4,728

Violation 1

Failure to Comply with Monitoring Program and Submit a Complete June 2017 Monitoring Report

The City should have completed one wet weather monitoring event, but only completed one partial wet weather monitoring event. Additional information is found in Attachment A to the ACL.

Table 1

Constituent	Rate	# of wet samples	# samples collected by City	Net samples NOT collected	Total Cost (net samples x rate)
Flow, pH, Dissolved Oxygen, Temperature, EC	n/a	3	-	3	Part of field cost
Table E-2 Constituents ¹	\$1,921	3	-	3	\$5,763
Aquatic Toxicity ²	\$2,015	1	-	1	\$2,015
Total Suspended Solids	\$25	3	-	3	\$75
Suspended sediment concentration	\$45	3	-	3	\$135
Hardness	\$25	3	-	3	\$75
E. Coli	\$25	3	-	3	\$75
Trace elements (Cu, Pb, Zn)	\$125	3	2	1	\$125
PCBs	\$100*	3	2	1	\$100
PAHs (including pyrene, chrysene, phenanthrene, benzo(a)pyrene, benzo(a)anthracene)	\$250*	3	-	3	\$750
Chlorinated Pesticides (chlordane, DDT, dieldrin)	\$100*	3	2	1	\$100
Ammonia	\$25	3	-	3	\$75
Municipal Action Level ³	\$210	2	-	2	\$420
Total avoided cost: \$9,708-\$5,763 = \$3,945					

The Table E-2 constituents were to have been sampled in the first wet weather event after monitoring began, and those constituents that were detected added to the monitoring program. The Table E-2 wet weather constituents were sampled on Nov 21, 2018, so the \$5,763 cost for

these samples is considered to be delayed between Dec 31, 2016 and Nov 21, 2018. (The Table E-2 dry weather sampling has not yet been completed, so no changes have been made to the avoided costs for Violation 2).

¹ Per MRP, see Table 1-A, below

² Per MRP, page E-32, aquatic toxicity shall consist of three tests (fathead minnow, daphnia, and green alga). Costs are \$1,040, \$275, and \$700, respectively.

³ See Table 1-B, below

* Full price paid for PAH test, then a price break for the rest of the semi-volatile compound groups.

Table 1-A: The MS4 Permit's Table E-2 lists numerous parameters, some of which are duplicated in the standard monitoring program. This table shows the cost for sampling for the Table E-2 parameters, while the sample program described in Table 1 is also conducted.

Constituents	Notes	Rate	Total Cost for One Sample Location
CONVENTIONAL POLLUTANTS			
Oil and Grease		\$50	
Total Phenols	Included in SVOC acids, below	-	
Cyanide		\$90	
pH, temperature, dissolved oxygen	Included in Table 1	-	
BACTERIA (single sample limits)			
Total coliform (marine waters)	n/a	-	
Enterococcus (marine waters)	n/a	-	
Fecal coliform (marine waters)	n/a	-	
E. coli (fresh waters)		\$25	
GENERAL			
Dissolved Phosphorus		\$29 [^]	
Total Phosphorus		\$35	
Turbidity		\$10	
Total Suspended Solids, Total Hardness	Included in Table 1	-	
Total Dissolved Solids		\$25	
Volatile Suspended Solids		\$25	
Total Organic Carbon		\$50	
Total Petroleum Hydrocarbons	Diesel, gasoline, and motor oil	\$150	
Biochemical Oxygen Demand		\$50	
Chemical Oxygen Demand		\$25	
Total Ammonia-Nitrogen		\$25	
Nitrate-Nitrate		\$50	
Total Kjeldahl Nitrogen		\$50	
Alkalinity		\$25	
Specific Conductance		\$20 [^]	
MBAS		\$75	
Chloride		\$25	
Fluoride		\$25	
Methyl tertiary butyl ether (MTBE)		\$85 [^]	
Perchlorate		\$85 [^]	
METALS (Dissolved & Total)			
	Total metals included in Table 1	\$125 (for dissolved)	
Aluminum, Antimony, Arsenic, Beryllium		-	

Constituents	Notes	Rate	Total Cost for One Sample Location
Cadmium, Chromium (total), Copper, Lead,		-	
Nickel, Selenium, Silver, Thallium Zinc		-	
OTHERS NOT IN METAL SCAN		-	
Chromium (Hexavalent)		\$42 [^]	
Iron		\$75	
Mercury	Included in Table 1	-	
FULL SCANS			
SVOC ACIDS	Cheaper rate (full price paid for PAHs in Table 1)	\$100	
SVOC BASE/NEUTRAL	Cheaper rate	\$100	
CHLORINATED PESTICIDES	Included in Table 1	-	
POLYCHLORINATED BIPHENYLS	Included in Table 1	--	
ORGANOPHOSPHATE PESTICIDES	Cheaper rate	\$100	
HERBICIDES		\$350 [^]	
			\$1,921

[^] This analysis isn't part of the CSULB contract. Price taken from the 2018 Caltest Analytical Laboratory contract with the Central Valley Regional Water Quality Control Board.

Table 1-B: Municipal Action Level sampling requirement for City of Gardena. Taken from Attachment G Part VIII of the MS4 permit, and listed in a footnote to Table 2 of the January 20, 2017 monitoring directive. This table shows the cost for sampling for these parameters, while the sample program described in Table 1 is conducted.

Parameter	Notes	Rate	Total cost for one sample location
pH and total suspended solids	Included in Table 1	-	
Chemical oxygen demand		\$25	
Total Kjeldahl nitrogen		\$50	
Nitrate + Nitrite		\$25+\$25	
Total phosphorus		\$35	
Mercury		\$50	
Cadmium, Chromium, Copper, Lead, Nickel, Zinc	Included in Table 1 as part of trace element scan	-	
			\$210

Personnel costs

Item and Details	Staff	Rate	Hours	Total Cost
Wet weather monitoring preparation	Project Mgr	\$152	1	\$152
	Sr Technician	\$102	1	\$102
	Technician	\$87	3	\$261
Wet weather monitoring: 3 locations (includes travel time, field measurements, lab drop off,	Technician	\$87	6	\$522

cleanup).				
Supplies: pH/EC/Temperature meter		\$58/day	1 day	\$58
Supplies: DO meter		\$58/day	1 day	\$58
Total personnel cost for field work				\$1,153
Wet weather sample: data review, QA/QC, report preparation, interpretation	Project Mgr	2	\$152	\$304
	Senior Tech	2	\$102	\$204
	Technician	8	\$87	\$696
Typing, mailing, reproduction	Clerical	2	\$65	\$130
Total cost for report preparation:				\$1,334

Violation 2

Failure to Comply with Monitoring Program and Submit a December 2017 Monitoring Report

The City should have completed two wet weather and two dry weather monitoring events. The City completed two partial wet weather monitoring events. Additional information is found in Attachment A to the ACL.

Table 2

Constituent	Rate	# wet samples	# dry samples	# samples collected by City+	Net samples NOT collected	Total Cost (net samples x rate)
Flow, pH, Dissolved Oxygen, Temperature, EC	n/a	12	2	0	14	Included in field cost
Table E-2 (139 constituents)	\$1,921	-	1	-	1	\$1,921
Aquatic Toxicity	\$2015	1	1	-	2	\$4,030
Total Suspended Solids	\$25	6	2	-	8	\$200
Hardness	\$25	6	2		8	\$200
E. Coli	\$25	6	2	-	8	\$200
Trace elements (Cu, Pb, Zn, Cd), total, water	\$125	4	2	1	5	\$600
Trace elements (Cu, Pb, Zn), total, suspended sediment	\$125	2	-	-	2	\$250
PCBs, water	\$100*	2	-	1	1	\$100
PCBs, susp. sediment	\$100*	2	-	-	2	\$200
PAHs (including pyrene, chrysene, phenanthrene, benzo(a)pyrene, benzo(a)anthracene), water	\$250*	2	-	-	2	\$500
PAHs (including pyrene, chrysene,	\$250*	2	-	-	2	\$500

Constituent	Rate	# wet samples	# dry samples	# samples collected by City+	Net samples NOT collected	Total Cost (net samples x rate)
phenanthrene, benzo(a)pyrene, benzo(a)anthracene, suspended sediment						
Chlorinated Pesticides (chlordane, DDT, dieldrin), water	\$100*	2	-	1	1	\$100
Chlorinated Pesticides (chlordane, DDT, dieldrin), suspended sediment	\$100*	2	-	-	2	\$200
Toxaphene, water	\$100*	2				\$200
Ammonia	\$25	6	2	-	8	\$200
Municipal Action Level (13 constituents)	\$210	4	-	-	4	\$840
Sediment monitoring ¹	\$3555	1			3	\$3,555 + benthic
Fish tissue monitoring ²	\$425	1	-	-	1	\$425
						Total: \$14,221

¹ See Table 2-A, below

² See Table 2-B, below

* Full price paid for PAH test, then a price break for the rest of the semi-volatile compound groups.

+ samples collected at appropriate locations

Table 2-A: Sediment monitoring for City of Gardena. Taken from Table 3 of the Regional Board's January 6, 2017 monitoring directive. To be sampled once every two years; the Prosecution Team has assumed it would be completed during this monitoring period.

Parameter	Rate	Total cost for one sample location
Trace Elements (Cu, Pb, Cd, Zn)	\$125	
PAHs	\$250	
Chlorinated pesticides (chlordane, dieldrin, DDT)	\$100	
PCBs	\$100	
Grain Size	\$85	
Sediment Toxicity ¹	\$2,770	
Benthic Community ²	Part of field cost	
		\$3,555 + field

¹ Three tests (10-day survival with Hyalella, 28-day survival with Hyalella, and 10-day growth and survival with Chironomus tentans). (\$570+\$1100 +\$1100)

² BMI is a field exercise not a lab test, and time will be added to the field cost.

(https://knowledge.sonomacreek.net/files/2011_CSBP_ref3241.pdf)

Table 2-B: Fish tissue monitoring for City of Gardena. Taken from Table 3 of the Regional Board's January 6, 2017 monitoring directive. To be sampled once every two years; the Prosecution Team has assumed that it would be completed during this monitoring period.

Parameter	Rate	Total cost for one sample location
Chlorinated pesticides (chlordane, dieldrin, DDT)	\$225	
Toxaphene	\$100	
PCBs	\$100	
		\$425

Personnel Costs

Item and Details	Staff	Rate	Hours	Total Cost
Wet weather monitoring preparation	Project Mgr	\$152	1	\$152
	Sr Technician	\$102	1	\$102
	Technician	\$87	3	\$261
Wet weather monitoring: 3 locations (includes travel time, field measurements, lab drop off, cleanup)	Technician	\$87	6	\$522
Benthic survey at 1 location	Technician	\$87	3	\$261
Supplies: pH/EC/Temperature meter		\$58/day	1 day	\$58
Supplies: DO meter		\$58/day	1 day	\$58
Total cost for first wet weather monitoring event:				\$1,414
Total cost for second wet weather monitoring event (no benthic):				\$1,153
Dry weather monitoring preparation	Sr Technician	\$102	1	\$102
	Technician	\$87	2	\$174
Dry weather monitoring: 1 location (includes travel time, field measurements, lab drop off, cleanup)	Technician	\$87	5	\$435
Supplies: pH/EC/Temperature meter		\$58/day	1 day	\$58
Supplies: DO meter		\$58/day	1 day	\$58
Total cost for first dry weather monitoring event:				\$827
Total cost for second dry weather monitoring event:				\$827
Total personnel cost for field work				\$4,221
Wet weather sample: data review, QA/QC, report preparation, interpretation	Project Mgr	2	\$152	\$304
	Senior Tech	2	\$102	\$204
	Technician	8	\$87	\$696
Total cost for first wet weather monitoring report:				\$1,204
Total cost for second wet weather monitoring report:				\$1,204
Dry weather sample: data review, QA/QC, report preparation, interpretation	Project Mgr	1	\$152	\$152

	Senior Tech	2	\$102	\$204
	Technician	5	\$87	\$435
Total cost for first dry weather monitoring report:				\$791
Total cost for second dry weather monitoring report:				\$791
Typing, mailing, reproduction	Clerical	5	\$65	\$325
Total cost for report for all four monitoring events:				\$4,315

Violation 3

Failure to Comply with Monitoring Program and Submit a Complete June 2018 Monitoring Report

The City should have completed one dry season event during this period, but it did not collect any samples. Additional information is found in Attachment A to the ACL.

Table 3

Constituent	Rate	# dry samples	Total Cost (net samples x rate)
Flow, pH, Dissolved Oxygen, Temperature, EC	n/a	1	Included in field cost
Aquatic Toxicity	\$2,015	1	\$2,015
Total Suspended Solids	\$25	1	\$25
Hardness	\$25	1	\$25
E. Coli	\$25	1	\$25
Trace elements (Cu, Pb, Zn), total, water	\$125	1	\$125
Ammonia	\$25	1	\$25
			Total: \$2,240

Personnel Costs

Item and Details	Staff	Rate	Hours	Total Cost
Dry weather monitoring preparation	Sr Technician	\$102	1	\$102
	Technician	\$87	2	\$174
Dry weather monitoring: 1 location (includes travel time, field measurements, lab drop off, cleanup)	Technician	\$87	5	\$435
Supplies: pH/EC/Temperature meter		\$58/day	1 day	\$58
Supplies: DO meter		\$58/day	1 day	\$58
Total personnel cost for field work				\$827
Dry weather sample: data review, QA/QC, report preparation, interpretation	Project Mgr	1	\$152	\$152
	Senior Tech	2	\$102	\$204
	Technician	5	\$87	\$435
Typing, mailing, reproduction	Clerical	2	\$65	\$130
Total cost for report preparation:				\$921

Violation 4**Failure to Comply with Monitoring Program and Submit a Complete December 2018**

Monitoring Report. The City should have completed three wet weather and one dry weather monitoring events, but it only completed two partial wet weather monitoring events. Additional information is found in Attachment A to the ACL.

Table 4

Constituent	Rate	# wet samples	# dry samples	# samples collected by City+	Net samples NOT collected	Total Cost (net samples x rate)
Flow, pH, Dissolved Oxygen, Temperature, EC	n/a	9	1	-	9	Included in field cost
Aquatic Toxicity	\$2,015	2	-	-	2	\$4,030
Total Suspended Solids	\$25	9	1	-	10	\$250
Hardness	\$25	9	1	-	10	\$250
E. Coli	\$25	9	1	-	10	\$250
Trace elements (Cu, Pb, Zn, Cd), total, water	\$125	7	1	2	7	\$875
Trace elements (Cu, Pb, Zn), total, suspended sediment	\$125	4	-	-	4	\$500
PCBs, water	\$100*	4	-	2	2	\$200
PCBs, susp. sediment	\$100*	4	-	-	4	\$400
PAHs (including pyrene, chrysene, phenanthrene, benzo(a)pyrene, benzo(a)anthracene), water	\$250*	4	-	-	4	\$1,000
PAHs (including pyrene, chrysene, phenanthrene, benzo(a)pyrene, benzo(a)anthracene), suspended sediment	\$250*	4	-	-	4	\$1,000
Chlorinated Pesticides (chlordane, DDT, dieldrin), water	\$100*	4	-	2	2	\$200
Chlorinated Pesticides (chlordane, DDT, dieldrin), suspended sediment	\$100*	4	-	-	4	\$400
Toxaphene, water	\$100*	4	-	-	4	\$400
Ammonia	\$25	9	1	-	10	\$250

Constituent	Rate	# wet samples	# dry samples	# samples collected by City+	Net samples NOT collected	Total Cost (net samples x rate)
Municipal Action Level (13 constituents)	\$210	6	-	-	6	\$1,260
						Total: \$11,265

* Full price paid for PAH test, then a price break for the rest of the semi-volatile compound groups.

+ At appropriate locations

Personnel Costs

Item and Details	Staff	Rate	Hours	Total Cost
Wet weather monitoring preparation	Project Mgr	\$152	1	\$152
	Sr Technician	\$102	1	\$102
	Technician	\$87	3	\$261
Wet weather monitoring: 3 locations (includes travel time, field measurements, lab drop off, cleanup)	Technician	\$87	6	\$522
Supplies: pH/EC/Temperature meter		\$58/day	1 day	\$58
Supplies: DO meter		\$58/day	1 day	\$58
Total cost for first wet weather monitoring event:				\$1,153
Total cost for second wet weather monitoring event:				\$1,153
Total cost for third wet weather monitoring event:				\$1,153
Dry weather monitoring preparation	Sr Technician	\$102	1	\$102
	Technician	\$87	2	\$174
Dry weather monitoring: 1 location (includes travel time, field measurements, lab drop off, cleanup)	Technician	\$87	5	\$435
Supplies: pH/EC/Temperature meter		\$58/day	1 day	\$58
Supplies: DO meter		\$58/day	1 day	\$58
Total cost for first dry weather monitoring event:				\$827
Total personnel cost for field work				\$4,286
Wet weather sample: data review, QA/QC, report preparation, interpretation	Project Mgr	2	\$152	\$304
	Senior Tech	2	\$102	\$204
	Technician	8	\$87	\$696
Total cost for first wet weather monitoring report:				\$1,204
Total cost for second wet weather monitoring report:				\$1,204
Total cost for third wet weather monitoring report:				\$1,204
Dry weather sample: data review, QA/QC, report	Project	1	\$152	\$152

preparation, interpretation	Mgr			
	Senior Tech	2	\$102	\$204
	Technician	5	\$87	\$435
Total cost for first dry weather monitoring report:				\$791
Typing, mailing, reproduction	Clerical	5	\$65	\$325
Total cost for report for all four monitoring events:				\$4,728

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent City of Gardena (hereafter Discharger) in connection with Administrative Civil Liability Complaint R4-2019-0005 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. 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 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 **\$714,985** by check that references "ACL Complaint R4-2019-0005" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Regional Board by **5:00 p.m. on February 25, 2019** or this matter will be placed on the agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Regional Board receive significant new information or comments during this comment period, the Regional Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. 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 violations. By checking this box, the Discharger requests that the Regional Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

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

(Print Name and Title)

(Signature)

(Date)

California Regional Water Quality Control Board, Los Angeles Region

HEARING PROCEDURES FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2019-0005

ISSUED TO
CITY OF GARDENA

SCHEDULED FOR APRIL 24, 2019

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

Overview

Pursuant to Water Code section 13323, the Assistant Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") has issued an Administrative Civil Liability (ACL) Complaint to the City of Gardena (hereafter Discharger), alleging violations of Water Code sections 13383 by failing to comply with the baseline monitoring requirements as prescribed in the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit (Order R4-2012-0175). Regional Board staff, represented by the Regional Board Staff Prosecution Team ("Prosecution Team") propose in the ACL Complaint that the Regional Board impose administrative civil liability on the Discharger in the amount of \$714,985.

A hearing on this matter is currently scheduled to be conducted before the Regional Board during its meeting on April 24, 2019. The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Regional Board will hear evidence, determine facts, make conclusions of law and consider whether to issue an ACL Order assessing the proposed liability, or a higher or lower amount. The Board may also decline to assess any liability, or may continue the hearing to a later date. If less than a quorum of the Board is available, this matter may be conducted before a hearing panel or continued to the next scheduled meeting. A continuance of the hearing will not automatically extend any deadlines set forth herein.

The public hearing will commence at 10:00 am or as soon thereafter as practical, or as announced in the Board's meeting agenda. The hearing will be held at:

320 West Fourth Street
Los Angeles, CA
90013
Room location TBD

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's website at <http://www.waterboards.ca.gov/losangeles/>. Please check the Board's website for the most up-to-date public hearing date and location as they are subject to change.

Hearing Procedures

The hearing will be a formal adjudicative proceeding and will be conducted in accordance with these Hearing Procedures. The Executive Officer has directed the use of these standardized hearing procedures for the adjudication of such matters. The procedures governing adjudicatory hearings

before the Regional Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at <http://www.waterboards.ca.gov>. Copies will be provided upon request.

In accordance with section 648(d), any procedure not provided by these Hearing Procedures are deemed waived. Except as provided in section 648(b) and herein, Chapter 5 of the California Administrative Procedure Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

Objections to these hearing procedures must be in writing and must be received by the Advisory Team no later than the deadline listed under "Important Deadlines" below, or they will be waived. Objections about the matters contained in these Hearing Procedures will not be entertained at the hearing. Failure to comply with the deadline and requirements contained herein may result in the exclusion of documents and/or testimony. The Discharger shall attempt to resolve objections to these Hearing Procedures with the Prosecution Team BEFORE submitting objections to the Advisory Team.

The procedures and deadlines herein may be amended by the Regional Board Chair or by the Advisory Team.

Separation of Prosecutorial and Advisory Functions

The Regional Board separates prosecutorial and adjudicative functions in matters that are prosecutorial in nature. To ensure the fairness and impartiality of this proceeding, those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Board (the "Prosecution Team") are separate from those who will provide legal and technical advice to the Regional Board (the "Advisory Team"). Members of the Advisory Team are: Deborah Smith, Executive Officer, Renee Purdy, Assistant Executive Officer, Sophie Froelich, Attorney, and Adriana Nunez, Attorney. Members of the Prosecution Team are: Hugh Marley, Assistant Executive Officer, Ivar Ridgeway, Senior Environmental Scientist, Erum Razzak, Environmental Scientist, Wendy Wyels, Environmental Program Manager (Retired Annuitant), Mayumi Okamoto, Attorney, and Catherine Hawe, Attorney.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Further, members of the Advisory Team have not exercised any authority over the Prosecution Team, or advised them with respect to this matter, or vice versa. Hugh Marley regularly advises the Regional Board in other, unrelated matters, but is not advising the Regional Board in this proceeding. Other members of the Prosecution Team act or 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 substantive ex parte communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

Hearing Participants

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons."

Designated Parties are those subject to the ACL Complaint and other persons or organizations anticipated to have a substantial interest in the outcome of the hearing. Designated Parties may present written evidence, summarize their evidence orally at the hearing and cross-examine other parties' witnesses (if they are called). "Evidence" includes witness testimony, documents, and tangible objects that tend to prove or disprove the existence of any alleged fact. "Relevant evidence" is evidence that relates to any fact in dispute in the proceedings. Designated Parties are subject to cross-examination about any evidence they present.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Regional Board Prosecution Team
2. City of Gardena

Interested Persons include any person or organization that is interested in the outcome of the hearing, but who has not been designated as a Designated Party. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, and monitoring data), but may present written and/or oral non-evidentiary comments and policy statements. Interested Persons may not cross-examine witnesses and are not subject to cross-examination.

At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Regional Board, Advisory Team, or others, at the discretion of the Regional Board Chair.

Requesting Designated Party Status

Persons or organizations who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses, etc.), along with a statement explaining why the Designated Parties listed above do not adequately represent the person's or organization's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below. All participants will be notified before the hearing whether the request for designated party status is granted.

Primary Contacts

Advisory Team:

Renee Purdy, Assistant Executive Officer
320 West Fourth Street, Suite 200
Los Angeles, California 90013
Phone: (213) 576-6622
Email: Renee.Purdy@waterboards.ca.gov

Sophie Froelich, Attorney
State Water Resources Control Board, Office of Chief Counsel
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 319-8557
Email: Sophie.Froelich@waterboards.ca.gov

Prosecution Team:

Wendy Wyels, Environmental Program Manager (Retired Annuitant)
State Water Resources Control Board, Office of Enforcement
Physical Address: 801 K Street Suite 2300, Sacramento, CA 95814

Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 323-0595
Email: Wendy.Wyels@waterboards.ca.gov

Mayumi Okamoto, Attorney
State Water Resources Control Board, Office of Enforcement
Physical Address: 801 K Street Suite 2300, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5674
Email: Mayumi.Okamoto@waterboards.ca.gov

Discharger:

Joseph Cruz, Director of General Services
City of Gardena
1717 West 162nd Street, Gardena, CA 90247
Phone: (310) 217-9568
Email: jcruz@cityofgardena.org

Ex Parte Communications

While this adjudicative proceeding is pending, the California Government Code forbids Designated Parties and Interested Persons from engaging in ex parte communications regarding this matter with Regional Board members and the Advisory Team, except during the public hearing itself. An ex parte communication is a written or verbal communication, either direct or indirect, that relates to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and a Regional Board member or a member of the Advisory Team that occurs in the absence of other parties and without notice and opportunity for all parties to participate in the communication (see Gov. Code, § 11430.10 et seq.). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Therefore, any written communication to Regional Board members or the Advisory Team before the hearing must also be copied to all other Designated Parties. Communications regarding non-controversial procedural matters, including a request for a continuance, are permissible ex parte communications and are not restricted.

The following communications to the Advisory Team must be copied to all Designated Parties: objections to these Hearing Procedures; requests for modifications to these Hearing Procedures; requests for designated party status, or objections thereto; and all written evidence, arguments, or policy statements from Designated Parties. This is not an all-inclusive list of ex parte communications.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each Designated Party shall have a combined total of **30** minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide opening and/or closing statements. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or

the Regional Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal or technical argument requires extra time, and why it could not have been provided in writing by the applicable deadline. Decisions will be based upon the complexity and the number of issues under consideration, the extent to which the Designated Parties have coordinated and/or have similar interests, and the time available for the hearing.

A timer will be used, but will not run during questions from the Regional Board and the Advisory Team or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence, Argument and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information in advance of the hearing, which must be received no later than the deadline listed under "Important Deadlines" below:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the 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 California Code of Regulations, title 23, section 648.3. Regional Board members will not generally receive copies of materials incorporated by reference unless copies are provided by the Designated Party proffering the evidence as part of the Designated Party's evidentiary submission. Referenced materials are generally not posted on the Regional Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the Designated Party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

Prosecution Team: The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list of all evidence on which the Prosecution Team relies (which must include, at a minimum, all documents cited in the ACL Complaint or other material submitted by the Prosecution Team); and the witness information required under items 3-4 for all witnesses, including Regional Board staff. The Prosecution Team shall submit this information so that it is received no later than the deadline listed under "Important Deadlines" below.

Designated Parties (including the Discharger): All Designated Parties shall submit comments, arguments or analysis regarding the ACL Complaint along with any additional supporting evidence not cited by the Regional Board's Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Regional Board staff. Designated Parties shall submit this information so that it is received no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party who would like to submit evidence, legal or technical arguments, or policy statements to rebut information submitted by other Designated Parties, shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis, or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

Final Hearing Package and Proposed Order: The Prosecution Team will submit the Final Hearing Package and a proposed Order so that it is submitted no later than the deadline listed under "Important Deadlines" below.

Copies: Regional Board members and the Advisory Team will receive copies of all submitted materials. If hard copies of the submitted materials are provided to the Regional Board members and the Advisory Team, the materials will be printed or copied double-sided in black and white on 8.5"x11" paper. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra ten (10) paper copies for the Regional Board and the Advisory Team. For voluminous submissions, the Regional Board members and Advisory Team may receive copies in electronic format only. Electronic copies may also be posted on the Regional Board's website. Designated Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Regional Board will not reject materials solely for failure to provide electronic copies.

Interested Persons: Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under "Important Deadlines" below to be included in the Regional Board's hearing package. Interested persons should be aware that this matter may settle without further notice, and therefore timely submittal by the deadline may be the only opportunity for an Interested Person to comment on the subject of the ACL Complaint. If the hearing proceeds as scheduled, the Regional Board will also receive oral comments from Interested Persons during the hearing. Interested Persons do not need to submit written comments in order to speak at the hearing.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Board Chair may exclude evidence and testimony that is not submitted in accordance with these Hearing Procedures. Excluded evidence and testimony will *not* be considered by the Regional Board and will *not* be included in the administrative record for this proceeding.

Presentations: PowerPoint and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing in electronic format, and hard copy if requested by the Advisory Team, so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination by Designated Parties.

Administrative Record and Availability of Documents

The ACL Complaint and evidentiary documents submitted in accordance with these Hearing Procedures shall be considered part of the official administrative record for this matter. Other submittals received for this proceeding will be added to the administrative record absent a contrary ruling by the Regional Board Chair. Written transcriptions of oral testimony or comments that are made at the hearing will be included in the administrative record.

These documents may be inspected and copied between the hours of 8:00 a.m. and 5:00 p.m. at the Regional Board's office located at 320 West Fourth Street, Suite 200 Los Angeles, California 90013. Arrangements for document review and/or obtaining copies of the documents may be made by

contacting the Prosecution Team Primary Contact above. Appointments are encouraged so the documents can be readily available upon arrival.

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

IMPORTANT DEADLINES

All submissions must be received by 5:00 p.m. on the respective due date below.^{1,2} Where both electronic and hard copy formats are required to be submitted to the Prosecution Team, a complete electronic copy must be received by 5:00 p.m. on the respective due date below, and a complete hard copy may follow via overnight delivery so that it is received by the Prosecution Team the next day.

<p>January 24, 2019</p>	<ul style="list-style-type: none"> ▪ Prosecution Team issues ACL Complaint, Hearing Procedures and other related materials. <p><u>Hard Copies to:</u> All other Designated Parties (by certified mail) <u>Electronic or Hard Copies to:</u> All known Interested Persons, Advisory Team</p>
<p>February 4, 2019</p>	<ul style="list-style-type: none"> ▪ Objections due on Hearing Procedures. ▪ Deadline to request “Designated Party” status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team <u>Electronic and Hard Copies to:</u> Prosecution Team</p>
<p>February 8, 2019</p>	<ul style="list-style-type: none"> ▪ Deadline to submit objections to requests for Designated Party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team <u>Electronic and Hard Copies to:</u> Prosecution Team</p>
<p>February 25, 2019</p>	<ul style="list-style-type: none"> ▪ Discharger’s deadline to submit <i>Hearing Waiver Form</i>.³ ▪ Interested Persons’ written comments are due. <p><u>Electronic or Hard Copy to:</u> Prosecution Team <u>Electronic or Hard copies to:</u> All Designated Parties, Advisory Team</p>
<p>February 27, 2019</p>	<ul style="list-style-type: none"> ▪ Advisory Team transmits decision on requests for designated party status. ▪ Advisory Team transmits decision on objections to Hearing Procedures. <p><u>Electronic or Hard Copies to:</u> All Designated Parties, All known Interested Persons</p>
<p>March 6, 2019</p>	<ul style="list-style-type: none"> ▪ Prosecution Team’s deadline for submission of information required under “Submission of Evidence, Argument and Policy Statements,” above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team</p>
<p>March 25, 2019</p>	<ul style="list-style-type: none"> ▪ Remaining Designated Parties’ (including the Discharger’s) deadline to submit all information required under “Submission of Evidence, Argument, and Policy Statements” above. This includes all written comments regarding the ACL Complaint. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team <u>Electronic and Hard Copies to:</u> Prosecution Team</p>

¹ With the exception of the deadline to submit the Final Hearing Package and proposed Order.

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

³ Pursuant to California Water Code section 13323(b), persons subject to an ACL Complaint have the right to a hearing before the Regional Board within 90 days of receiving the ACL Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, the Discharger is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing administrative civil liability. However, if the Board accepts the waiver, all deadlines marked with an “*” will be revised if a settlement cannot be reached.

<p>April 8, 2019</p>	<ul style="list-style-type: none"> ▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal/ technical arguments and/or policy statements and all evidentiary objections. ▪ Deadline to request Prehearing Conference. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team</p>
<p>April 11, 2019</p>	<ul style="list-style-type: none"> ▪ Deadline to submit requests for additional time at the hearing. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team</p>
<p>April 15, 2019</p>	<ul style="list-style-type: none"> ▪ Prosecution Team sends Final Hearing Package and proposed Order. <p><u>Electronic or Hard Copies to:</u> Regional Board members, Advisory Team, All other Designated Parties</p>
<p>April 17, 2019</p>	<ul style="list-style-type: none"> ▪ Advisory Team transmits hearing time limits <p><u>Electronic or Hard Copies to:</u> All Designated Parties, All known Interested Persons</p>
<p>April 24, 2019</p>	<ul style="list-style-type: none"> ▪ Hearing