



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

May 27, 2014

Certified Mail – Return Receipt Requested
Article Number: 7011 0470 0002 8952 5546

Mr. Robert Pickering
Bart's Iron Design
24482 Western Way
Laguna Niguel, CA 92677

In reply refer to / attn:
SM-808117:rstewart

Mr. Pickering:

NOTICE OF HEARING AND ISSUANCE OF COMPLAINT NO. R9-2014-0023 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST BART'S IRON DESIGN FOR VIOLATIONS OF ORDER NO. 97-03-DWQ

Enclosed find Complaint No. R9-2014-0023 (Complaint) for Administrative Civil Liability against Bart's Iron Design in the amount of fifteen thousand two hundred forty two dollars (\$15,242) for violations of State Water Resources Control Board (State Water Board) Order No. 97-03-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 (General Permit) Waste Discharge Requirements (WDRS) for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities*. The alleged violations are described in the Complaint and the attached Technical Analysis to the Complaint.

Waiver of Hearing

Pursuant to Water Code section 13323, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall hold a hearing on the Complaint no later than ninety (90) days after it is issued. You may elect to waive your right to a hearing before the San Diego Water Board. Waiver of the hearing constitutes admission of the violations alleged in the Complaint and acceptance of the assessment of civil liability in the amount of fifteen thousand two hundred forty two dollars (\$15,242) as set forth in the Complaint. For the San Diego Water Board to accept the waiver of your right to a public hearing, you must submit the enclosed waiver form signed by an authorized agent of Bart's Iron Design with Option 1 selected to the San Diego Water Board by 5 p.m., **June 27, 2014**.

Public Hearing

Alternatively, if you elect to proceed to a public hearing, a hearing is tentatively scheduled to be held before the San Diego Water Board on **August 13, 2014**, or on **August 14, 2014** before the Executive Officer. The meeting will convene at the San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, California, 92108. During the hearing, the San Diego Water Board or its delegate will accept testimony, public comment, and decide whether to

affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Enclosed are recommended procedures for the San Diego Water Board to follow in conducting the hearing. Please note that comments on the proposed procedures are due by **June 6, 2014** to the San Diego Water Board's advisory attorney, Catherine Hagan, at the address indicated in the hearing procedures.

In the subject line of any response, please include the reference number SM-808117:rstewart. For questions or comments, please contact Rebecca Stewart by phone at 619-521-3004, or by email at rebecca.stewart@waterboards.ca.gov.

Respectfully,



JAMES G. SMITH
Assistant Executive Officer

JGS:✓jh:✓cmc:rls

- Enclosures:
1. ACL Complaint No. R9-2014-0023
 2. Technical Analysis
 3. Administrative Civil Liability Complaint Fact Sheet
 4. Proposed Hearing Procedure
 5. Waiver of Public Hearing Form

cc: (with enclosures, via email)

David Gibson, Executive Officer, San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108, dgibson@waterboards.ca.gov

Catherine Hagan, Senior Staff Counsel, Office of Chief Counsel, State Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108, chagan@waterboards.ca.gov

Brandi Outwin-Beals, Senior Water Resource Control Engineer, San Diego Water board, 2375 Northside Drive, Suite 100, San Diego, CA 92108, boutwin@waterboards.ca.gov

Ben Neill, Water Resource Control Engineer, San Diego Water board, 2375 Northside Drive, Suite 100, San Diego, CA 92108, bneill@waterboards.ca.gov

James Ralph, Staff Counsel, Office of Enforcement, State Water Board, P.O. Box 100, Sacramento, CA 95812-0100, jralph@waterboards.ca.gov

David Barker, Supervising Water Resource Control Engineer, San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108, dbarker@waterboards.ca.gov

Eric Becker, Senior Water Resource Control Engineer, San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108, ebecker@waterboards.ca.gov

Tony Felix, Water Resource Control Engineer, San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108, tfelix@waterboards.ca.gov

Greg Gearheart, Senior Water Resources Control Engineer, State Water Board, P.O. Box 100, Sacramento, CA 95812-0100, ggearheart@waterboards.ca.gov

Lisa Zawaski, Senior Water Quality Engineer, City of Dana Point, 33282 Golden Lantern, Dana Point, CA 92629-1805, lzawaski@DanaPoint.org

Tech Staff Info & Use	
Order No.	R9-2014-0023
WDID	9 301023036
PIN	SM-808117

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

In the matter of:

Bart's Iron Design

Place ID: SM-808117

WDID: 9 30I023036

COMPLAINT NO. R9-2014-0023

FOR

ADMINISTRATIVE CIVIL LIABILITY

Violations of

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

May 27, 2014

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Bart's Iron Design (hereafter Discharger), located at 25825 Las Vegas Avenue, Capistrano Beach, California, is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) must impose civil liability pursuant to sections 13261, 13385, and 13399.33 of the California Water Code (CWC).
2. This Administrative Civil Liability Complaint is issued under authority of CWC section 13323.
3. The Discharger operates a structural metal fabrication facility. The Discharger is identified with Standard Industrial Classification (SIC) number 3441, Fabricated Structural Metal. This category of industrial facility is required to obtain coverage under Order No. 97-03-DWQ, *National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities* (General Permit).

4. On March 17, 2009, the City of Dana Point advised the Discharger to contact the San Diego Water Board regarding coverage under the General Permit. On February 25, 2011, the Discharger submitted a Notice of Intent (NOI) for coverage under the General Permit. The NOI indicated that a Storm Water Pollution Prevention Plan would be prepared by July 1, 2011.

5. Storm Water Pollution Prevention Plan

a. Section A of the General Permit provides the following:

“1. Implementation Schedule

A storm water pollution prevention plan (SWPPP) shall be developed and implemented for each facility covered by this General Permit in accordance with the following schedule.

- a. Facility operators beginning industrial activities before October 1, 1992 shall develop and implement the SWPPP no later than October 1, 1992. Facility operators beginning industrial activities after October 1, 1992 shall develop and implement the SWPPP when industrial activities begin.
- b. Existing facility operators that submitted a Notice of Intent (NOI), pursuant to State Water Resources Control Board (State Water Board) Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing SWPPP and shall implement any necessary revisions to their SWPPP in a timely manner, but in no case later than August 1, 1997.”
- b. As of May 26, 2014, the Discharger has not developed and implemented a SWPPP.
- c. During an inspection on November 1, 2013, a San Diego Water Board inspector verbally notified the facility attendant that a SWPPP is required to be available for review. Neither the facility attendant, nor the facility operator, Robert Pickering, via telephone, could produce the site's SWPPP.
- d. On November 12, 2013, the San Diego Water Board issued Notice of Violation No. R9-2013-0171 citing that the failure to provide a SWPPP during the November 1, 2013 site inspection was a violation of the General Permit.

6. Best Management Practices (BMPs)

Effluent Limitation B.3 of the General Permit provides:

“Facility operators covered by this General Permit must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BAT¹ for toxic and non-conventional pollutants and BCT² for conventional pollutants. Development and implementation of an SWPPP that complies with the requirements in Section A of the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement.”

- a. Between November 1, 2013 and February 28, 2014, the Discharger did not implement adequate BMPs to reduce or prevent pollutants in storm water and non-storm water discharges.
- b. During a site inspection on November 1, 2013, a San Diego Water Board inspector verbally notified the facility attendant that adequate BMPs were not implemented at the site.
- c. On November 12, 2013, the San Diego Water Board issued Notice of Violation No. R9-2013-0171 citing that the failure to implement adequate BMPs was a violation of the General Permit.
- d. On February 28, 2014, a San Diego Water Board inspector observed that adequate BMPs were not implemented at the site during a rain event inspection.

7. Reporting and Monitoring

Section 14 of the General Permit provides:

“All facility operators shall submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located and to the local agency (if requested).”

- a. As of May 26, 2014, the Discharger has not submitted the Annual Report for Fiscal Year (FY) 2012-2013, which was due on July 1, 2013.
- b. During a site inspection on November 1, 2013, a San Diego Water Board inspector verbally notified the facility attendant that the FY 2012-2013 annual report had not been submitted.

¹ BAT is the best available technology economically achievable.

² BCT is best conventional pollutant control technology.

- c. Pursuant to CWC section 13399.31, on November 6, 2013, the San Diego Water Board sent a Notice of Non-Compliance and CWC section 13267 Order to the Discharger notifying the Discharger that the FY 2012-2013 annual report had not been submitted, and required the report to be submitted by December 6, 2013.
- d. Pursuant to CWC section 13399.31, on December 10, 2013, the San Diego Water Board sent a second Notice of Non-Compliance and CWC section 13267 Order to the Discharger notifying the Discharger that the FY 2012-2013 annual report had not been submitted, and required the report to be submitted by February 10, 2013. The intended due date was February 10, 2014; however, this was a harmless clerical error which stated an incorrect year. The Discharger did not submit the required information after notice was provided and the information was requested.
- e. CWC sections 13399.31(d) and 13399.33 direct the San Diego Water Board to impose administrative civil liability in an amount that is not less than one thousand dollars (\$1,000) and recover the staff costs incurred if a discharger fails to submit the required annual report within 60 days after the San Diego Water Board issues the initial notice of noncompliance.

8. Annual fee

CWC section 13260(d)(1)(A) states:

"Each person who is subject to subdivision (a) or (c) shall submit an annual fee according to a fee schedule established by the state board."

Attachment 3 of the General Permit provides the following:

"The total annual fee is \$1,359.00. Checks should be made payable to: SWRCB"

- a. The annual fee for 2012 was due on February 8, 2013. As of May 26, 2014, the Discharger had not paid the annual fee for 2012.
- b. On February 20, 2013, the State Water Board issued a Demand for Payment for the delinquent 2012 annual fee.
- c. On April 2, 2013, the State Water Board issued a Notice of Violation for failure to pay the delinquent 2012 annual fee.

ALLEGED VIOLATIONS

9. Violation 1: Failure to Develop and Implement a SWPPP

The Discharger violated Section A of the General Permit by failing to develop a SWPPP by the July 1, 2011 due date. The San Diego Water Board has not received the SWPPP. The SWPPP is 1,061 days late (from July 1, 2011 to May 26, 2014).

10. Violation 2: Failure to Implement BMPs

The Discharger violated Effluent Limitation B.2 of the General Permit by failing to implement any BMPs during the November 1, 2013 and February 28, 2014 San Diego Water Board inspections. There were no BMPs implemented for 120 days (from November 1, 2013 to February 28, 2014).

11. Violation 3: Failure to Submit the FY 2012-2013 Annual Report

The Discharger violated Section B.14 of the Monitoring Program and Reporting Requirements of the General Permit by failing to submit the required monitoring report for FY 2012-2013 by the July 1, 2013 due date. The annual report is 329 days late (from July 2, 2013 to May 26, 2014).

12. Violation 4: Failure to Pay the 2012 Annual Fee

The Discharger violated CWC section 13260(d)(1)(A) and Attachment 3 of the General Permit by failing to submit the annual fee required for 2012 by the February 8, 2013 due date. The State Water Board has not received the fee. This fee is 472 days late (from February 9, 2013 to May 26, 2014).

13. The details of this violation are set forth in full in the accompanying Technical Analysis (Attachment B), which is incorporated herein by this reference as if set forth in full.

MAXIMUM LIABILITY

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

CWC section 13261(a) provides that a person who fails to pay a fee under section 13260 when so requested by a regional board may be civilly liable. Section 13261(b) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed one thousand dollars (\$1,000) for each day of violation.

As detailed in the incorporated Technical Analysis, the maximum liability amount the San Diego Water Board could assess the Discharger for the applicable violations alleged in the Complaint is \$15,572,000 as summarized below:

Violations Subject to CWC Section 13385(c)	Maximum Liability
Failure to Develop and Implement a SWPPP	\$10,610,000
Failure to Implement BMPs	\$1,200,000
Failure to Submit FY 2012-2013 Annual Report	\$3,290,000
Violation Subject to CWC Section 13261(c)	
Failure to Pay 2012 Annual Fee	\$472,000
TOTAL MAXIMUM LIABILITY AMOUNT	\$15,572,000

MINIMUM LIABILITY

15. For each violation of CWC section 13385(a)(2), summarized above, CWC section 13385(e) requires that, at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation(s). The State Water Board Enforcement Policy (Enforcement Policy) further instructs the regional Water Boards to assess liability against a violator at least ten percent higher than the economic benefit realized from the violation so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violators.

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

As detailed in the incorporated Technical Analysis, and based on the calculated economic benefit amount for the applicable violations alleged in the Complaint, the minimum liability amount the San Diego Water Board should assess the Discharger is **\$15,242** as summarized below:

Violations Subject to CWC Section 13385(c)	Minimum Liability
Failure to Develop and Implement a SWPPP	\$3,124
Failure to Implement BMPs	\$1,777
Failure to Pay 2012 Annual Fee	\$1,603
Violation Subject to CWC Section 13399.33(c) and (d)	
Failure to Submit FY 2012-2013 Annual Report	\$8,738
Total	\$15,242

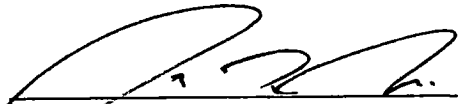
PROPOSED LIABILITY

16. Pursuant to CWC section 13385, subdivision (a), in determining the amount of any civil liability, the San Diego Water Board shall consider the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup and abatement, the degree of toxicity of the discharges; and with respect to the Discharger, the ability to pay, the effect on the Discharger's ability to continue in business, and prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters as justice may require.
17. The Enforcement Policy penalty calculation methodology is not required to be used in determining the amount of civil liability when assessing a mandatory minimum penalty pursuant to CWC section 13399.33(c).

Based on consideration of the above facts, the applicable law, and after applying the penalty calculation methodology in section VI of the Enforcement Policy, it is recommended that the San Diego Water Board impose the minimum civil liability against the Discharger using "Other Factors as Justice May Require" because the calculated liability amounts are disproportionate to the magnitude/effect of the violations. The minimum and recommended civil liability is **\$15,242**.

If the Discharger elects to contest this matter, the recommended liability may increase to recover additional necessary staff costs.

Dated this 27th Day of May, 2014.



JAMES G. SMITH
Assistant Executive Officer

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

Attachment A: Penalty Methodology Decisions Summary Worksheet
Attachment B: Technical Analysis

Attachment A

Penalty Methodology Decisions-Bart's Iron Design- ACL Complaint No. R9-2014-0023

Step 1: Potential for Harm for Discharge Violations
Step 2: Assessments for Discharge Violations
 Steps 1 and 2 do not apply to non-discharge violations

Step 3: Per Day Assessment for Non-Discharge Violations

Violations	Per Day Factors				Statutory Maximum Per Day
	Potential for Harm <small>[minor, moderate, major]</small>	Deviation from Requirement <small>[minor, moderate, major]</small>	Per Day Factor	Days of Violation	
No SWPPP	moderate	major	0.55	1061	\$10,000
No BMPs	moderate	major	0.55	120	\$10,000
No 2012 Annual Fee	minor	major	0.35	472	\$1,000

Initial Liability Amount From Step 3

No SWPPP	$(0.55) \times (1061) \times (\$10,000) = \$5,835,500$
No BMPs	$(0.55) \times (120) \times (\$10,000) = \$660,000$
No 2012 Annual Fee	$(0.35) \times (472) \times (\$1,000) = \$165,200$

Step 4: Adjustment Factors

Violator Conduct Adjustments

Culpability	Cleanup and Cooperation	History of Violations
<small>[0.5 - 1.5]</small>	<small>[0.75 - 1.5]</small>	
1.4	1.4	1.0

Multiple Day Violation Adjustments

Violations	Total Days of Violation	Reduced Days of Violation	Justification for Reduction
No SWPPP	1061	41	The violations are not causing daily detrimental impacts to the environment
No BMPs	120	10	
No 2012 Annual Fee	472	21	

Step 5: Adjusted Base Liability Amounts

Violations	
No SWPPP	$(0.55) \times (41) \times (\$10,000) \times (1.4) \times (1.4) \times (1.0) = \$441,980$
No BMPs	$(0.55) \times (10) \times (\$10,000) \times (1.4) \times (1.4) \times (1.0) = \$107,800$
No 2012 Annual Fee	$(0.35) \times (21) \times (\$1,000) \times (1.4) \times (1.4) \times (1.0) = \$14,406$

Step 6 : Ability to Pay/Continue in Business = Yes

Step 7: Other Factors as Justice May Require

Violations	Calculated Liability	Adjusted Liability	Justification for Reduction
NO SWPPP	\$441,980	\$3,124	Calculated liability amounts are disproportionate to the magnitude/effect of the violations.
No BMPs	\$104,800	\$1,777	
No 2012 Annual Fee	\$14,406	\$1,603	

Step 8: Economic Benefit

Violations	Economic Benefit	Violations	Minimum	Maximum
No SWPPP	\$2,840	No SWPPP	\$3,124	\$10,610,000
No BMPs	\$1,615	No BMPs	\$1,777	\$1,200,000
No 2012 Annual Fee	\$1,457	No 2012 Annual Fee	\$1,603	\$472,000

Step 9: Maximum and Minimum Liability Amounts

Mandatory Penalties and Staff Costs No FY 12-13 Annual Report $\$1,000 + \$7,738 = \$8,738$

Step 10: Final Liability Amount = \$15,242

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

ATTACHMENT B

TECHNICAL ANALYSIS

for

ACL Complaint No. R9-2014-0023

against

Bart's Iron Design

The State Water Board's Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code (CWC) sections 13327 and 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

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

The following provides factual and analytical evidence to support the proposed Administrative Civil Liability (ACL) against Bart's Iron Design (Discharger) for the following violations:¹

Violation 1: FAILURE TO DEVELOP AND IMPLEMENT A STORM WATER POLLUTION PREVENTION PLAN (SWPPP)

Violation 2: FAILURE TO IMPLEMENT BEST MANAGEMENT PRACTICES (BMPs)

Violation 4: FAILURE TO SUBMIT THE FISCAL YEAR (FY) 2012 ANNUAL FEE

For Steps 1-3 of the Enforcement Policy, each violation is analyzed separately. Steps 4-10 of the Enforcement Policy apply in common to all the violations and are analyzed after Steps 1-3 are completed for each violation.

VIOLATION 1: FAILURE TO DEVELOP AND IMPLEMENT A SWPPP

Step 1 – Potential for Harm for Discharge Violations

This factor does not apply because Violation 1 is a non-discharge violation.

Step 2 – Assessment for Discharge Violations

This factor does not apply because Violation 1 is a non-discharge violation.

Step 3 – Per Day Assessment for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs the San Diego Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Deviation from Requirement.

1. The penalty calculation methodology is not necessary for Violation 3, because the Prosecution Team recommends the minimum penalty (\$1,000) pursuant to CWC section 13399.33(c). The Enforcement Policy methodology is not required to be used in determining the amount of civil liability when assessing a mandatory minimum penalty pursuant to CWC section 13399.33(c).

The Potential for Harm is **moderate** because the failure to develop and implement a SWPPP poses a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.

A SWPPP has two major objectives: (1) to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-storm water discharges from a facility; and (2) to identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges.

Bart's Iron Design is located approximately 500 feet from San Juan Creek. The *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan) designates the following beneficial uses for San Juan Creek: municipal and domestic supply (MUN), agricultural supply (AGR), contact water recreation (REC-1), non-contact water recreation (REC-2), warm freshwater habitat (WARM), cold freshwater habitat (COLD), and wildlife habitat (WILD). Without the development of a SWPPP, there will likely be discharges of pollutants from the industrial facility which results in no less than a moderate potential for harm to beneficial uses of those receiving waters.

The Extent of Deviation from applicable requirements is **major** because the intended effectiveness of the requirement has been compromised. Specifically, the intent of the requirement was that a SWPPP be developed and implemented, and it was not. Thus, the requirement has been rendered ineffective.

Using "TABLE 3 – Per Day Factor" of the Enforcement Policy and applying a Potential for Harm of **moderate** and a Deviation from Requirement of **major** results in a factor of **0.55**. As a result, the Initial Base Liability is:

$$\text{Violation 1 Initial Base Liability} = (0.55) \times (1,061 \text{ days of violation}) \times (\$10,000) = \$5,835,500$$

VIOLATION 2: FAILURE TO IMPLEMENT BMPs

Step 1 – Potential for Harm for Discharge Violations

This factor does not apply because Violation 2 is a non-discharge violation.

Step 2 – Assessment for Discharge Violations

This factor does not apply because Violation 2 is a non-discharge violation.

Step 3 – Per Day Assessment for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs the San Diego Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Deviation from Requirement.

The Potential for Harm is **moderate** because the failure to implement adequate BMPs poses a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. The lack of BMPs does not provide for a reduction or prevention of pollutants associated with this industrial facility in storm water discharges to San Juan Creek which could pose a substantial threat to the beneficial uses of San Juan Creek, which are listed above.

The Deviation from Requirement is **major** because the intended effectiveness of the requirement was not met. Specifically, the intent of the requirement is that BMPs be implemented to reduce or prevent pollutants in storm water discharges, and they were not. Thus, the requirement has been rendered ineffective.

Using "TABLE 3 – Per Day Factor" of the Enforcement Policy and applying a Potential for Harm of **moderate** and a Deviation from Requirement of **major** results in a per day factor of **0.55**. As a result, the Initial Base Liability is:

$$\text{Violation 2 Initial Base Liability} = (0.55) \times (120 \text{ days of violation}) \times (\$10,000) = \$660,000$$

VIOLATION 4: FAILURE TO SUBMIT THE 2012 ANNUAL FEE

Step 1 – Potential for Harm for Discharge Violations

This factor does not apply because Violation 4 is a non-discharge violation.

Step 2 – Assessment for Discharge Violations

This factor does not apply because Violation 4 is a non-discharge violation.

Step 3 – Per Day Assessment for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs the San Diego Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is **minor** because the failure to submit an annual fee poses no direct threat to beneficial uses.

The Deviation from Requirement is **major** because the intended effectiveness of the requirement has been compromised. Specifically, the intent of the requirement is that an annual fee be paid by the Discharger, and it was not. Thus, the requirement has been rendered ineffective.

Using "TABLE 3 – Per Day Factor" of the Enforcement Policy and applying a Potential for Harm of **minor** and an Extent of Deviation of **major** results in a factor of **0.35**. As a result, the Initial Base Liability is:

$$\text{Violation 4 Initial Base Liability} = (0.35) \times (472 \text{ days of violation}) \times (\$1,000) = \$165,200$$

Step 4 – Adjustment Factors for Violations 1, 2, and 4

Discharger's Conduct Factors

There are three additional factors to be considered for modification of the amount of initial liability: The Discharger's culpability, efforts to cleanup or cooperate with the regulatory authority, and the Discharger's compliance history.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of **1.4** for culpability because the Discharger verified its understanding of, and commitment to, the SWPPP, BMP, and annual fee requirements in the General Permit when the Notice of Intent (NOI) was filed in February 2011. Despite this commitment, the Discharger has refused to comply with the General Permit.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger was given a multiplier value of **1.4** because while there is no evidence of environmental damage from discharges of pollutants from the facility, the Discharger has been uncooperative and has failed to bring the facility into compliance with the General Order.

History of Violations

This factor is to be used when there is a history of repeat violations. A minimum multiplier of 1.1 is to be used where there is a history of repeat violations and is to be increased as necessary. In this case, a multiplier of **1.0** was assigned because other than the alleged violations at issue in this Complaint, the Discharger does not have a history of violations.

Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the San Diego Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation. The Prosecution Team recommends that the alternate approach to penalty calculation described in the Enforcement Policy be applied for Violations 1, 2, and 4 because based on inspections, there is a minimal threat of daily non-storm water discharges and there is a minimal threat of daily detrimental impacts to the environment. Using this approach, penalties will be assessed for days 1, 5, 10, 15, 20, 25, 30, 60, and every 30 days thereafter for violations 1, 2 and 4.

Violation 1: As of May 26, 2014, the number of days of violation for failure to develop and implement a SWPPP as required by the General Permit is 1061 days (due date of July 1, 2011). The adjusted number of days of violation, for penalty calculation purposes, is **41** days.

This results in a Revised Initial Base Liability Amount as follows:

$$\text{Violation 1 Revised Initial Base Liability} = (0.55) \times (41 \text{ days of violation}) \times (\$10,000) = \$225,500$$

Violation 2: As of May 26, 2014, the number of days of violation for failure to implement adequate BMPs as required by the General Permit is 120 days (due date November 1, 2013 through February 28, 2014). The adjusted number of days of violation, for penalty calculation purposes, is **10** days.

The results in a Revised Initial Base Liability Amount as follows:

$$\text{Violation 2 Revised Initial Base Liability} = (0.55) \times (10 \text{ days of violation}) \times (\$10,000) = \$55,000$$

Violation 4: As of May 26, 2014, the number of days of violation for failure to pay an annual fee as required by the General Permit is 472 days (due date of February 8, 2013). The adjusted number of days of violation, for penalty calculation purposes, is **21** days.

This results in a Revised Initial Base Liability as follows:

$$\text{Violation 4 Revised Initial Base Liability} = (0.35) \times (21 \text{ days of violation}) \times (\$1,000) = \$7,350.$$

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 1-3.

Total Base Liability Amount: Violations 1, 2, and 4

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

$$\begin{aligned} \text{Total Base Liability} &= (\text{Violation 1}) \$225,500 \times 1.4 \times 1.4 \times 1.0 = \$441,980 \\ &(\text{Violation 2}) \$55,000 \times 1.4 \times 1.4 \times 1.0 = \$107,800 \\ &(\text{Violation 4}) \$7,350 \times 1.4 \times 1.4 \times 1.0 = \$14,406 \\ &\mathbf{\$441,980 + \$107,800 + \$14,406 = \$564,186} \end{aligned}$$

Steps 6 through 10 are applied to the Total Base Liability Amount

STEP 6 – Ability to Pay and Continue in Business

At this time, the Prosecution Team has no information to indicate that the Discharger has an inability to pay the proposed liability amount. Accordingly, the Total Base Liability is not adjusted.

STEP 7 – Other Factors as Justice May Require

The Enforcement Policy provides that if the San Diego Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for “other factors as justice may require,” if express findings are made. In addition, the costs of investigation and enforcement are “other factors as justice may require” and should be added to the liability amount.

The prosecution team recommends the Total Base Liability amount for violations 1, 2, and 4 be adjusted downward to the minimum required because the calculated penalty amounts for these violations are disproportionate to the magnitude and effect of the violations. The following reductions are recommended:

Violation 1 - Failure to Develop and Implement a SWPPP

The Total Base Liability Amount of \$441,980 should be reduced to **\$3,124**.

Violation 2 - Failure to Implement Adequate BMPs

The Total Base Liability Amount of \$107,800 should be reduced to **\$1,777**.

Violation 4 - Failure to Pay the 2012 Annual Fee

The Total Base Liability Amount of \$14,406 should be reduced to **\$1,603**.

Staff Costs: The San Diego Water Board has incurred **\$7,738** in staff costs associated with the investigation and enforcement of the violations alleged herein. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liability Amount. If the Discharger elects to contest this matter, the recommended liability may increase to recover additional necessary staff costs incurred through hearing.

STEP 8 – Economic Benefit

Pursuant to CWC section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The economic benefit for all violations evaluated using the Enforcement Policy's penalty calculation methodology (Violation 1, 2, and 4) was calculated using the United States Environmental Protection Agency's BEN computer program and was determined to be **\$5,912** as follows:

Violation #1: Failure to Develop and Implement an adequate SWPPP: **\$2,840**

San Diego Water Board staff estimates the cost of developing a SWPPP to be \$2,500. The date of non-compliance began on July 1, 2011, which is the date the SWPPP was due. Although the Discharger has not demonstrated compliance, an end date of May 26, 2014 has been used for penalty calculation purposes. The failure to develop an adequate SWPPP is an avoided cost, which the Discharger has not incurred and does not plan to. The economic benefit of this non-compliance is equal to the actual cost of the avoided cost plus interest; in this case the economic benefit is \$2,840.

Violation #2: Failure to Implement Adequate BMPs: **\$1,615**

San Diego Water Board staff estimates the cost of implementing adequate BMPs to be \$1,500 per year. The date of non-compliance began on November 1, 2013, the San Diego Water Board verbally notified the facility attendant that adequate BMPs were not implemented at the site. The violation end date is February 28, 2014, the last San Diego Water Board inspection affirming that BMPs were not implemented at the site. The failure to implement BMPs is an avoided cost, which the Discharger has not incurred and does not plan to. The economic benefit of this non-compliance is equal to the actual cost plus interest; in this case the economic benefit is \$1,615.

Violation #4: Failure to Pay the 2012 Annual Fee: \$1,457

The General Permit annual fee for 2012 is \$1,359. The date of non-compliance began on February 8, 2013, the date the fee was due. Although the Discharger has not demonstrated compliance, an end date of May 26, 2014 has been used for penalty calculation purposes. The failure to pay an annual fee is an avoided cost, which the Discharger has not incurred and does not plan to. The economic benefit of this non-compliance is equal to the actual cost plus interest; in this case the economic benefit is \$1,457.

STEP 9 – Maximum and Minimum Liability Amounts

The maximum liability amount is based on \$10,000 per day for Violations 1 and 2 pursuant to CWC section 13385(e) and \$1,000 per day for Violation 4 pursuant to CWC section 13261(b)(1). The minimum liability amounts for each violation are based on CWC section 13385(e) and the Enforcement Policy.

Violation 1: Failure to Develop and Implement a SWPPP

a. Minimum Liability Amount: **\$3,124**

The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Prosecution Team's estimate of the Discharger's economic benefit obtained from Violation 1 is \$2,840.

b. Total Maximum Liability Amount: **\$10,610,000**

Maximum liability amount Violation 1: (1061 days of violation) x (\$10,000) = \$10,610,000

The proposed liability falls within these maximum and minimum liability amounts.

Violation 2: Failure to Implement BMPs

a. Minimum Liability Amount: **\$1,777**

The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Prosecution Team's estimate of the Discharger's economic benefit obtained from Violation 2 is \$1,615.

b. Total Maximum Liability Amount: **\$1,200,000**

Maximum liability amount Violation 2: (120 days of violation) x (\$10,000) = \$1,200,000

The proposed liability falls within these maximum and minimum liability amounts.

Violation 4: Failure to Submit Annual Fee

a. Minimum Liability Amount: **\$1,603**

The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Prosecution Team's estimate of the Discharger's economic benefit obtained from Violation 4 is \$1,457.

b. Total Maximum Liability Amount: **\$472,000**

Maximum liability amount Violation 4: (472 days of violation) x (\$1,000) = \$472,000

The proposed liability falls within these maximum and minimum liability amounts.

STEP 10 – Final Liability Amount

The total proposed liability includes a penalty of **\$1,000** plus staff costs of **\$7,738** for Violation 3, which is a mandatory penalty (CWC section 13399.33) and was not required to be analyzed pursuant to the penalty calculation methodology.

The final liability amount is recommended to be the minimum liabilities for Violations 1, 2, and 4 plus the mandatory liability amount for Violation 3.

Violations	Final Recommended Liability
Violation 1: Failure to Develop and Implement a SWPPP	\$3,124
Violation 2: Failure to Implement BMPs	\$1,777
Violation 3: Failure to Submit FY 2012-2013 Annual Report	\$8,738
Violation 4: Failure to Pay 2012 Annual Fee	\$1,603
Total	\$15,242

Based on the foregoing analysis, and consistent with the Enforcement Policy and CWC sections 13261, 13385, and 13399.33, the final liability amount proposed for the alleged violations is **\$15,242**.

Administrative Civil Liability Complaint

Fact Sheet

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

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

Parties

The parties to a complaint proceeding are the San Diego Water Board Prosecution Team and the person(s) named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of San Diego Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit comments. If the matter proceeds to hearing, the hearing may be held before the San Diego Water Board (seven Governor appointed members or the Executive Officer). Those who will hear the evidence and rule on the matter act as judges. The San Diego Water Board is assisted by advisory staff, who provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the San Diego Water Board or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Notice.

Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; or (5) hearing.

Withdrawal may result if the discharger provides information to the Prosecution Team that clearly and unmistakably demonstrates that a fundamental error exists in the information set forth in the complaint.

ACL Complaint Fact Sheet

Withdrawal and Reissuance may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement results when the Parties negotiate a resolution of the complaint. The settlement can be payment of an amount less than the proposed penalty or partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project (CP). Qualifying criteria for CPs and SEPs are contained in the State Water Board's Enforcement Policy, which is available at the State Water Board's website at: www.swrcb.ca.gov/plans_policies/docs/wqcp.doc. There can be no settlement of mandatory minimum penalties required by statute.

Hearing: If the matter proceeds to hearing, the Parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within ninety (90) days of the issuance of the Complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Options Form included in this package. The hearing will be conducted under rules set forth in the Hearing Notice. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide comments, but may generally not submit evidence or testimony. At the end of the presentations by the Designated Parties, the San Diego Water Board will deliberate to decide the outcome. The San Diego Water Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors That Must Be Considered By the Board

Except for mandatory penalties under Water Code Section 13399.33 and 13385 (i) and (h), the San Diego Water Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Water Code Section 13327, 13385(e) and 13399). During the period provided to submit evidence (set forth in the Hearing Notice) and at the hearing, a discharger may submit information that it believes supports its position regarding the complaint. If a discharger intends to

ACL Complaint Fact Sheet

present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

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

For a business:

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

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - a. IRS Form 1120 for C Corporations
 - b. IRS Form 1120 S for S Corporations
 - c. IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the SWRCB with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
1. The following information can be substituted if income tax returns cannot be made available:
 - a. Audited Financial Statements for last three years;
 - b. A list of major accounts receivable with names and amounts;
 - c. A list of major accounts payable with names and amounts;
 - d. A list of equipment acquisition cost and year purchased;
 - e. Ownership in other companies and percent of ownership for the last three years;
 - f. Income from other companies and amounts for the last three years.

ACL Complaint Fact Sheet

For a municipality, county, or district:

1. Type of entity:
 - a. City/Town/Village;
 - b. County;
 - c. Municipality with enterprise fund;
 - d. Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - a. Population;
 - b. Number of persons age 18 and above;
 - c. Number of persons age 65 and above;
 - d. Number of Individual below 125% of poverty level;
 - e. Median home value;
 - f. Median household income.
3. Current or most recent estimates of:
 - a. Population;
 - b. Median home value;
 - c. Median household income;
 - d. Market value of taxable property;
 - e. Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

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

Petitions

If the San Diego Water Board issues an order requiring payment, a discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at www.swrcb.ca.gov/public_notices/petitions. An order of the State Water Board, including its ruling on a petition from a San Diego Water Board order, can be challenged by filing a petition for writ of mandate in Superior Court pursuant to Water Code section 13330.

ACL Complaint Fact Sheet

Once an order for payment of penalties becomes final, the San Diego Water Board or State Water Board may seek an order of the Superior Court under Water Code Section 13328, if necessary, in order to collect payment of the penalty amount.

SAN DIEGO WATER QUALITY CONTROL BOARD

PROPOSED DRAFT

HEARING PROCEDURE FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R9-2014-0023
ISSUED TO

MR. ROBERT PICKERING
BART'S IRON DESIGN
25825 LAS VEGAS AVENUE
CAPISTRANO BEACH, CALIFORNIA

SCHEDULED FOR AUGUST 13 OR 14, 2014

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

Background

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) sections 13261, 13385, and 13399.33 against Bart's Iron Design (Discharger) alleging it has violated Effluent Limitation B.3, Section A: Storm Water Pollution Prevention Plan Requirements, Section B.14 Annual Report and Attachment 3, Annual Fee of Order No. 97-03-DWQ by failing to develop and implement a Storm Water Pollution Prevention Plan, failing to implement adequate Best Management Practices, failing to submit the Fiscal Year 2012/2013 Annual Report, and failing to pay the 2012 Annual Fee. The ACL Complaint proposes that administrative civil liability in the amount of **\$15,242** be imposed as authorized by CWC sections 13385 and 13399.33. Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the San Diego Water Board on **August 13 or 14, 2014**, in San Diego.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the San Diego Water Board will consider whether to adopt, modify, or reject the proposed assessment. The hearing will be held at the San Diego Water Board Office at 2375 Northside Drive, Suite 100, in San Diego. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the San Diego Water Board's web page at: www.waterboards.ca.gov/sandiego.

Hearing Procedure

The hearing will be conducted in accordance with this hearing procedure. This proposed draft version of the hearing procedure has been prepared by the Prosecution Team and is subject to revision and approval by the San Diego Water Board's Advisory Team. A copy of the procedures governing an adjudicatory hearing before the San Diego Water Board may be found at Title 23 of the California Code of Regulations, §648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the San Diego Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURE AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. ANY OBJECTIONS TO THE PROPOSED HEARING PROCEDURE MUST BE RECEIVED BY CATHERINE HAGAN, SENIOR STAFF COUNSEL, NO LATER THAN JUNE 6, 2014, OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

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

The following participants are hereby designated parties in this proceeding:

- (1) San Diego Water Board Prosecution Staff
- (2) Mr. Robert Pickering, Bart's Iron Design

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party, and not already listed above, shall request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5 p.m. on **June 16, 2014**, to Catherine Hagan, Senior Staff Counsel, at the address set forth below. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the San Diego Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by 5 p.m. on **June 26, 2014**. The parties will be notified by 5 p.m. on **July 17, 2014**, as to whether the request has been granted or denied.

Contacts

Advisory Staff:

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San Diego, CA 92108

Rebecca Stewart
Sanitary Engineering Associate
California Regional Water Quality Control Board, San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108

Discharger:

Mr. Robert Pickering
Bart's Iron Design

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the San Diego Water Board (Prosecution Staff) have been separated from those who will provide advice to the San Diego Water Board (Advisory Staff). Members of the Advisory Staff are: Catherine Hagan, Senior Staff Counsel, and Brandi Outwin-Beals. Members of the Prosecution Staff are: James Ralph, Staff Counsel, James Smith, Assistant Executive Officer, Jeremy Haas, Environmental Program Manager, Chiara Clemente, Senior Environmental Scientist, and Rebecca Stewart, Sanitary Engineering Associate.

Ex Parte Communications

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

Hearing Time limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 20 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than ten days after all of the evidence has been received (**July 28, 2014**). Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the San Diego Water Board (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

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

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider. Evidence and exhibits already in the public files of the San Diego Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

5. (Dischargers only) If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the San Diego Water Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."
6. (Dischargers only) If the Discharger would like to propose a Supplemental Environmental Project (SEP) or Enhanced Compliance Action (ECA) in lieu of paying some or all of the civil liability in accordance with the State Water Board's Water Quality Enforcement Policy, the Discharger shall submit a detailed SEP or ECA proposal including a specific implementation timetable.

The Prosecution Team shall submit two (2) hard copies and one (1) electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that it is received no later than 5 p.m. on **July 7, 2014**.

The remaining designated parties shall submit two (2) hard copies and one electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that they are received no later than 5 p.m. on **July 16, 2014**.

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

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Catherine Hagan, Senior Staff Counsel, as early as possible, but they must be received by **July 18, 2014**. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the San Diego Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the San Diego Water Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the San Diego Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with CWC section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, no later than 5 p.m. on **July 28, 2014**.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5 p.m. on **July 25, 2014** to the Advisory Team with a copy to all other designated parties. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the San Diego Water Board office at 2375 Northside Drive, Suite 100, San Diego, CA 92108. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the San Diego Water Board. Many of these documents are also posted on-line at www.waterboards.ca.gov/sandiego . Although the web page is updated regularly, to ensure access to the latest information, you may contact Catherine Hagan, Senior Staff Counsel.


Questions

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

IMPORTANT DEADLINES

- May 27, 2014** Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice.
- June 6, 2014** Objections due on proposed Hearing Procedure.
- June 16, 2014** Deadline for submission of request for designated party status.
- June 26, 2014** Deadline for opposition to request for designated party status.
- June 27, 2014** Discharger's deadline for waiving right to hearing.
- July 7, 2014** Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
- July 16, 2014** Remaining Designated Parties' Deadline for submission of all information required under "Evidence and Policy Statements," above.
- July 17, 2014** Advisory Team issues final Hearing Procedures and decision on requests for designated party status, if any.
- July 18, 2014** Interested Parties' deadline for submission of non-evidentiary policy statements.
- July 25, 2014** All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.
- July 28, 2014** Designated Parties' deadline for request of a pre-hearing conference.

**August 13, 2014 or
August 14, 2014** Hearing


James Smith
Assistant Executive Officer

27 May 2014
DATE

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent Bart's Iron Design (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R9-2014-0023 (hereinafter "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability.)

- a. I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board.
- b. I certify that upon approval of this settlement by the San Diego Water Board, the Discharger will remit payment for the administrative civil liability imposed in the amount of **fifteen thousand two hundred forty two dollars (\$15,242)** by check that references "ACL Complaint No. R9-2014-0023" made payable to the "State Water Resources Control Board". Payment must be received within 30 days of approval by the San Diego Water Board at the following address: State Water Resources Control Board, Accounting Office, Attn: ACL Payment, PO Box 1888, Sacramento, California, 95812-1888. A copy of the check must also be received by the San Diego Water Board at 2375 Northside Drive, Suite 100, San Diego, CA 92108 with 30 days of approval.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the San Diego Water Board receive significant new information or comments from any source (excluding the San Diego Water Board's Prosecution Team) during this comment period, the San Diego Water Board's Assistant Executive Officer may withdraw the complaint, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the San Diego Water Board, and that the San Diego Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the 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 San Diego Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the San Diego Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the San Diego Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the San Diego Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the 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 San Diego Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the San Diego Water 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 San Diego Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)