



State Water Resources Control Board



Office of Enforcement

1001 I Street • Sacramento, California 95814 • (916) 341-5272
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Linda S. Adams
Acting Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

July 25, 2011

Los Angeles Department of Water and Power
Attn: Katherine Rubin
Manager of Wastewater Quality & Compliance
111 North Hope Street
Los Angeles, CA 90012-2607

Dear Ms Ruben:

SUBJECT: CASE NO. SWB-2008-4-0006 OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF NPDES PERMIT FOR HAYNES GENERATING STATION – TECHNICAL RESPONSE

Thank you for your October 30, 2008 response to the State Water Resources Control Board Office of Enforcement's Offer to Participate in Expedited Payment Program. As you recall, the State Water Board's Office of Enforcement sent the Los Angeles Department of Water and Power (Permittee) Offer No. SWB-2008-4-0006 (Offer), which assessed mandatory minimum penalties (MMPs) in the amount of \$564,000 against the Permittee for violation of effluent limitations. The Permittee presented arguments in the October 30, 2008 letter regarding the violations cited in the Notice of Violation (NOV) Exhibit A to the Settlement Offer.

Based on the information provided in the Permittee's response and further technical review by staff, the Office of Enforcement has determined that sixty-five (65) of the alleged violations cited in the NOV Exhibit A to the Settlement Offer are hereby dismissed. The Office of Enforcement has also determined that nine (9) were omitted from the original Offer. Administrative Civil Liability Complaint No. OE-2011-0040 (Complaint) will include these omitted violations and will also include fourteen (14) more recent violations that were noted in the Permittee's self-monitoring reports. The Complaint covers the period of November 1, 2004 through April 31, 2011. However, this letter specifically addresses the October 30, 2008 response and the violations noted in it. See specific responses below:

1. Metals – Copper, Zinc, Arsenic, Nickel
a. Serial Discharge Flow

"For the metal violations listed, the SWRCB calculated the mass-based exceedances utilizing unrepresentative flows. The maximum design flow for the serial discharge 001

California Environmental Protection Agency

is 276 million gallons per day (MGD); this represents the cumulative flow from two generating units (001A and 001B. This total serial discharge flow of 276 MGD was used in the calculation of the mass of metals for each generating unit (discharge 001A), which effectively increased (and in some cases doubled) the mass of the metals. Utilizing the actual flow significantly decreases the mass values compared to the values calculated by the SWRCB. Please refer to the attached drawing (Attachments #2-6) for the detailed generating unit circulating water piping connections to the serial discharges 001, 002, and 003.

To correctly calculated the mass based discharge, the actual flow for each generating unit for each serial discharge (001A etc.) must be used otherwise the mass-based flow is greatly overestimated. As shown in the corrected summary Table #2 (Attachment #7) for arsenic, copper, nickel, and zinc the mass-based discharge has been calculated using the correct flow for each generating unit. This eliminates 26 violations. The LADWP will be reporting the actual flows for each generating unit and its respective discharge in the future discharge monitoring reports.”

Staff Response

After reviewing the schematics of the plant (provided by the Permittee), reviewing the permit requirements and its findings, staff has determined that it is more accurate to assess compliance with the metals limits at the end of the pipe and not at each serial. If one serial has no discharge, the concentration and flow of the discharging serial are used. The metals limits are based on the 1997 Ocean Plan. These are water quality-based effluent limits (WQBELs) and in the National Pollutant Discharge Elimination Program (NPDES) program, WQBELs are assessed at the outfall.

Staff is using the term “outfall” to mean 001(A&B) and serial to mean either 001A or 001B. The permit’s section I.A.4 states that “the wastes discharge from Discharge Serial Nos. 001(A&B), 002(A&B), and 003(A&B) with constituents in excess of the following limits are prohibited.” The permit then lists the limits for metals, chronic toxicity, and radioactivity. Staff interprets this requirement to mean, that compliance is assessed at the end of the pipe. The Permittee provided the individual flows for the serials in most cases. Where flow for the individual serial was not provided, staff assumed half of the total flow for each pipe. Using the concentrations of metals for each serial and the flows, staff was able to calculate the concentration at the outfall. Staff believes that this is more accurate and reduces the number of metals-related violations.

b. Root Cause Analysis

“The LADWP is currently conducting a root cause analysis to determine the underlying cause for the remaining metal exceedances. Operations and maintenance activities are being evaluated as well as the laboratory analyses.

One of the issues that has been discovered through the root cause analysis is that the test method currently being used for copper (EPA method 200.8) does not consider the salt matrix interference yielding falsely elevated results.

LADWP has commenced a comparison methodology study, where split samples have been taken and both testing methods, EPA 200.8 and 1640m, have been used to analyze the copper concentration. The result using EPA 1640m is lower than the analysis that uses EPA 200.8. This difference represents that the 1640m is lower than the analysis that used EPA 200.8. This difference represents that the 1640m has the ability to eliminate the salt water interference from the analysis. For future copper analyses, LADWP will be utilizing the 1640m method.”

Staff Response

Staff does not concur with LADWP’s contention. The fact that one method shows a lower value is not evidence that one method is better than another. There is no quality assurance/quality control documentation (i.e., blanks and spikes) to support this.

Staff disagrees with this argument. In 2004 and early 2005 (and in its 2006 priority pollutant scan), the Permittee used the EPA method 6020 and not EPA 200.8. On 05/10/2006, the Permittee grabbed samples for its priority pollutant scan (at Serial No. 001A) and for its semi-annual monitoring requirement for metals at Serial No. 001A. The former was analyzed with EPA method 6020, the latter with EPA 200.8. Both methods resulted in exceedance in copper. The values were 8.3 ug/L and 8.9 ug/L, respectively. This is a seven (7) percent difference, an acceptable deviation. Both of these methods are approved methods in the Title 40 of the Federal Code of Regulations, Part 136. This split seems to contradict LADWP’s assertion that the analytical method produced false positives.

Staff believes that an absence of copper exceedances since November 2007 can be attributed to replacing the copper-nickel condensers and not the difference in analytical methods used.

c. Background Concentrations

“In addition, as mentioned in each of the noncompliance discussion, if the ambient background concentrations were taken into consideration, discharge limitations for

arsenic, copper, and nickel would easily be met. See Table #3 (Attachment #8), illustrating this outcome.”

Staff Response

Background is irrelevant in a discussion of compliance. The Permittee must comply with the limits in the permit or not discharge into waters of the United States.

2. Free Available Chlorine (FAC)

“The daily average FAC was not exceeded as indicated in the NOV. The reported violations for the FAC are based on data from samples obtained only during the chlorination period. The daily chlorination period is limited to 160 minutes for serial discharges 001 and 003 (each) and 80 minutes for serial discharge 002 (Order No. 2001-81 permits up to two hours per generating unit per day). The reported values do not take into account the remaining 1280 minutes in the day (for serial discharges 001 and 003, and 1360 minutes for 002) during which there is no chlorination (the ambient FAC was measured to be 0.01 mg/L by the Regional Board during the 2007 site inspection).

Using the reported daily averages listed in the NOV would be equivalent to chlorinating at the generating units at the reported concentration for the entire 24-hour period. The daily average should be a time-weighted average to account for this misrepresentation of the average chlorine values. See Table 1 listing these FAC violations LADWP believes to be incorrectly cited.

In addition, FAC is measured to one significant digit, using a rounding error; please regard those violations listed in Table #4 (Attachment #9) as not exceeding the limit of 0.2 mg/L.”

Staff Response

Staff wished to clarify the application of the EPA variance for chlorine. The Permittee is prohibited from discharging chlorine from any single generating unit for more than 2 hours per day. For discharges lasting longer than 20 minutes, the variance is *not* applicable and total residual chlorine limitations must be calculated using the methodology in the Ocean Plan. The Permittee always reported that chlorination is restricted to 20 minutes in its self-monitoring reports. If this is not the case, the Permittee must report the duration of chlorination. Failure to report this information is a violation of the permit.

The limit for FAC in the variance explicitly states the limit as “a daily average limitation of 0.2 mg/L based on daily sampling at Outfalls 001(A&B), 002(A&B), and 003(A&B) *during periods of chlorination.*” Chlorine is toxic to fish. The variance relaxes the limit

that would have been calculated using the Ocean Plan methodology. Failure to comply is a violation of the permit and a violation of one of the conditions of the variance.

Staff agrees that the daily average limitation of 0.2 mg/L for FAC has one significant figure. Twenty-five (25) violations were therefore dismissed. Values of 0.25, staff retained, based on EPA's, *Guidelines and Format for Methods to be Proposed at 40 CFR Part 136 or Part 141* (EPA, 1996). Section 3.13.2 states, "when the first digit discarded is five or greater, or when five is followed by a digit other than zero, the last digit retained is increased by one."

3. Temperature

"The outfall temperature for three of the listed violations, (No's 756415, 756239, and 712388) reached a temperature of 102 and 103 degrees Fahrenheit for a duration of three minutes during a period in which the recirculation gate was being adjusted during a backwash. According to our NPDES, page 6 of the order, it states that the temperature cannot exceed 120 degrees Fahrenheit for this type of operation. Therefore, these temperature exceedances should be removed." Staff agrees with this argument and has dismissed these violations accordingly.

4. Minimum Mandatory Penalty

"There have been several instances in which the MMP has been incorrectly applied to the chronic violations. Per the Water Code section 13385(i), the MMP applies to those "chronic" violations(s) which represent the fourth consecutive violation in a 180-day period for each distinct serial discharge (001A, 001B, 002A, etc.). The MMP was incorrectly applied to chronic violations that should not have been subject to the MMP. See Table #1 for those chronic violations that should not have been subject to the MMP. See Table #1 for those chronic violations LADWP believes the MMP was incorrectly applied. In addition, when the correct flow is applied to calculate the mass base value (lbs/day), three of the serious violations change MMP category from significant to chronic. This applies to violations identified as #766168, #766248, #759974."

Staff Response

Water Code section 13385 subdivision (i) states, in part, "a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for *each* violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations...(emphasis added)." If the Permittee violates a waste discharge requirement effluent limitation four or more times in any period of six consecutive months, a \$3,000 MMP shall be assessed for each of those

violations, except for the first three. The statute refers to violations of a waste discharge requirement effluent limitation generally and does not specify that those violations must be for particular parameter or that the violations occur at a specific discharge serial number or outfall.

Exhibit A to Administrative Civil Liability Complaint OE-2011-0040 shows the number of violations within 180 days of any violation flagged as "chronic." It also shows the date 180 days prior to the violation date. These chronic violations are computed using a computer algorithm. The algorithm was developed by enforcement, NPDES program, and Information Technology staff.

After a comprehensive review of LADWP's October 30, 2008 response as well as a thorough file review for this facility, staff has dismissed sixty-five (65) violations that were originally included in SWB-2008-4-0006. The remaining violations and additional violations that were not included in SWB-2008-4-0006 are included in the enclosed Administrative Civil Liability Complaint OE-2011-0040.

Please contact Erin Mustain at (916) 445-9379 or EMustain@waterboards.ca.gov with any questions you may have about this letter or the enclosed Complaint.

Sincerely,



Reed Sato, Director
Office of Enforcement

Enclosure



State Water Resources Control Board



Office of Enforcement

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Linda S. Adams
Acting Secretary for
Environmental Protection

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Governor

July 25, 2011

Los Angeles Department of Water and Power
Attn: Katherine Rubin
Manager of Wastewater Quality & Compliance
111 North Hope Street
Los Angeles, CA 90012-2607

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO.
7003 3110 0003 0767 4815

COMPLAINT NO. OE-2011-0040 FOR MANDATORY MINIMUM PENALTY AGAINST LOS ANGELES DEPARTMENT OF WATER AND POWER, HAYNES GENERATING STATION, 6801 EAST 2ND STREET, LONG BEACH CA (NPDES NO. CA0000353, CI NO. 2769)

Dear Ms. Ruben:

Enclosed is Complaint No. OE-2011-0040 for Mandatory Minimum Penalty in the amount of \$438,000 against Los Angeles Department of Water and Power (hereinafter Permittee) for violating waste discharge requirements contained in Regional Board Order No. 00-081. Also enclosed is a copy of the State Water Resources Control Board (State Water Board) Notice of Public Hearing to Consider an Administrative Civil Liability Complaint.

Unless waived, a hearing before a Hearing Officer of the State Water Board will be held on this Complaint pursuant to California Water Code Sections 13323(c) and 183. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. OE-2011-0040 and return it to the Office of Enforcement by **5:00 p.m. on August 24, 2011**. If we do not receive the waiver and full payment of the mandatory minimum penalty by **August 24, 2011**, this matter will be heard by a State Water Board Hearing Officer. An agenda containing the date, time, and location of the hearing will be mailed to you at least ten days prior to the hearing date.

If you have any questions regarding this matter, please contact Ms. Erin Mustain at (916) 445-9379.

Sincerely,

Reed Sato
Director, Office of Enforcement
State Water Resources Control Board

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

Enclosures

cc: [via email only]

Ms. Erin Mustain, Office of Information Management and Analysis,
State Water Resources Control Board

Ms. Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board

Mr. Tim Regan, Office of Chief Counsel, State Water Resources Control Board

Mr. Phil, Wyels, Office of Chief Counsel, State Water Resources Control Board

Mr. Hugh Marley, Los Angeles Regional Water Quality Control Board

1 REED SATO, Director (SBN 87685)
2 MAYUMI OKAMOTO, Staff Counsel (SBN 253243)
3 ANN K. B. CARROLL, Staff Counsel (SBN 240452)
4 Office of Enforcement
5 State Water Resources Control Board
6 1001 I Street, 16th Floor
7 Sacramento, California 95814
8 Telephone: 916-341-5674
9 Fax: 916-341-5896
10 E-mail: mokamoto@waterboards.ca.gov

11 Attorneys for the Prosecution Team

12 **STATE OF CALIFORNIA**
13 **STATE WATER RESOURCES CONTROL BOARD**

14 **In the matter of:**) **Complaint No. OE-2011-0040**
15) **Mandatory Minimum Penalty**
16) **for**
17 **Los Angeles Dept. of Water and**) **Violation of California Water Code § 13376**
18 **Power**) **and**
19 **Haynes Generating Station**) **ORDER NO. 00-081**
20 **Los Angeles, CA 90012-2607**) **(NPDES No. CA0000353)**

21 This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC)
22 Section 13385(h) and (i) is issued to Los Angeles Department of Water and Power (hereinafter
23 Permittee) based on a finding of violations of waste discharge requirements prescribed in Order No. 00-
24 081 (NPDES No. CA0000353, CI No. 2769).

25 **The Director of the Office of Enforcement of the State Water Resources Control Board (State**
26 **Water Board) finds the following:**

- 27
- 28 1. The Permittee owns and operates Haynes Generating Station (facility) located at 6801 East 2nd
29 Street, Long Beach, CA 90803. The Permittee discharges once through cooling water, chemical
30 metal cleaning wastes, and low volume wastes (non-chemical metal cleaning wastes, water
31 softener regeneration wastes, demineralizer regeneration wastes, boiler and evaporator
32 blowdown, condensate polisher regeneration wastes, laboratory drains and floor drainage

1 including storm runoff) to the following outfalls: Outfall 001(A&B); Outfall 002(A&B); and
2 Outfall 003(A&B). These outfalls are in close proximity (Latitude 33° 45' 42" North, Longitude
3 118° 05' 47" West) to San Gabriel River Estuary, a navigable water of the United States. These
4 discharge streams are susceptible to containing pollutants, which can degrade water quality and
5 impact beneficial uses of water and which are defined as wastes under the Porter-Cologne Water
6 Quality Control Act (CWC Section 13000 et seq.).

7
8 2. On June 29, 2000, the Regional Water Quality Control Board, Los Angeles Region (Regional
9 Board) adopted Order No. 00-081 (NPDES No. CA0000353) which serves as NPDES Permit and
10 Waste Discharge Requirements for the facility.

11
12 3. Order No. 00-081 (Effluent Limitations I.A.2) contains final effluent limitations for temperature:
13 "The temperature of wastes discharged shall not exceed 100°F during normal operation of the
14 facility. During heat treatment, the temperature of wastes discharged shall not exceed 115°F
15 except during adjustment of the recirculation gate at which time the temperature of wastes
16 discharged shall not exceed 120°F. Temperature fluctuations during gate adjustment about 115°F
17 shall not last for more than thirty [30] minutes."

18
19 4. Order No. 00-081 (Effluent Limitations I.A.4) contains final effluent limitations for arsenic,
20 copper, nickel, zinc discharged from Outfall 001 (A&B), 002 (A&B), and 003 (A&B):

21
22

23 Constituent	24 Discharge Limitations (Daily Maximum) Concentration	25 Discharge Limitations (Daily Maximum) Mass	26 Discharge Limitations (Monthly Average)	27 Discharge Limitations (Monthly Average)
28 Arsenic	162.5 ug/L	374 (624) lb/day	30.5 mg/L	70.2 (117) lb/day
29 Copper	57 ug/L	131 (219) lb/day	7.5 mg/L	25.3 (42.2) lb/day
30 Nickel	110 ug/L	253 (422) lb/day	27.5 mg/L	63.3 (105) lb/day
31 Zinc	404 ug/L	931 (1,551) lb/day	74mg/L	170 (284) lb/day

32

33 5. Order No. 00-081 (Effluent Limitations I.A.5) contains final effluent limitations for total residual
34 chlorine and free available chlorine discharged from Outfall 001 (A&B), 002 (A&B), and 003
35 (A&B):

Constituent	Discharge Limitations (Instantaneous Maximum) Concentration	Discharge Limitations (Instantaneous Maximum) Mass	Discharge Limitations (Daily Average)	Discharge Limitations (Daily Average)
Total residual chlorine	0.413 mg/L	951 (1,585) lb/day	--	--
Free available chlorine	0.50 mg/L	1,152 (1,920) lb/day	0.2 mg/L	460 (767) lb/day

6. Order No. 00-081 (Effluent Limitations I.A.6.b) contains final effluent limitation for in-plant waste streams for Suspended Solids (low volume wastes)¹:

Constituent	Units	Discharge Limitations (Daily Maximum) Concentration	Discharge Limitations (Monthly Average) Concentration
Suspended Solids	mg/L	100	30

7. Order No. 00-081 (Effluent Limitations I.A.6.c) contains final effluent limitations for in-plant waste streams for Suspended Solids and BOD₅ 20°C (sanitary wastes):

Constituent	Units	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
BOD ₅ 20°C	mg/L	45	30
Suspended Solids	mg/L	45	30

8. In addition to effluent limits, the permit includes a narrative limit to comply with all Ocean Plan objectives (Finding 23 and Provision II.C): The limit for Bis (2-ethylhexyl) phthalate is derived from the 1997 Ocean Plan objective expressed as a thirty-day average.

Constituent	Units	Discharge Limitations (Monthly Average) Concentration
Bis (2-ethylhexyl) phthalate	ug/L	3.5

¹ "Low volume wastes" are non-chemical metal cleaning wastes, water softener regeneration wastes, demineralizer regeneration wastes, boiler and evaporator blowdown, condensate polisher regeneration wastes, secondary treated sanitary wastes, laboratory drains and floor drainage including storm runoff.

1 9. One hundred and forty-six (146) effluent limit violations of Order No. 00-081 were noted in the
2 Permittee's self-monitoring reports for the first and second quarters of 2003. The violations are
3 specifically identified in Exhibit "A" to the Complaint. Exhibit "A" is attached hereto and
4 incorporated herein by reference.

5
6 10. On September 26, 2008, the Director of the State Water Board Office of Enforcement issued the
7 Permittee the Offer to Participate in Expedited Payment Program (EPP) No. SWB-2008-4-0006,
8 which included a Notice of Violation notifying the Permittee of effluent violations subject to a
9 mandatory minimum penalty.

10
11 11. Any discharge containing pollutants violating the effluent limitations set in the waste discharge
12 requirements is prohibited by CWC Section 13376.

13
14 12. CWC Section 13385(h) requires the Water Boards to assess a mandatory minimum penalty of
15 three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC Section 13385(h)(2)
16 "a serious violation is defined as any waste discharge that violates the effluent limitations
17 contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent
18 or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40
19 of the Code of Federal Regulations specifies the Group I and II pollutants."

20
21 13. CWC Section 13385(i) requires the Water Boards to assess a mandatory minimum penalty of
22 three thousand dollars (\$3,000) for each violation whenever the permittee violates a waste
23 discharge requirement effluent limitation in any period of six consecutive months, except that the
24 requirement to assess the mandatory minimum penalty shall not be applicable to the first three
25 violations within that time period.

26
27 14. The maximum amount of discretionary administrative civil liability assessable pursuant to CWC
28 Section 13385 for each day of violation is \$10,000 per day of violation plus \$10 times the
29 number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

30 ///

31 ///

32 ///

1 **YOU ARE HEREBY GIVEN NOTICE THAT:**

2
3 15. The Director of the State Water Board Office of Enforcement proposes that the Permittee be
4 assessed a mandatory minimum penalty in the amount of \$438,000 for the violations cited in
5 Exhibit "A." Refer to Exhibit "A" for the calculation of the amount of mandatory minimum
6 penalty.

7
8 16. The Permittee may waive the right to a hearing and pay the recommended administrative civil
9 liability. Should the Permittee choose to waive its right to a hearing, an authorized agent must
10 sign the waiver form attached to this Complaint and return it to the Office of Enforcement by
11 5:00 p.m. on August 24, 2011. If the hearing is waived, a check in the amount of \$438,000
12 (payable to the State Water Pollution Cleanup and Abatement Account) must be received by the
13 Office of Enforcement by 5:00 p.m. on August 24, 2011.

14
15 17. If the Office of Enforcement does not receive a waiver and full payment of the recommended
16 penalty by August 24, 2011, the Complaint will be heard by a State Water Board Hearing Officer
17 pursuant to California Water Code Sections 13323(c) and 183. The Notice of Public Hearing
18 contains that date, time, location, and specific procedures of the scheduled hearing of this matter.

19
20 18. If a hearing on this matter is held, the State Water Board will consider whether to affirm, reject,
21 or modify (i.e. increase the proposed civil liability above the mandatory minimum) the proposed
22 civil liability, or whether to refer the matter to the Attorney General for assessment of judicial
23 civil liability.


24
25 19. There are no statutes of limitation that apply to administrative proceedings. The statutes of
26 limitation that refer to "actions" and "special proceedings" and are contained in the California
27 Code of Civil Procedure apply to judicial proceedings, not administrative proceeding. See *City of*
28 *Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal.
29 Procedure (4th ed. 1996) Actions, Section 405(2), p. 510.)

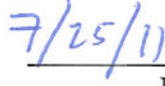
30
31 20. Notwithstanding the issuance of this Complaint, the State Water Board and/or the Regional
32 Board shall retain the authority to assess additional penalties for violations of the requirements of

1 the Permittee's waste discharge requirements for which penalties have not yet been assessed or
2 for violations that may subsequently occur.

3
4 21. This enforcement action is exempt from the provisions of the California Environmental Quality
5 Act, California Public Resources Code Section 21000 et seq., in accordance with California
6 Code of Regulations, title 14, Section 15321.

7
8 22. Regulations of the United States Environmental Protection Agency require public notification of
9 any proposed settlement of the civil liability occasioned by violation of the Clean Water Act
10 including NPDES permit violations. Accordingly, interested persons will be given 30 days to
11 comment on any proposed settlement of this Complaint.

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15 _____
16 Reed Sato
17 Director, Office of Enforcement
18 State Water Resources Control Board

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Date

#	Violation Number	Violation Date	Constituent	Pollutant Group	Limitation Period	Outfall	Limit	Result/Average Units	% Over Limit	Date 180 Days Prior	Serious Violation?	Chronic?	No. of Violations within the 180 days ³	Mandatory Fine?	Wider Cyle Penalty
86	592381	9/20/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 003	0.2	0.35	75%	3/30/2006	Y	N	N/A	Y	\$3,000
87	592378	9/27/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.25	25%	3/31/2006	Y	N	N/A	Y	\$3,000
88	592382	9/27/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 003	0.2	0.25	25%	3/31/2006	Y	N	N/A	Y	\$3,000
89	592375	9/30/2006	BOD	Group 1	Monthly Average	Sanitary	30	34.8	16%	4/3/2006	N	Y	23	Y	\$3,000
90	592383	10/5/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.34	70%	4/8/2006	Y	N	N/A	Y	\$3,000
91	592384	10/5/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 003	0.2	0.3	50%	4/8/2006	Y	N	N/A	Y	\$3,000
92	592385	10/5/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.32	60%	4/21/2006	Y	N	N/A	Y	\$3,000
93	592382	10/18/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 002	0.2	0.34	70%	4/21/2006	Y	N	N/A	Y	\$3,000
94	592384	10/18/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 003	0.2	0.32	60%	4/21/2006	Y	N	N/A	Y	\$3,000
95	592387	10/22/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.27	35%	4/25/2006	Y	N	N/A	Y	\$3,000
96	592388	10/24/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.25	25%	4/25/2006	Y	N	N/A	Y	\$3,000
97	592389	10/24/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 003	0.2	0.25	25%	4/25/2006	Y	N	N/A	Y	\$3,000
98	592390	10/24/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.26	30%	4/28/2006	Y	N	N/A	Y	\$3,000
99	592390	10/24/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 003	0.2	0.26	30%	4/28/2006	Y	N	N/A	Y	\$3,000
100	570169	11/1/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 003	0.2	0.29	45%	5/6/2006	Y	N	N/A	Y	\$3,000
101	570139	11/2/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.32	60%	5/7/2006	Y	N	N/A	Y	\$3,000
102	570140	11/2/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 002	0.2	0.32	60%	5/7/2006	Y	N	N/A	Y	\$3,000
103	570166	11/3/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.35	75%	5/7/2006	Y	N	N/A	Y	\$3,000
104	570170	11/3/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 002	0.2	0.26	30%	5/20/2006	Y	N	N/A	Y	\$3,000
105	570141	11/16/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.3	50%	5/22/2006	Y	N	N/A	Y	\$3,000
106	570141	11/16/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.3	50%	5/22/2006	Y	N	N/A	Y	\$3,000
107	570144	11/20/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.25	25%	5/24/2006	Y	N	N/A	Y	\$3,000
108	570147	11/20/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.25	25%	5/24/2006	Y	N	N/A	Y	\$3,000
109	570147	11/20/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.25	25%	5/24/2006	Y	N	N/A	Y	\$3,000
110	570146	11/30/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.28	40%	6/1/2006	Y	N	N/A	Y	\$3,000
111	570146	11/30/2006	Copper	Group 2	Monthly Average	Outfall 001(A&B)	7.5	15.7	109%	6/2/2006	Y	N	N/A	Y	\$3,000
112	570171	11/30/2006	Copper	Group 2	Monthly Average	Outfall 002(A&B)	7.5	11.5	53%	6/2/2006	Y	N	N/A	Y	\$3,000
113	570171	11/30/2006	Copper	Group 2	Monthly Average	Outfall 001(A&B)	17.5	13.3	77%	6/2/2006	Y	N	N/A	Y	\$3,000
114	666297	12/19/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.3	50%	6/3/2006	Y	N	N/A	Y	\$3,000
115	666297	12/25/2006	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.26	30%	6/2/2006	Y	N	N/A	Y	\$3,000
116	570174	1/20/2007	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.32	60%	6/2/2006	Y	N	N/A	Y	\$3,000
117	570175	1/21/2007	Free Available Chlorine	Group 2	Daily Average	Outfall 001	0.2	0.26	30%	7/25/2006	Y	N	N/A	Y	\$3,000
118	668032	2/7/2007	BOD	Group 1	Daily Maximum	Sanitary	45	75	167%	8/11/2006	Y	N	N/A	Y	\$3,000
119	668341	2/14/2007	BOD	Group 1	Daily Maximum	Sanitary	45	115	256%	8/18/2006	Y	N	N/A	Y	\$3,000
120	668342	2/21/2007	BOD	Group 1	Daily Maximum	Sanitary	45	59	131%	8/25/2006	N	Y	39	Y	\$3,000
121	668345	2/28/2007	BOD	Group 1	Monthly Average	Sanitary	45	74.1	165%	9/1/2006	Y	N	N/A	Y	\$3,000
122	668346	2/28/2007	BOD	Group 1	Monthly Average	Sanitary	30	80.8	169%	9/1/2006	Y	N	N/A	Y	\$3,000
123	962417	3/3/2007	TSS	Group 1	Monthly Average	Low volume	30	77	257%	10/2/2006	Y	N	N/A	Y	\$3,000
124	962418	3/3/2007	Nickel	Group 2	Monthly Average	Outfall 001A, No discharge at 001B	27.5	33.4	21%	12/2/2006	Y	N	N/A	Y	\$3,000
125	756472	5/31/2007	Copper	Group 2	Monthly Average	Outfall 001A, No discharge at 001B	7.5	8.3	11%	12/2/2006	Y	N	N/A	Y	\$3,000
126	756472	5/31/2007	Nickel	Group 2	Monthly Average	Outfall 001A, No discharge at 001B	27.5	34.7	26%	12/2/2006	Y	N	N/A	Y	\$3,000
127	756534	5/31/2007	Nickel	Group 2	Monthly Average	Outfall 002(A&B)	63.3	66.3	10%	12/2/2006	N	Y	11	Y	\$3,000
128	712387	8/3/2007	Temperature	Group 2	Instantaneous	Outfall 001	100	102	2%	12/2/2006	N	Y	12	Y	\$3,000
129	902401	8/31/2007	TSS	Group 1	Monthly Average	Outfall 001	50	102	204%	2/4/2007	N	Y	11	Y	\$3,000
130	745645	11/13/2007	Copper	Group 2	Daily Maximum	Outfall 001(A&B)	50	127.4	255%	3/4/2007	N	Y	5	Y	\$3,000
131	745646	11/13/2007	Copper	Group 2	Daily Maximum	Outfall 001(A&B)	131	268.1	205%	5/1/2007	N	Y	5	Y	\$3,000
132	756495	11/30/2007	Copper	Group 2	Monthly Average	Outfall 001(A&B)	17.3	79.1	457%	6/1/2007	Y	N	N/A	Y	\$3,000
133	756497	11/30/2007	Copper	Group 2	Monthly Average	Outfall 001(A&B)	7.5	35	367%	6/2/2007	Y	N	N/A	Y	\$3,000
134	902210	2/28/2008	TSS	Group 1	Monthly Average	Low volume	30	31	103%	9/3/2007	N	Y	5	Y	\$3,000
135	809537	5/5/2008	TSS	Group 1	Monthly Average	Sanitary	45	138	307%	11/7/2007	Y	N	N/A	Y	\$3,000
136	809540	5/5/2008	BOD	Group 1	Monthly Average	Sanitary	30	37	123%	11/7/2007	Y	N	N/A	Y	\$3,000
137	809538	5/3/2008	TSS	Group 1	Monthly Average	Sanitary	30	56	187%	12/3/2007	Y	N	N/A	Y	\$3,000
138	902145	6/30/2008	TSS	Group 1	Monthly Average	Low volume	30	56	187%	1/2/2008	Y	N	N/A	Y	\$3,000
139	902099	6/30/2008	bis (2-ethylhexyl) phthalate	Group 2	30-Day Average	Outfall 001A, No discharge at 001B	3.5	7.6	217%	11/7/2007	Y	N	N/A	Y	\$3,000
140	901931	5/30/2009	TSS	Group 1	Monthly Average	Low volume	30	64	213%	4/3/2009	Y	N	N/A	Y	\$3,000
141	901931	5/30/2009	TSS	Group 2	30-Day Average	Outfall 002(A&B)	30	64	213%	4/3/2009	Y	N	N/A	Y	\$3,000
142	901935	5/31/2010	bis (2-ethylhexyl) phthalate	Group 2	30-Day Average	Outfall 003(A&B)	3.5	21.5	614%	12/2/2009	Y	N	N/A	Y	\$3,000
143	901935	5/31/2010	bis (2-ethylhexyl) phthalate	Group 2	30-Day Average	Outfall 003(A&B)	3.5	24.7	706%	12/2/2009	Y	N	N/A	Y	\$3,000
144	901931	1/31/2011	TSS	Group 1	Monthly Average	Low volume	30	32.5	108%	4/3/2010	N	Y	5	Y	\$3,000
145	901946	4/4/2011	TSS	Group 1	Daily Maximum	Low volume	30	134	347%	10/6/2010	Y	N	N/A	Y	\$3,000
146	901947	4/30/2011	TSS	Group 1	Monthly Average	Low volume	30	447	1390%	11/12/2010	Y	N	N/A	Y	\$3,000
TSS = Total Suspended Solids															
BOD = Biochemical Oxygen Demand 5-day at 20°C															
1 - Violation occurs on sample date or last date of averaging period.															
2 - For Group 1 pollutants, a violation is serious when the limit is exceeded by more than 40%.															
3 - When a serious violation occurs on the same day as a non-serious violation, the serious violation is only assessed an MMP once and is counted last in determining the order in which multiple violations on the same day occurred.															
Violation period ending the last day of April 2010															
Group 1 Violations Assessed MMP: 41															
Group 2 Violations Assessed MMP: 103															
Other Effluent Violations Assessed MMP: 2															
Total Violations Assessed MMP: 146															
Mandatory Minimum Penalty = (114 Serious Violations + 31 Non-Serious Violations) x \$3,000 = \$438,000															
Total Penalty: \$438,000															

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. OE-2011-0040

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

I am duly authorized to represent Los Angeles Dept. Water and Power (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. OE-2011-0040 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (c), states that, "any hearing shall be before the state board, or before a member of the state board in accordance with Section 183, and shall be conducted not later than 90 days after the party has been served [with the complaint]."

(Check here if the Permittee waives the hearing requirement and will pay the recommended liability.)

- a. I hereby waive any right the Permittee may have to a hearing before the State Water Resources Control Board Hearing Officer.
- b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of **\$438,000** by check that references "ACL Complaint No. OE-2011-0040" made payable to the "*Cleanup and Abatement Account*". Payment must be received by the State Water Board by **5:00 p.m. on August 24, 2011** or this matter will be placed on the State Water Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the State Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Director of the State Water Board Office of Enforcement may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the State Water Board, and that the State 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 Permittee 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 Permittee to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

**HEARING OF THE
STATE WATER RESOURCES CONTROL BOARD**

1001 "I" Street
P.O. Box 100
Sacramento, California 95814
(916) 341-5272

ACLIC No. OE-2011-0040

NOTICE OF PUBLIC HEARING

TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

<u>DISCHARGER</u>	<u>DISCHARGE LOCATION</u>	<u>RECEIVING WATERS</u>
Los Angeles Department Water and Power	6801 East 2 nd Street, Long Beach, CA 90803	San Gabriel River Estuary

Administrative Civil Liability Complaint ("ACLIC") No. OE-2011-0040 alleges that Los Angeles Department of Water and Power (Permittee) violated waste discharge requirements contained in Regional Board Order No. 00-081 by failing to comply with effluent. As stated in the ACLIC, State Water Board staff, represented by the State Water Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$438,000 be assessed against Los Angeles Department of Water and Power for these violations.

Pursuant to Water Code section 13323(c) and section 183, a member of the State Water Board (hereinafter "Hearing Officer") will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the State Water Board about resolution of the ACLIC.

This notice sets forth procedures and outlines the process to be used at this hearing.

I. HEARING DATE AND LOCATION

Date: October 19-20 2011
Time: 10:00 A.M.
Place: 320 W. 4th Street
Los Angeles, CA 90013
* Room location TBD

II. AVAILABILITY OF DOCUMENTS

The ACLC and other documents concerning the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or copies of the documents may be made by calling Mr. Hugh Marley of the Los Angeles Regional Board at (213) 620-6375. Comments received, the Prosecution Team's proposed Hearing Report and Order, and other subsequent relevant documents will be available as they are received or generated.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the Hearing binder. However, the entire file might not be present at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing binder, they must submit a written or electronic request to the Case Manager of the Prosecution Team (identified in section V below) so that it is received **by 5:00 p.m. on October 1, 2011**. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing binder will be present at the hearing.)

III. NATURE OF HEARING

This will be a formal adjudicative hearing pursuant to section 648 et seq. of title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the State Water Board, except as otherwise specified in the above-referenced regulations.

IV. PARTIES TO THE HEARING

The following are the parties to this proceeding:

1. Los Angeles Department of Water and Power
2. State Water Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Officer identified in section VIII below so that it is received **by 5:00 p.m. on August 4, 2011**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall also include a statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the State Water Board affect the person), and a statement explaining why the parties designated above do not adequately represent the person's interest. The requesting party will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

V. COMMUNICATIONS WITH THE PROSECUTION TEAM

The California Administrative Procedure Act requires the State Water Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of the State Water Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Erin Mustain, Water Resource Control Engineer from the State Water Board. Mayumi Okamoto will advise the Prosecution Team prior to and at the panel hearing. Neither Ms. Okamoto nor the members of the Prosecution Team will be advising the State Water Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the hearing panel (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Erin Mustain
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
(916) 445-9379
emustain@waterboards.ca.gov

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

A. Submittals By Parties.

Not later than **September 12, 2011**, the Prosecution Team will send the parties a preliminary Hearing binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

Los Angeles Department of Water and Power is required to submit:

- 1) Any additional documents or evidence the Party wants the Hearing Officer to consider,
- 2) A summary of any testimony the Party intends to present, and
- 3) A statement regarding how much time the Party needs to present the case

to the attention of the Case Manager of the Prosecution Team (as identified above) and other designated parties so that it is received **by 5:00p.m. on September 21, 2011**. All documentation listed above must be received by the deadline, or it may be excluded from consideration by the Hearing Officer. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Officer and the parties a final Hearing binder no later than **October 11, 2011**. An agenda containing the date, time, and location of the hearing will be mailed to the Los Angeles Department of Water and Power at least ten days prior to the hearing date.

B. Submittals By Interested Persons.

Persons who are not designated as parties, above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Officer to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by Prosecution Team, included in the final Hearing binder, and fully considered by the Hearing Officer in advance of the hearing, any such written materials must be received **by 5:00 p.m. on August 24, 2011**. If possible, please submit written comments in Word format electronically to Erin Mustain. Interested persons should be aware the State Water Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Officer will also receive oral comments from any person during the hearing (see below).

VII. HEARING PROCEDURES

Adjudicative proceedings before the Hearing Officer generally will be conducted in the following order:

- Opening statement by Hearing Officer
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Discharger presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Officer
- Deliberations (in open or closed session)
- Announcement of recommendation to the State Water Board

While this is a formal administrative proceeding, the Hearing Officer does not generally require the cross-examination of witness, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Officer after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager **by 5:00 p.m. on September 21, 2011** to state how much time they believe is necessary for their presentations (see Section VI. A above). It is the State Water Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Hearing Officer, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. All evidence, including all written materials, must be received by the deadlines identified in Section IV.A, and IV.B., above, or it may be excluded from consideration by the Hearing Officer. The Hearing Officer will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

VIII. COMMUNICATIONS WITH THE HEARING OFFICER

A. Ex Parte Communications Prohibited.

As an adjudicative proceeding, State Water Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the State Water Board, Hearing Officer, or Hearing Officer Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

B. Hearing Officer Advisors.

The Hearing Officer will be advised before and during the hearing by a technical advisor, Tim Regan, Senior Staff Counsel, and/or Phil Wyels, Assistant Chief Counsel. None of these individuals has exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

C. Objections to manner of hearing and resolution of any other issues.

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Officer as stipulations.
2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing and by **5:00 p.m. on September 21, 2011**: to the Legal Advisor to the Hearing Officer.:

Tim Regan
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 341-5172
TRegan@waterboards.ca.gov

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

3. Any issues outside the scope of those described in section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Officer, as set forth in section C.2, **by 5:00 p.m. on September 21, 2011** if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

IX. QUESTIONS ABOUT NOTICE

Questions about notice may be directed to the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Officer as described above.

Date: July 25, 2011