



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

April 30, 2014

Leon Farahnik
Chairman and Agent for Service of Process
CarbonLITE Industries, LLC
10250 Constellation Boulevard, Suite 2820
Los Angeles, 90067
(by Certified First-Class Mail)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Baird Reimer
Vice President of Operations
CarbonLITE Industries, LLC
875 Michigan Avenue
Riverside, CA 92507
(by First-Class Mail)

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2014-0022, CARBONLITE INDUSTRIES, LLC

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (Water Code) section 13323. The Complaint proposes that civil liability in the amount of **seventy-five thousand one hundred and fifty dollars (\$75,150)** be imposed pursuant to Water Code section 13385 on CarbonLITE Industries, LLC (hereinafter Discharger) for violations of the State's General Permit for Discharges of Storm Water Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (Permit).

In response to the Complaint, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Santa Ana Water Board by signing the enclosed waiver (checking off the box next to Option #1) and submitting it to this office by May 28, 2014, along with payment for the full amount;
- Waive its right to a 90-day hearing and agree to enter into settlement discussions with the Santa Ana Water Board by signing the enclosed waiver (checking off the box next to Option #2) and submitting it to this office by May 28, 2014;

- Waive its right to a 90-day hearing in order to extend the hearing deadlines by signing the enclosed waiver (checking off box next to Option #3) and submitting it to this office by May 28, 2014; or
- Contest the Complaint and/or enter into settlement discussions with the Santa Ana Water Board without signing the enclosed waiver.

If the Discharger would like to rebut the presumption in the Complaint regarding **an ability to pay the proposed liability**, it must submit detailed financial information to the Santa Ana Water Board by June 9, 2014. Information must include a balance sheet of outstanding debts and liabilities, as well as the information detailed on the attached Administrative Civil Liability Fact Sheet.

If the Santa Ana Water Board does not receive a signed waiver by May 28, 2014, then a hearing on this matter will be scheduled for the **July 25, 2014** regular meeting of the Santa Ana Water Board to be held at the **City Council Chambers of Loma Linda, located at 25541 Barton Road in Loma Linda, California**. If a hearing on this matter is held, the Santa Ana Water Board will consider whether to issue, reject, or modify an Administrative Civil Liability Order based on the enclosed Complaint, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability. Specific notice about this hearing and its procedures will be provided under separate cover.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, attention Mary Bartholomew, **no later than 5 p.m. on the dates indicated in the attached Hearing Procedure**. This includes material submitted by the Discharger to be considered at a hearing and material submitted by interested parties, including members of the public, who wish to comment on the Complaint. Written materials received after **5 p.m. on the dates indicated in the attached Hearing Procedure** will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.

Payment of this assessed civil liability amount **seventy-five thousand one hundred and fifty dollars (\$75,150)** does not absolve the Discharger from complying with the Permit, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the Permit in a timely manner.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Mary Bartholomew by phone at (951) 321-4586 or by email at Mary.Bartholomew@waterboards.ca.gov or Michelle Beckwith by phone at (951) 782-4433 or by email at Michelle.Beckwith@waterboards.ca.gov.

All legal questions should be directed to Naomi Kaplowitz, Office of Enforcement, by phone at (916) 341-5677 or by email at Naomi.Kaplowitz@waterboards.ca.gov.

Sincerely,



Hope A. Smythe
Division Chief

Enclosure: Administrative Civil Liability Complaint R8-2014-0022
Exhibit A – Specific Factors Considered – Civil Liability
Hearing Procedures
Waiver Form
ACL Fact Sheet

cc w/encl: Regional Board
Mr. Kurt Berchtold, Executive Officer, RWQCB, Riverside
Ms. Naomi Kaplowitz, Office of Enforcement, SWRCB, Sacramento
Mr. David Boyers, Office of Enforcement, SWRCB, Sacramento
Mr. David Rice, Office of Chief Counsel, SWRCB, Sacramento
Mr. Kevin Street, City of Riverside NPDES Coordinator
Mr. Jason Uhley, County of Riverside, NPDES Coordinator
Ms. Elizabeth Jimenez, CarbonLITE

**State of California
California Regional Water Quality Control Board
Santa Ana Region**

IN THE MATTER OF:

| | | |
|----------------------------|---|--------------------------------|
| CarbonLITE Industries, LLC |) | Complaint No. R8-2014-0022 |
| 875 Michigan Avenue |) | for |
| Riverside, CA 92507 |) | Administrative Civil Liability |
| Attn: Mr. Leon Farahnik |) | |
| _____ |) | |

This Administrative Civil Liability Complaint (Complaint) is issued to the CarbonLITE Industries, LLC (hereinafter CarbonLITE or Discharger) to assess administrative civil liability for discharges in violation of provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board) may impose civil liability. As shown in Exhibit A, incorporated herein by reference, the Complaint alleges (1) violations for discharging material other than storm water to waters of the United States and (2) violations for failing to implement a Storm Water Pollution Prevention Plan, as required pursuant to violations of Order No. 97-03-DWQ, NPDES No. CAS000001.

The Division Chief of the Regional Board hereby gives notice that:

1. CarbonLITE is alleged to have violated provisions of law for which Regional Board may impose administrative civil liability pursuant to Water Code section 13385. This Complaint proposes to assess seventy-five thousand one-hundred and fifty dollars (\$75,150) in administrative civil liability for the violations cited based on considerations described herein.
2. This Complaint is issued pursuant to Water Code section 13323.
3. A hearing concerning this Complaint will be held before the Regional Board within 90 days of the date of issuance of this Complaint, unless, pursuant to Water Code section 13323, CarbonLITE waives its right to a hearing. Waiver procedures are specified in the attached Waiver Form. The hearing on this matter is scheduled for the Regional Board's regular meeting on July 25, 2014 at the City Council Chambers of Loma Linda, located at 25541 Barton Road in Loma Linda, California. CarbonLITE, or its representative, will have the opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
4. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to

refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

FACTUAL BASIS FOR THE ALLEGATIONS

5. HPC Industries, Inc. started operation of CarbonLITE, a polyethylene terephthalate (PET) plastic recycling facility, which operates on 10 acres at 875 Michigan Avenue in the City of Riverside, California. The facility is currently regulated under the State's General Permit for Discharges of Storm Water Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (Permit). The facility's Waste Discharge Identification (WDID) Number is 8 33I023299 and was issued on August 22, 2011. The facility operators identified in their Notice of Intent that Standard Industrial Classification codes 5162 (Plastics Materials and Basic Forms and Shapes) and 5093 (Scrap and Waste Materials) are conducted at the facility.
6. CarbonLITE processes recycled bottles to produce food-grade plastic pellets. Plastic bottles are delivered by trailer to the facility and off-loaded into an approximately 220,000 square foot building, where the plastic bottles are washed and the labels removed using sodium hydroxide (also known as lye), sorted, ground into flakes, heated, and then extruded into finished-product pellets. While the majority of the recycling activities take place indoors, outside activities include loading and unloading docks; storage of wastes, process chemicals and products; operation of a chiller; and, operation of a RO (reverse osmosis) unit.
7. On March 5, 2012, an inspector from the City of Riverside Department of Public Works (City) conducted an environmental compliance inspection of the facility. The City inspector noted that six roll-off dumpsters were leaking a corrosive liquid (pH 12). The corrosive liquid flowed across CarbonLITE's facility and onto a neighboring facility, BDM Inc., to the south. The corrosive liquid also flowed from the waste bins to an on-site drop inlet, entered the storm drain system, and discharged to Springbrook Wash, which is adjacent to the northern boundary of the facility. Springbrook Wash is tributary to the Santa Ana River, which is located approximately 2.5 miles from the facility. During their investigation, the City inspector noted that for at least 1600 feet, the sandy bottom of Springbrook Wash had been stained a bluish color and that damp areas in the wash registered an abnormally high pH. Further, there were plastic wastes, plastic pellets, and bottle labels deposited in the streambed. A written warning issued by the city inspector required that the facility operators clean up and correct the violations by the next day, March 6, 2012.
8. On March 6, 2012, Regional Board staff conducted a routine compliance inspection of the facility, without knowledge of the March 5, 2012 inspection by City staff. Facility representatives did not mention the discharge or the City's

inspection to the Regional Board staff. Regional Board staff noted liquid waste leaking from the waste bins. An absorbent sock had been placed around an adjacent storm drain inlet so that it partially surrounded the inlet. However, the faulty implementation of this treatment control resulted in it being ineffective in both treating a high pH discharge and in preventing that discharge from entering the storm drain inlet and, subsequently, Springbrook Wash. Inspection of that storm drain revealed the presence of plastic pellets, debris, and sediment at the storm drain outlet of Springbrook Wash. In addition to the high pH discharge draining into the area, Regional Board staff noted a second storm drain inlet surrounded by uncovered containers filled with plastic waste, including small diameter plastic pieces, and 275-gallon totes filled with various process chemicals, including sodium hydroxide.

9. On March 7, 2012, City of Riverside Industrial Waste inspectors inspected the facility, reported that the area where the high pH discharge was previously observed was clean, and stated in their summary report that the Discharger needed to identify a permanent method of disposal for high pH waste water. The City informed CarbonLITE personnel that they would be required to perform a clean-up of the contaminated portions of the pavement, their internal storm drain system, and Springbrook Wash.
10. On March 15 -16, 2012, Regional Board staff and California Fish and Wildlife staff inspected Springbrook Wash and spoke with CarbonLITE representatives. It was determined that approximately 1600 linear feet of the wash had been stained blue by the discharge, and subsequent testing by the remediation company indicated pH ranging from 9 to 11 in the wash. CarbonLITE representatives stated that the discharge had originated from paper and plastic bottle labels that had been removed using a sodium hydroxide solution (a chemical reaction between label glue and the sodium hydroxide resulted in the blue color that stained Springbrook Wash). The waste labels were processed through a filter press that was supposed to remove the excess liquid before disposal in the metal waste bins located in the southwest portion of the property. As production increased during the period of August 2011 and March 2012, the screw presses were unable to press the sodium hydroxide solution as completely from the waste labels as anticipated and wet labels were transferred to outdoor waste bins. CarbonLITE representatives were unable to state specifically when the discharge of high pH runoff resulting from the leaking waste bins began.
11. Further, during a discussion on March 16, 2012 between the facility operator, Regional Board staff, and a California Fish and Wildlife warden, CarbonLITE representatives stated that, on at least one occasion on March 1, 2012, in preparation for the March 2, 2012 grand opening ceremony, CarbonLITE hired Waxies Environmental Services to wash down the exterior paved surfaces, in part to make the area around the waste bins appear cleaner. CarbonLITE staff stated that they had not implemented their visual monitoring plan as described in their Storm Water Pollution Prevention Plan, and that they were not aware of the

high pH wastewater draining from the waste bins until they were notified by City of Riverside inspectors on March 5, 2012.

12. A remediation company report, dated May 27, 2012, stated that the streambed sediment in Springbrook Wash had been remediated to a pH of less than 9.0 standard units and plastic bottle labels and plastic material was removed from the streambed.

**STATEMENT OF PROHIBITIONS, PROVISIONS, AND REQUIREMENTS
APPLICABLE TO THE DISCHARGER:**

13. Federal regulations require operators of specific categories of facilities where discharges of storm water are associated with an industrial activity to obtain a National Pollutant Discharge Elimination System (NPDES) permit and to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or to prevent pollutants associated with an industrial activity in storm water discharges and to authorize non-storm water discharges. The regulations require such operators either to apply for an individual NPDES permit or to seek coverage under an adopted storm water general permit.
14. Pursuant to federal regulations, the State Water Resources Control Board (State Water Board) adopted Water Quality Order No. 97-03-DWQ, NPDES Permit No. CAS000001, Waste Discharge Requirements for Discharges for Storm Water Associated with Industrial Activities Excluding Construction Activities (Permit), to regulate storm water discharges and authorized non-storm water discharges associated with industrial activities set forth in the federal regulations.
15. The Permit generally prohibits the discharge of non-storm water to the storm drain system.
 - A. Permit, General Order, Discharge Prohibition, Provision A.1: "Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit."
 - B. Permit, General Order, Special Conditions, Provision D.1: "The following non-storm water discharges are authorized by this General Permit provided that they satisfy the conditions specified in Paragraph b. below: fire hydrant flushing; potable water sources, including potable water related to the operation, maintenance, or testing of potable water systems; drinking fountain water; atmospheric condensates including refrigeration, air conditioning, and compressor condensate; irrigation drainage; landscape watering; springs; ground water; foundation or

footing drainage; and sea water infiltration where the sea waters are discharged back into the sea water source.”

16. The Permit requires that each covered facility develop and implement a storm water pollution prevention plan (SWPPP) in which the facility identifies and evaluates sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-storm water discharges, and identifies and implements site-specific best management practices (BMPs) to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges.
- A. Permit, General Order, Provisions, 2: “Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing SWPPP and shall implement necessary revisions to their SWPPP in accordance with Section A of this General Permit in a timely manner, but in no case later than August 1, 1997. Facility operators beginning industrial activities after adoption of this General Permit must develop and implement an SWPPP in accordance with Section A of this General Permit when the industrial activities begin.”
- B. Permit, Section A, Storm Water Pollution Prevention Plan Requirements, 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. . . . Facility operator beginning industrial activities after October 1, 1992 shall develop and implement the SWPPP when industrial activities begin.”

CarbonLITE prepared a Storm Water Pollution Prevention Plan (SWPPP) that identifies areas of potential pollutant exposure and identifies BMPs. CarbonLITEs SWPPP at the time of the sodium hydroxide discharges, dated “December 2011,” identifies potential pollutant sources, provides for the formation of a management committee, employee training, waste handling and storage techniques, visual inspections, and response procedures, and methodically identifies a plan to ensure unauthorized non-storm water does not discharge offsite, as follows:

- A. Identification of SWPPP, Section 5 Potential Pollutant Sources and Controls
- i. Recyclable Waste By-Product – Bottles Hot Pre-Washing Station: “The label separator unit will remove the identifying labels and process them as waste. This type of waste – now in a sludge-type form – will be gathered and hauled off the site to be recycled.”

- ii. Waste Accumulation Areas: “Non-hazardous waste results from the daily operational functions of the facility that deal with washing and decontaminating the plastic material prior to extrusion. Both [hazardous and non-hazardous] waste types are stored properly in designated areas and containers and kept separate to minimize contact and/or contamination.”
- iii. Waste Accumulation Areas – Non-Hazardous Waste: “Non-hazardous waste produced by the site is stored indoors in bins and it includes discarded material that does not result from an industrial or commercial operation and does not pose a substantial or potential threat to human health. The waste is kept in closed receptacles and away from stormwater discharge points to prevent off-site transport of trash.”
- iv. Waste Accumulation Areas – Non-Hazardous Waste: “Non-structural BMPs implemented include the proper disposing and handling of both [hazardous and non-hazardous] waste types; practicing spill mitigation procedures in the event of a spill; protecting from rupture or leakage; storing in a covered area and ensuring that the containers are structurally sound to suitable store waste material.”

B. SWPPP, Section 7, Best Management Practices

- i. Non-Structural – Employee Training: “The site has implemented a training program for employees and they are to be informed by the Committee of the goals of the Plan and the responsibility of each employee... The topics discussed during the training sessions are as follows: 1. Goals of the Plan; 2. Spill response procedures; 3. Good housekeeping practices; 4. Best Management Practices (BMPs); 5. Employee responsibilities.”
- ii. Non-Structural – Spill Response and Spill Control Equipment: “Appropriate containment and response equipment is kept on-site and in close proximity to potential spill areas... Absorbent materials are also used to control spills and kept nearby potential spill sources.”
- iii. Non-Structural – Good Housekeeping: “Daily site inspections are conducted to make certain that the facility is maintained in a clean and orderly condition. The Maintenance Department along with the VP of Operations implements the site inspections.

Waste materials are collected, stored and disposed of properly.”

- iv. Non-Structural – Maintenance Schedules: “The Committee, VP of Operations and Maintenance Manager are also responsible for creating maintenance schedules to be followed to prevent any potential introduction of pollutants to stormwater discharges during either wet or dry

periods. The maintenance schedules include, at a minimum, provisions for the following activities: 1. Removal of all debris and potential pollutants from all loading/handling, waste accumulation, fuel dispensing and external facility areas... 5. Removal of debris and potential pollutants from stormwater drainage channels, conveyance systems and outfalls... 9. Practicing proper waste handling and disposal techniques... 18. Corrective actions recommended by the Committee as a result of inspections..."

- v. Non-Structural – Inspections: "The Committee is also responsible for inspecting equipment and plant areas for evidence of potential sources of stormwater pollutants and non-stormwater discharges..."

C. SWPPP, Section 8, Storm Water Pollution Prevention Committee

- i. "CarbonLITE Industries, LLC has established a Committee in order to ensure that all policies, measures, practices and operational improvements available for the prevention of stormwater pollution as established in the Plan are being met. The Committee consists of Mr. Vijendra Siddhi (Plant Engineer), Gilliam Els (VP of Operations) and Mr. Mark Akers (Maintenance Manager).

The Committee reviews results of inspections..., investigations of accidental spills or releases of potential stormwater pollutants, evaluates stormwater pollution prevention policies and verifies abatement of potential sources of stormwater pollutants, if required."

D. Appendix D -- Monitoring Program and Reporting Requirements

- i. Non-storm Water Discharge Visual Observations: "The Committee must visually observe all drainage areas within their facilities for the presence of unauthorized non-storm water discharges."

WATER CODE PROVISIONS UPON WHICH LIABILITY IS BEING ASSESSED

- 17. Water Code section 13385, subdivision (a), paragraph (1) provides that a discharger is subject to civil liability for failing to comply with the discharge reporting requirements of Water Code section 13376.
- 18. Water Code section 13385, subdivision (a), paragraph (2) provides that a discharger is subject to civil liability for violating a waste discharge requirement imposed pursuant to Water Code Chapter 5.5 of Article 1 (commencing with section 13370).
- 19. Pursuant to Water Code section 13385, subdivision (c), violations of Water Code section 13385, subdivision (a), are subject to administrative civil liability in an

amount not to exceed the sum of \$10,000 for each day in which the violation occurs, and, where there is a discharge, \$10 for each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons.

ALLEGED VIOLATIONS

20. Violation No. 1: As a result of failing to implement the SWPPP, the Discharger discharged wastes, over a period of at least 1 day, into waters of the United States. These high pH wastes threaten to cause pollution, contamination, nuisance, and threaten to adversely impact the beneficial uses of the receiving waters.
21. Violation No. 2: Between the period January 1, 2012 and March 6, 2012, CarbonLITE engaged in industrial activities without implementing its SWPPP, in violation of its Permit. Pursuant to the Permit, CarbonLITE was required to implement the SWPPP when industrial activities began.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

22. On November 17, 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision (e). The entire Enforcement Policy can be found at:

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

23. The specific required factors in Water Code section 13385, subdivision (e), are the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, and the degree of toxicity of the discharge. With respect to the violator, the required factors are the ability to pay, the effect on the violator's ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation and other matters that justice may require.
24. The specific factors required by the Enforcement Policy are: the potential harm to beneficial uses; the physical, chemical, biological or thermal characteristics of the discharge; the discharge's susceptibility to cleanup; the violation's deviation from requirements; the discharger's culpability; cleanup and the discharger's cooperation; the history of violations; the discharger's ability to pay; other factors as justice may require; and economic benefit from the avoidance or delay of

implementing requirements. These factors address the statute-required factors and also are used to calculate penalties consistent with both the Water Code and the Enforcement Policy.

25. The required factors have been considered for Violations 1 and 2 using the methodology in the Enforcement Policy, as explained in detail in Exhibit A.

PROPOSED ADMINISTRATIVE LIABILITY

26. Based on consideration of the above facts and after applying the penalty methodology, the Division Chief proposes that civil liability be imposed administratively on the Discharger in the amount of **seventy-five thousand one-hundred and fifty dollars (\$75,150)** pursuant to Water Code section 13385, subdivision (c). No penalty was assessed based on a per gallon basis or for the volume of all the potential discharges from the site.
27. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
28. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
29. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321, subdivision (a), paragraph (2).

WAIVER OF HEARING

The Discharger may waive its right to a hearing. If the Discharger chooses to do so, please sign the attached Waiver Form and return it, together with a check for **\$75,150**. **Indicate "R8-2014-0022" on the check and make it payable to the State Water Pollution Cleanup and Abatement Account.** Send the check to the following address:

State Water Resources Control Board
Division of Administrative Services
Accounting Branch
P.O. Box 1888
Sacramento, CA 95814

The waiver and a copy of the check shall also be mailed to the Regional Board at the following address:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348
Attention: Mary Bartholomew

If the Discharger waives its right to a hearing and pays the assessed amount, the Regional Board may not hold a hearing regarding this Complaint.

If you have any questions, please contact Mary Bartholomew at (951) 321-4586. For legal questions, contact Naomi Kaplowitz, Office of Enforcement, at (916) 341-5677.

4/30/14
Date

Hope A. Smythe
Hope A. Smythe
Division Chief
Regional Board Prosecution Team

Exhibit A
Administrative Civil Liability Complaint No. R8-2014-0022
Specific Factors Considered
CarbonLITE Industries, LLC (Discharger)

Each factor of the Enforcement Policy methodology and its corresponding category, adjustment, or amount for the non-discharge and discharge violations alleged in Administrative Civil Liability (ACL) Complaint No. R8-2014-0022 (Complaint) is presented below:

Violation No. 1: Discharge – In accordance with the State's General Permit for Discharges of Storm Water Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (Permit), any materials other than storm water that discharge either directly or indirectly to waters of the United States are prohibited. Pursuant to Water Code section 13385, subdivision (c), a violation of that prohibition is subject to administrative civil liability in an amount of up to \$10,000 for each day in which the violation occurs.

STEP 1 – Potential for Harm for Discharge Violations

The potential for harm to the environment associated with the discharge of high pH wastes is 5. This is determined by the sum of the factors for:

a) Potential for Harm to Beneficial Uses: 3 - Moderate

The Discharger, in preparation for a March 2, 2012 grand opening ceremony, hired an environmental services company to wash down exterior paved surfaces around its outdoor waste receptacles. Those receptacles, which were leaking blue waste, were holding large volumes of paper and plastic bottle labels that had been removed using a sodium hydroxide solution. A chemical reaction between the label glue and the sodium hydroxide solution resulted in the blue color of the waste. It was determined that approximately 1600 linear feet of Springbrook Wash, a tributary to the Santa Ana River, was stained blue by the discharge. During the Regional Board staff inspection on March 6, 2012, fluids were observed leaking from waste bins and entering the storm drain. Subsequent testing by a remediation company indicated pH ranging from 9 to 11 in the wash. Additionally, at the March 6, 2012 inspection, plastic pellets were found in the storm drain inlet to Springbrook Wash. The discharge continued for at least 3 days.

Here, a factor of 3 is assigned because the high pH of the discharge poses a moderate threat to beneficial uses. Water quality objectives for inland surface waters include maintaining a pH between 6.5 standard pH units and 8.5 standard pH units. The discharge from CarbonLITE exceeded 9.0 standard pH units.

Beneficial uses for the Santa Ana River, Reach 4, into which Springbrook discharges, include: Groundwater Recharge (GWR): Waters are used for natural or artificial recharge of groundwater; Water Contact Recreation (REC1): Waters are used for recreational activities involving body contact with water where

ingestion of water is reasonably possible; Non-contact Water Recreation (REC2): Waters are used for recreational activities involving proximity to water, but not normally involving body contact with water where ingestion of water would be reasonably possible; Warm Freshwater Habitat (WARM): Waters support warm-water ecosystems that may include, but are not limited to, preservation and enhancement of aquatic habitats, vegetation, fish and wildlife, including invertebrates; and Wildlife Habitat (WILD): Waters support wildlife habitats that may include, but are not limited to, the preservation and enhancement of vegetation and prey species used by waterfowl and other wildlife.

Possible adverse effects on water quality and beneficial uses of discharging sodium hydroxide include caustic effects on human and wildlife tissue, increases in the level of total dissolved solids, and inhibition of the bioavailability of soil nutrients for in-stream vegetation.

b) Physical, Chemical, Biological or Thermal Characteristics: **3 – Above Moderate Risk**

The discharge consisted of a solution with a high pH and other pollutants that create alkali conditions and have the potential to adversely impact aquatic organisms and public health.

The Office of Environmental Health Hazard Assessment (OEHHA) is the State of California's lead state agency for the assessment of health risks posed by environmental contaminants. OEHHA describes sodium hydroxide as an alkali metal that absorbs water and water vapor from the air, generating heat. It reacts with all mineral and organic acids to form salts, is corrosive to most metals, and reacts with metals to generate flammable hydrogen gas. Sodium hydroxide is a strong irritant on all body tissues by all routes of exposure (inhalation, ingestion, skin contact, and eye contact) and can cause burns to and damage any tissue it contacts.

c) Susceptibility to Cleanup or Abatement: **0**

A score of 0 is assigned because more than 50% of the discharge was susceptible to cleanup. The discharge occurred during low-flow periods and a complete cleanup was possible. The Discharger cleaned-up and mitigated effects of the spill by March 27, 2012.

STEP 2 – Assessments for Discharge Violations

The discharge is a moderate sized waste discharge of moderate duration, based on the staining and high pH in Springbrook Wash. On the basis of no known discharge volume, liability is proposed on a daily assessment, as shown below:

d) Deviation from the Requirement: **Major**

The Deviation reflects the extent to which the prohibition was violated. The Permit expressly prohibits non-storm water discharges. The discharge of a corrosive solution was, therefore, a major deviation from the requirements of the Permit.

e) Per Day Factor: **0.22** (Table 2, pg. 15 of the Enforcement Policy)

f) Days of Violation: **1**

It is unknown with certainty how many days the Discharger discharged high pH wastewater to Springbrook Wash or the number of gallons discharged. CarbonLITE staff explained to Regional Board staff that the discharge had originated prior to the March 2, 2012 grand opening, for which the pavement around the waste dumpsters was washed down. Leaking waste dumpsters were observed during the March 5, 2012 City of Riverside inspection and the March 6, 2012 Regional Board staff inspection. During the City of Riverside's March 5, 2012 inspection, it was noted that the blue staining in Springbrook Wash extended at least a quarter of a mile downstream of the facility's discharge point, evidencing prior discharges. At least several days of discharge from the waste bins would have been necessary to raise the levels of pH in Springbrook wash to 9-11. At the very least, the discharge occurred over a day of washing activity.

g) Initial Liability Amount: **\$2,200** (Number of days (1) X Maximum penalty (\$10,000) X Per Day Factor (0.22))

The Per Day Factor is multiplied by the maximum per day amount allowed under the Water Code to yield the Initial Liability Amount for this violation.

STEP 3 - Per Day Factor for Non-Discharge Violations

h) This step is not applicable because the violation is a discharge violation.

STEP 4 – Adjustment Factors

i) Culpability: **1.5**

The Discharger is responsible for the violations alleged in the Complaint. The Discharger orchestrated the washing down of the area surrounding the outdoor receptacles in order to prepare for the site's grand opening ceremony. This activity was undertaken knowingly. Additionally, the Discharger failed to immediately notify the Regional Board of the discharge. Based on these facts, the Discharger failed to act with the care that is expected of a similarly situated entity. A factor of 1.5, which increases the penalty, is appropriate.

j) Cleanup and Cooperation: **1**

The Discharger was given the neutral score of 1, which neither increases nor decreases the penalty. The Discharger was cooperative in taking steps to come back into compliance. The Discharger cleaned-up the contaminated area thoroughly.

k) History of Violations: **1**

The Discharger has no history of discharges in violation of its Permit. Therefore, a neutral score of 1 was selected.

STEP 5 – Determination of Total Base Liability Amount

l) Total Base Liability Amount: **\$3,300**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2. Applying the adjustment factors yields \$3,300 (Initial Liability (\$2,200) X Adjustments (1.5)(1)(1)).

Steps 6 through 10 Are Applied to the Combined Total Base Liability Amount for All Violations and Will be Discussed After the Total Base Liability Amounts Have Been Determined for the Remaining Violations

Violation No. 2: SWPPP Implementation – In accordance with the Permit, a covered facility must develop and implement a Storm Water Pollution Prevention Plan (SWPPP). Pursuant to Water Code section 13385, subdivision (c), a violation of that requirement is subject to administrative civil liability in an amount of up to \$10,000 for each day in which the violation occurs.

STEPS 1 and 2

a) These steps are not applicable because this is not a discharge violation.

STEP 3 - Per Day Factor for Non-Discharge Violations

b) Potential for Harm: **Moderate**

The characteristics of the violation present either a minor, moderate, or major potential for harm or threat to beneficial uses. The Enforcement Policy defines violations of moderate harm as those that indicate a substantial potential for harm to beneficial uses. The Stormwater Pollution Prevention Plan's (SWPPP) main objectives are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to identify and implement site-specific best management practices (BMPs) to reduce

or prevent pollutants associated with industrial activities in storm water discharges. Because failing to have adequate BMPs can cause significant harm to beneficial uses, as exemplified by the discharge that occurred in this case, the violation presents a substantial threat. Therefore, the potential for harm to beneficial uses is determined to be moderate.

c) Deviation from Requirement: **Major**

The violation represents either a minor, moderate, or major deviation from the applicable requirements. The requirement in the Industrial Storm Water General Permit Order 97-03-DWQ (Industrial General Permit) to develop and implement a SWPPP is instrumental to the industrial stormwater program. Here, although a SWPPP was developed, the key elements were never implemented, rendering the requirement to have a SWPPP in place meaningless. The deviation from applicable requirements, thus, is determined to be major. Therefore, a Per Day Factor of 0.55 is assigned.

d) Per Day Factor: **0.55** (Table 3, pg. 16 of the Enforcement Policy)

e) Days of Violation: **66**

The Discharger's SWPPP was dated December 2011. On the March 6, 2012 site inspection, Regional Board staff confirmed that the SWPPP had not yet been implemented. Additionally, inadequate SWPPP implementation was observed during the March 5, 2012 City of Riverside staff inspection. The SWPPP was not implemented for a period of, at least, 66 days. Therefore the maximum penalty for this violation is \$660,000.

However, the alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable. The failure to implement a SWPPP does not cause a daily detrimental impact to the environment or the regulatory program.

Applying the per-day factor to the adjusted number of days of violation rounded to the nearest full day equals 8 days of violation.

f) Initial Liability Amount: The Per Day Factor is multiplied by the maximum per day amount allowed under the Water Code to yield the Initial Liability Amount for this violation. A calculation of initial liability totals \$44,000 (0.55 per day factor X 8 adjusted days of violation X \$10,000 per day penalty).

STEP 4 – Adjustment Factors

g) Culpability: **1.3**

The Discharger was required, and had the resources available, to implement pollution prevention measures that would have precluded the discharge. The Discharger, however, failed to implement key components of its SWPPP, including, but not limited to, storing waste in properly designated areas away from stormwater discharge points, or ensuring that containers are structurally sound. The failure to implement SWPPP components that the Discharger had developed falls below the due standard of care. Thus, a factor of 1.3, which increases the penalty amount, is assigned.

h) Cleanup and Cooperation: 1

The Discharger was given the neutral score of 1, which neither increases nor decreases the fine. The Discharger was cooperative in taking steps to come back into compliance. The Discharger cleaned-up the contaminated area thoroughly.

i) History of Violations: 1

The Discharger has no history violations related to SWPPP implementation. Therefore, a neutral score of 1 was selected.

STEP 5 – Determination of Total Base Liability Amount

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

j) Total Base Liability Amount: \$57,200 (Initial Liability (\$44,000) X Adjustments (1.3)(1)(1))

Steps 6 through 10 Are Applied to the Combined Total Base Liability Amount for All Violations (\$60,500)

STEP 6 – Ability to Pay and Ability to Continue in Business

a) Adjusted Combined Total Base Liability Amount: \$60,500

The Discharger is one of the largest producers of food-grade post-consumer Recycled PET in the world. The Discharger announced in November of 2013 that it plans to open a second \$40 million processing plant in Texas. The Discharger employs 130 people and plans on hiring another 100 for its Texas operations. Prosecution staff believes the Discharger has the ability to pay the proposed liability and continue to operate.

Based on the reasons discussed above, an ability to pay factor of 1 has been applied to the Combined Total Base Liability Amount.

STEP 7 – Other Factors as Justice May Require

- b) Adjusted Combined Total Base Liability Amount: \$75,150 (\$10,000 (Violation No. 1) + \$57,200 (Violation No. 2) + \$7,950 (staff costs))

The Regional Board has incurred \$7,950 in staff costs (53 hours at \$150 per hour) associated with the investigation and enforcement of the violations alleged herein. This includes hours spent inspecting the Discharger's facility and drafting the Complaint. In accordance with the Enforcement Policy, this amount is added to the Total Liability Amount.

The Prosecution Team believes that the amount determined using the above factors is inappropriate because it is disproportionate to assessments for similar conduct made in the recent past using the same Enforcement Policy. Blue staining in Springbrook Wash extended at least a quarter of a mile downstream of the facility's discharge point, indicating that many gallons were discharged. Additionally, the high levels of pH in Springbrook Wash are indicative of a multiple day discharge. Based on these considerations, the Prosecution Team believes the maximum penalty for Violation No. 1 is warranted.

STEP 8 – Economic Benefit

- c) Estimated Economic Benefit: \$1,985

The Economic Benefit amount is any savings or monetary gain derived from the act or omission that constitutes the violation. The economic benefit associated with the release of wastes to the Springbrook Wash is the avoided costs of daily inspections, employee training, and maintenance, which would have prevented the discharge from occurring.

It is estimated that the Discharger gained a total of \$1,985 in costs savings during the period of violation. This amount is based on the following estimations: (1) \$19 to perform daily inspections from the period of January 1, 2012 through March 5, 2012; (2) \$1,000 to conduct employee training regarding SWPPP implementation, and; (3) \$768 in maintenance costs. Water Board Senior Economist staff used the US EPA's BEN model to determine the economic benefit, as required by the Enforcement Policy.

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10 percent higher than any economic benefit realized by the discharger for failing to comply with the WDR. The Total Base Liability Amount (\$71,150) is more than ten percent greater than the estimated economic benefit (\$2,183.50).

STEP 9 – Maximum and Minimum Liability Amounts

d) Minimum Liability Amount: **\$2,183.50**

The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Regional Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the violations cited in this Complaint plus ten percent \$2,183.50 (\$1,985 + 10%) is less than the proposed liability amount.

e) Maximum Liability Amount: **\$670,000**

The maximum administrative liability amount is the maximum amount allowed by Water Code section 13385: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs. The proposed liability falls between these maximum and minimum liability amounts.

STEP 10 – Final Proposed Liability Amount

- f) The final liability amount proposed for the two violations is seventy-five thousand one hundred and fifty dollars (**\$75,150**).

California Regional Water Quality Control Board
Santa Ana Region

HEARING PROCEDURE
FOR TENTATIVE ADMINISTRATIVE CIVIL LIABILITY ORDER
PROPOSED TO BE ISSUED TO
CARBONLITE INDUSTRIES, LLC
RIVERSIDE COUNTY

SCHEDULED FOR JULY 25, 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

On April 30, 2014, the Division Chief, acting as head of the Santa Ana Regional Water Quality Control Board (Regional Board) Prosecution Team, issued Administrative Civil Liability (ACL) Complaint R8-2014-0022 pursuant to California Water Code (Water Code) section 13323 to CarbonLITE Industries, LLC (CarbonLITE or Discharger). The Complaint alleges failure to implement a Stormwater Pollution Prevention Plan and discharges to the Santa Ana River that violated the State's General Permit for Discharges of Storm Water Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (Permit) and Water Code section 13385.

The Complaint proposes that the Regional Board impose administrative civil liability in the amount of **seventy five thousand one hundred and fifty dollars (\$75,150)** pursuant to Water Code section 13385. Unless the Discharger pays the proposed liability, a hearing will be held before the Regional Board during its **July 25, 2014** meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the proposed ACL Order. At the hearing, the Regional Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability.

The public hearing will be held on **July 25, 2014**, and will commence no earlier than 9:00 a.m. or as soon thereafter as practical, or as announced in the Regional Board meeting agenda. The meeting will be held at

City Council Chambers of Loma Linda, 25541 Barton Road, Loma Linda, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's web page at:

http://www.waterboards.ca.gov/santaana/board_info/meetings

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure, which has been approved by the Board Chair for the adjudication of such matters. The procedures governing adjudicatory hearings before the Regional Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at:

<http://www.waterboards.ca.gov>

Copies will be provided upon request. In accordance with Section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648(b) and herein, Chapter 5 of the Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

The Discharger shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

Separation of Prosecutorial and Advisory 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 Board (the "Prosecution Team") have been separated from those who will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Advisory Team are: Kurt Berchtold, Executive Officer and David Rice, Staff Counsel. Members of the Prosecution Team are: Hope Smythe, Division Chief; Mary Bartholomew, Environmental Scientist; Michelle Beckwith, Senior Environmental Scientist, and Naomi Kaplowitz, Staff Counsel.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Other members of the Prosecution Team act or have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

Hearing Participants

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons." Designated Parties 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). At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Regional Board, staff, or others, at the discretion of the Board Chair.

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

1. Regional Board Prosecution Team
2. CarbonLITE Industries, LLC

Requesting Designated Party Status

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

requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

Primary Contacts

Advisory Team:

David Rice, Staff Counsel
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5182
David.Rice@waterboards.ca.gov

Prosecution Team:

Michelle Beckwith, Senior Environmental Scientist
Regional Water Quality Control Board – Santa Ana Region
3737 Main Street, Suite 500, Riverside, CA 92501
Phone: (951) 782-4433
Michelle.Beckwith@waterboards.ca.gov

Discharger:

CarbonLITE Industries, LLC
875 Michigan Avenue
Riverside, CA 92507
Attn: Ms. Elizabeth Jimenez
elizabeth@carbonliterecycling.com

Ex Parte Communications

Designated Parties and Interested Persons are forbidden from engaging in ex parte communications regarding this matter. An ex parte communication is a written or verbal communication related to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and a Board Member or a member of the Board's Advisory Team (see Gov. Code, § 11430.10 et seq.). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Communications regarding non-controversial procedural matters are also not considered ex parte communications and are not restricted.

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 30 minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide a closing statement. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary.

Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

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

Submission of Evidence and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information in advance of the hearing:

1. All documentary evidence and exhibits to be offered at the hearing.
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. Alternatively, the testimony of any witness may be presented by declaration, so long as that witness will be available for cross-examination at the hearing.
4. The qualifications of each expert witness, if any.

Prosecution Team: The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the ACL Complaint, Staff Report, or other material submitted by the Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Board staff.

Designated Parties (including the Discharger): All Designated Parties shall submit comments regarding the ACL Complaint along with any additional supporting evidence not cited by the Regional Board's Prosecution Team no later than the deadline listed under "Important Deadlines" below.

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

Copies: For each evidentiary deadline, each Designated Party shall send one electronic copy of the above materials to each of the other Designated Parties at the address or addresses provided above by 5:00 p.m. on the deadline described above.

Interested Persons: Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under "Important Deadlines" to be included in the Board's agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

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

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

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

Questions

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

IMPORTANT DEADLINES

All required submissions must be received by 5:00 p.m. on the respective due date.

| | |
|----------------|---|
| April 30, 2014 | <ul style="list-style-type: none"> ▪ Prosecution Team issues Complaint and Hearing Procedure on Discharger and other parties. |
| May 28, 2014 | <ul style="list-style-type: none"> ▪ Discharger's deadline to submit 90-Day Hearing Waiver Form and payment ▪ Objections due on Hearing Procedure. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p> |
| June 9, 2014* | <ul style="list-style-type: none"> ▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements," above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p> |
| June 13, 2014 | <ul style="list-style-type: none"> ▪ Deadline to request "Designated Party" status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p> |
| June 18, 2014* | <ul style="list-style-type: none"> ▪ Deadline to submit opposition to requests for Designated Party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p> |
| June 25, 2014 | <ul style="list-style-type: none"> ▪ Advisory Team issues decision on Hearing Procedure objections. ▪ Advisory Team issues decision on requests for designated party status. |
| June 30, 2014* | <ul style="list-style-type: none"> ▪ Remaining Designated Parties' (including the Discharger's) deadline to submit all information required under "Submission of Evidence and Policy Statements" above. This includes all written comments regarding the ACL Order, and any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. ▪ Interested Persons' comments are due. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p> |
| July 7, 2014* | <ul style="list-style-type: none"> ▪ Prosecution Team's deadline to submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. ▪ Deadline to submit requests for additional time. ▪ If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of <i>this</i> deadline. |

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|-----------------------------|---|
| | <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p> |
| July 11, 2014* [†] | <ul style="list-style-type: none"> ▪ Prosecution Team submits Hearing binder on the parties and Board. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p> |
| July 25, 2014* | Hearing |

* Dischargers have the right to a hearing before the Board within 90 days of receiving the Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, the Discharger is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing civil liability. However, if the Board accepts the waiver, all deadlines marked with an "*" will be revised if a settlement cannot be reached.

[†] This deadline is set based on the date that the Board compiles the Board Members' agenda packages. Any material received after this deadline will not be included in the Board Members' agenda packages.

Santa Ana Regional Water Quality Control Board

**WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR
DISCRETIONARY LIABILITY**

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

I am duly authorized to represent CarbonLITE Industries, LLC (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2014-0022 (hereinafter the "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(s) who have been issued a complaint may waive the right to a hearing."

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

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **seventy-five thousand one hundred and fifty dollars (\$75,150)** by submitting a check made payable to the "*State Water Pollution Cleanup and Abatement Account*," that references "ACL Complaint No. R8-2014-0022." Payment must be received by the Regional Water Board by **May 28, 2014** or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Division Chief may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board (or the Regional Board's delegee), and that the Regional 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 Regional 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 Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1." In these discussions, the Discharger can raise settlement options, including supplemental environmental projects and enhanced compliance projects that meet the State Water Resources Control Board's requirements for such projects, see http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf and http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/rs2009_0013_sep_finalpolicy.pdf.

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

(Print Name and Title)

(Signature)

(Date)

Administrative Civil Liability

Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code Section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer. The complaint describes the violations that are alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver 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 Regional Water Board Prosecution Team and the person named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "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 non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which 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 board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

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; (5) hearing. Each of these options is described below.

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

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. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at: http://www.waterboards.ca.gov/plans_policies/. Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

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 90 days of the issuance of the Complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. 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 non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Regional 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 Regional Water Board

Except for Mandatory Minimum Penalties under Water Code Section 13385 (i) and (h), the Regional 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 (California Water Code Section 13327, 13385(e) and 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

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

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits

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

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - IRS Form 1120 for C Corporations
 - IRS Form 1120 S for S Corporations
 - 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;
3. The following information can be substituted if income tax returns cannot be made available:
 - Audited Financial Statements for last three years;
 - A list of major accounts receivable with names and amounts;
 - A list of major accounts payable with names and amounts;
 - A list of equipment acquisition cost and year purchased;
 - Ownership in other companies and percent of ownership for the last three years;
 - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
 - City/Town/Village;
 - County;
 - Municipality with enterprise fund;
 - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - Population;
 - Number of persons age 18 and above;
 - Number of persons age 65 and above;
 - Number of Individual below 125% of poverty level;
 - Median home value;
 - Median household income.
3. Current or most recent estimates of:
 - Population;
 - Median home value;
 - Median household income;
 - Market value of taxable property;

- 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 its 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 Regional Water Board issues an order requiring payment, the 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:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code Section 13328, if necessary, in order to collect payment of the administrative civil liability amount.