



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Ms. Lori Myott
Manager
Lansing Board of Water & Light – Erickson Power Station
3725 South Canal Road
Lansing, Michigan 48917
lori.myott@lbwl.com

Re: Notice of Violation and Opportunity to Confer
Focused Evaluation Inspection Report and Description of Violations
Lansing Board of Water & Light – Erickson Power Station, Lansing, Michigan
Facility ID MID000721704

Dear Ms. Myott:

On April 5, 2022, the U.S. Environmental Protection Agency conducted a Resource Conservation and Recovery Act (RCRA) Focused Compliance Inspection (FCI) and on August 5, 2022, completed its Non-financial Record Review (NRR), of the Lansing Board of Water & Light (LBWL) – Erickson Power Station (“Erickson” or “you/your”) facility located in Lansing, Michigan. EPA also issued a Request for Information (RFI) to Erickson on April 25, 2022. The purpose of the inspection and NRR was to review information available on the facility’s coal combustion residuals (CCR) website and the purpose of the RFI was to evaluate Erickson’s compliance with certain provisions of RCRA and its implementing regulations related to the management and storage of CCR regulated units on-site.

Information currently available to EPA suggests that Erickson may be in violation of RCRA. By this letter, EPA is extending to you an opportunity to advise the Agency, in person or in writing, of any further information EPA should consider with respect to the violations discussed in Enclosure A to this letter.

During the inspection and NRR, EPA observed several violations, described in Enclosure A. The description of the violations is not a final determination regarding Erickson's compliance with RCRA. EPA requests that you voluntarily submit a response in writing to us no later than 30 calendar days after receipt of this letter documenting the actions, if any, which you have taken since replying to the RFI to address the violations described below or demonstrating why the identified areas are not violations. After your receipt of this letter and, if applicable, review of your response, EPA will notify you of any further action.

Actions Requested

To the extent you have information related to the matters described herein and if you would like EPA to consider that information, then no later than 30 calendar days from receipt of this letter, please provide any information documenting the actions, if any, which you have taken to address the identified violations, as well as any additional information requested.

Please send the information requested by this letter by electronic mail to:

r5lecab@epa.gov

and

gangwisch.bryan@epa.gov

The subject line of all email correspondence must include MID000721704. All electronically submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied. If you are unable to send a response to these email addresses due to email size restrictions or other problems, contact Bryan Gangwisch to make additional arrangements for transmission of the response.

This letter is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks information from specific individuals or entities as part of an administrative investigation. You may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B for any part of the information you submit to EPA in response to this letter. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth at 40 C.F.R. Part 2, Subpart B. If you do not assert a business confidentiality claim when you submit the information, EPA may make this information available to the public without further notice.

The EPA contact in this matter is Bryan Gangwisch. You may reach Bryan at (312) 886-0989 if you have questions. The EPA attorney contact in this matter is Tom Martin. You may reach Tom at (312) 886-4273 if you have any legal questions. Thank you for your prompt attention to these violations and your efforts to protect human health and the environment.

Sincerely,

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

Enclosure

cc: Alexandra Clark, EGLE, clarka37@michigan.gov
Phil Roycraft, EGLE, roycraftp@michigan.gov
Elizabeth Browne, EGLE, brownee@michigan.gov

ENCLOSURE A
NOTICE OF VIOLATION
Lansing Board of Water and Light
Forebay, Retention Basin, and Clear Water Ponds at Erickson Station

This **Notice of Violation** (NOV) presents violations at the Lansing Board of Water and Light (LBWL) facility's Forebay, Retention Basin, and Clear Water Ponds regulated under EPA's coal combustion residuals (CCR) regulations found at 40 C.F.R. Part 257. The following provisions of the CCR regulations are referenced in this NOV:

Location Restrictions - 40 C.F.R. § 257.60

Initial and Periodic Hazard Potential Classification Assessments - 40 CFR §§ 257.71 and 257.73

Structural Stability Assessment - 40 CFR § 257.73(d)

Safety Factor Assessment - 40 CFR § 257.73(e)

Fugitive Dust Control Plan - 40 C.F.R. § 257.80 – Air Criteria

Inflow Design Flood Control - 40 CFR § 257.82

Inspection Requirements for CCR Surface Impoundments - 40 C.F.R. § 257.83

Groundwater Monitoring Systems - 40 CFR § 257.90 *et seq.*

Statistical Analysis and Background - 40 CFR §§ 257.91(a)(1), 93(a), (b), (g)(5) and 94(b)

Federal CCR Recordkeeping, Notification, and Publicly Accessible Internet Website Requirements - 40 C.F.R. §§ 257.105, 257.106, and 257.107

Areas of Violation:

During the 4/5/22 inspection and NRRs, EPA observed the following violations:

**LBWL – Erickson Station Ponds
Location Restrictions
Violations of 40 C.F.R. § 257.60**

1. LBWL failed to demonstrate compliance, in accordance with 40 C.F.R. §§ 257.60(a) and 257.60(c)(1), with CCR unit location conditions which state that the owner/operator (o/o) must show, by 10/17/18, that the CCR unit meets minimum requirements for placement no less than 1.52 meters (five feet) above the upper limit of the uppermost aquifer or that there will not be an intermittent, recurring, or sustained hydraulic connection between any portion of the base of the CCR unit and the uppermost aquifer due to normal fluctuations in groundwater elevations (including the seasonal high water table).

Document(s) used for this allegation: Location Restrictions Supplemental Memo (certified/dated 3/23/20); Location Restrictions Report (dated 10/10/18) – posted on LBWL website. LBWL’s original Location Restrictions Report (dated 10/10/18) initially concluded that the base elevations of the Erickson Station impoundment system are significantly greater than 5 feet above the uppermost aquifer beneath the site. However, LBWL acquired new data in 2019 and 2020 which contradicted the earlier findings. Specifically, LBWL’s supplemental memo (dated 3/23/20) notes ... “pertaining to the distance to the uppermost aquifer ... as a result of groundwater elevation data collected from newly installed monitoring wells (HDR, 2020) ...the base of the Forebay, Retention Basin, and CWP impoundments is not 5 feet above the upper limit of the uppermost aquifer.”

As a result, LBWL has not demonstrated that all three CCR units are 5 feet above the uppermost aquifer or that no intermittent, recurring, or sustained hydraulic connection occurs between any portion of the base of the CCR unit and the uppermost aquifer due to normal fluctuations in groundwater elevations.

40 C.F.R. § 257.60(c)(4) provides that an owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of 40 C.F.R. § 257.60(a) is subject to the requirements of 40 C.F.R. § 257.101(b)(1), which requires that the o/o cease placing CCR and non-CCR waste streams into such CCR units as soon as technically feasible, but no later than April 11, 2021, and close the CCR unit in accordance with the requirements of § 257.102.

The allegation referenced above also results in a violation of Section 40 C.F.R. § 257.105(e) because the documentation was not placed in the operating record as required. Also, additional potential violations by LBWL for not meeting notification and posting deadlines per 40 C.F.R. §§ 257.106(e) (State/Tribal Authority Notice) and 257.107(e) (Publicly Accessible Internet Site Requirements), require further documentation or explanation since this information was not made readily available at the time of the inspection or thereafter.

LBWL – Erickson Station Ponds
Design Criteria – Liner System; Hazard Classification; and Structural Stability and
Safety Factor Assessment and Integrity
Violations of 40 C.F.R. §§ 257.71 and 73

2. Since October 17, 2016 until March 26, 2020, LBWL failed to document in the operating record by 10/17/2016, in accordance with 40 C.F.R. § 257.71(a)(1), liner design criteria information requirements, relating to, whether or not such unit was constructed with any one of the following: (i) [Reserved] (ii) A composite liner that meets the requirements of § 257.70(b); or (iii) An alternative liner composite liner that meets the requirements of § 257.70(c).

Document(s) used for this allegation: Impoundments Liner System Certification (certified/dated 3/26/20) – posted on LBWL website. This documentation, due on October 17, 2016, was filed late on March 26, 2020. The Impoundments Liner System Certification prepared by LBWL states: “Historic documentation does not indicate that the existing liner systems beneath the Forebay, Retention Basin, and Clear Water Pond CCR impoundments were constructed in compliance with the criteria provided in 40 CFR §257.71(a)(1)(i) – (iii).” (3/26/2020, Liner Certification, p. 4); however, the date or certification of the report indicates that the liner design criteria information was documented late and therefore LBWL did not comply by the date required at 40 C.F.R. § 257.71(a)(1).

The allegation referenced above also results in a violation of 40 C.F.R. § 257.105(f)(2) because the certification was not placed in the operating record as required. Also, additional potential violations by LBWL for not meeting notification and posting deadlines per 40 C.F.R. §§ 257.106(f)(3) and 257.107(f)(3), require further documentation or explanation since this information was not made readily available at the time of the inspection or thereafter.

3. From October 17, 2016, until June 19, 2020, LBWL failed to conduct, in accordance with 40 C.F.R. § 257.73(a)(2), initial hazard potential classification assessments of the CCR unit by 10/17/16 for all three units. Under 40 C.F.R. § 257.73(f)(2), the o/o may use a previously completed assessment(s) in lieu of the initial assessment(s) to serve as the initial assessment required by paragraphs (a)(2), (d), and (e) of this section provided that the previous assessment was completed no earlier than 42 months prior to 10/17/16.

Document used for this allegation: Hazard Potential Classification (certified/dated 6/19/20) and Revised Hazard Potential Classification Assessment Report (certified/dated 5/16/22) – posted on LBWL website. LBWL did not demonstrate by 10/17/16 the initial hazard potential classification for the Forebay, Retention Basin, and Clear Water Pond CCR units. The initial hazard potential classification was completed for the 3 CCR units late, on 6/19/20. In addition, the initial hazard potential classification for the Clear Water Pond in the 6/19/20 Classification document is based on an April 30, 2012, closure report for the former “Ash Pond” at LBWL. However, since the previous assessment in that closure report was not completed by 42 months prior to 10/17/16, or

4/17/13, using the data from the 2012 assessment for the Clear Water Pond is not allowed by under § 257.73(f)(2)(i). LBWL completed and placed in the operating record a revised hazard potential classification assessment report for the Clear Water Pond on 5/16/22.

The allegations referenced above also result in violations of Sections 257.73(f)(1) and (2) and 257.105(f)(5) because the assessments were not placed in the operating record as required. Also, additional potential violations by LBWL for not meeting notification and posting deadlines per 40 C.F.R. §§ 257.106(f)(4) and 257.107(f)(4), require further documentation or explanation since this information was not made readily available at the time of the inspection or thereafter.

4. In June 2020, LBWL failed to maintain, in accordance with 40 C.F.R. § 257.73(a)(4), the vegetated slopes of the dikes for the CCR Forebay and Retention Basin, because those vegetative slopes exceeded a height of six inches above the slope of the dike in areas outside of where the slopes are protected with an alternate form(s) of slope protection.

Document(s) used for this allegation: Forebay and Retention Basin Structural Stability Assessment (certified/dated 8/13/20) – posted on LBWL website. Does not meet 40 C.F.R. § 257.73(a)(4). LBWL's Forebay and Retention Basin Structural Stability Assessment (certified/dated 8/13/20) noted on page 11 that vegetation evident on the interior and exterior slopes of the Forebay and Retention Basin embankments, as well as vegetation in and around the stone riprap, was overgrown and exceeded a height of 6-inches at the time of the HDR June 2020 inspection (Ref. [6]). LBWL stated that the vegetation is typically maintained and the overgrown vegetation will be cut to maintain a height of 6 inches or less.

5. LBWL failed to compile, in accordance with 40 C.F.R. § 257.73(c)(1), a history of construction, which shall contain, to the extent feasible, the information specified in paragraphs (c)(1)(i) through (xi) of this section.

Document(s) used for this allegation: History of Construction Clear Water Pond, (dated 6/12/20) and History of Construction Forebay and Retention Basin (dated 8/10/20) – posted on LBWL website. Does not meet 40 C.F.R. § 257.73(c)(1), 257.73(c)(1)(ix), and 257.73(c)(1)(xi). The Clear Water Pond report was dated 6/12/2020 but was required to be completed no later than 10/17/16. The Forebay & Retention Basin report was dated 8/10/2020 but was required to be completed no later than 10/17/16. Per Section 257.73(c)(1)(ix), the history must include "Area-capacity curves for the CCR unit". The History of Construction for Clear Water Pond report states: "requested and not available for Clear Water Pond" (6/12/2020, (History of Construction Report, p. 10). Per Section 257.73(c)(1)(xi) the history also must include "construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit". Again, relying on LBWL's April 30, 2012, closure report for the former "Ash Pond", this information was "requested but not available for Clear Water Pond." (History of Construction Report, p. 11).

The allegation referenced above also results in a violation of Section 257.105(f)(9) because the history of construction was not placed in the operating record as required. Also, additional potential violations by LBWL for not meeting notification and posting deadlines per 40 C.F.R. §§ 257.106(f)(8) and 257.107(f)(8), require further documentation or explanation since this information was not made readily available at the time of the inspection or thereafter.

6. LBWL failed to conduct and determine, in accordance with 40 C.F.R. § 257.73(d)(1) and (f), an initial stability assessment, by 10/17/2016, and periodic structural stability assessments thereafter regarding whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein.

Document(s) used for this allegation: Initial Structural Stability and Safety Factor Assessment for Clear Water Pond (certified/dated 6/12/20) and Initial Structural Stability and Safety Factor Assessment for Forebay and Retention Basin (certified/dated 8/13/20) – posted on LBWL website. Does not meet 40 C.F.R. § 257.73(d)(1) and 257.73(d)(1)(iii) and (f). Due on 10/17/16, the Clear Water Pond assessment is dated 6/12/2020 and the Forebay & Retention Pond assessment is dated 8/13/2020. Initial Structural Stability assessments for all three units were not completed by the required date.

Also, under § 257.73(d)(1)(iii), the assessment must document if dikes are mechanically compacted to a density sufficient to withstand range of loading conditions in the CCR unit. However, “Construction drawings and specifications, including compaction records for the Clear Water Pond, were unavailable for review.” Also, April 30, 2012, closure report for the former “Ash Pond” (Ref. [3]) referenced the original specifications for the embankment and noted that “It was reportedly constructed on clays and silts underlain by silts and sands underlain by bedrock (sandstone). According to the specifications construction for the Ash Pond, the natural ground surface, which also forms the liner, was stripped and scarified to provide a bond with the first layer of the dike fill. The construction specifications indicate that the embankment was constructed primarily with selected on-site clay borrow material from locations shown in Figure 4. The fill was specified to be placed in layers of 8-inch loose thickness and compacted to 95% of the maximum dry density determined by ASTM standard D-1557.” (Initial Structural Stability and Safety Factor Assessment, p. 9). Since the Ash Pond is a separate unit than the current Clear Water Pond, the construction specifications documented for the Ash Pond (April 30, 2012, closure report for the former “Ash Pond”) cannot be used to determine structural stability compliance for another separate unit (the Clear Water Pond).

The allegation referenced above also results in a violation of Section 257.105(f)(10) because the assessment was not placed in the operating record as required. Also, additional potential violations by LBWL for not meeting notification and posting deadlines per 40 C.F.R. §§ 257.106(f)(9) and 257.107(f)(9), require further

documentation or explanation since this information was not made readily available at the time of the inspection or thereafter.

7. LBWL failed to complete and post, in accordance with 40 C.F.R. § 257.73(d)(1)(vi) and (f), an initial stability assessment, by 10/17/2016, and periodic structural stability assessments thereafter regarding whether the CCR unit has been designed, constructed, operated, and maintained with hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and whether those structures are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the structures.

Document(s) used for this allegation: Initial Structural Stability and Safety Factor Assessment for Clear Water Pond (certified/dated 6/12/20) and Initial Structural Stability and Safety Factor Assessment for Forebay and Retention Basin (certified/dated 8/13/20); Initial Inspection Report Clear Water Pond (6/12/20); Initial Inspection Report Forebay and Retention Basin (8/10/20) – posted on LBWL website. Page 11 of the Initial Inspection Report for the Clear Water Pond states, “visual inspections (via remotely operated vehicle (ROV)) were not available for the buried or submerged pipes.” Page 4 of the Initial Inspection Report for the Clear Water Pond lists five hydraulic structures that extend through the embankment for Clear Water Pond. Also, the Initial Structural Stability Report for the Clear Water Pond on page 10 states that “... the interior of the pipes and submerged pipes were not observed and should be inspected internally via remotely operated vehicle (ROV).”

Page 4 of the Initial Inspection Report for the Forebay and Retention Basin lists nine hydraulic structures that extend through the embankment for Forebay and Retention Basin. Initial Structural Stability and Safety Factor Assessment for the Forebay and Retention Basin states “[t]he portions of the hydraulic structures that were underground or submerged were not inspected...” Also, the same report states that “The By-Pass Pipe was not observable during the inspection as it is buried and the outlet is submerged in the Retention Basin. It should be noted that the interior of the pipes and submerged pipes were not observed, and LBWL reported that no dewatered or remotely operated vehicle (ROV) internal inspections have been conducted.” As set out above, LBWL failed to complete and post the assessment in accordance with 40 C.F.R. § 257.73(d)(1)(vi) and (f).

The allegation referenced above also results in a violation of Section 257.105(f)(10) because the assessment was not placed in the operating record as required. Also, additional potential violations by LBWL for not meeting notification and posting deadlines per 40 C.F.R. §§ 257.106(f)(9) and 257.107(f)(9), require further documentation or explanation since this information was not made readily available at the time of the inspection or thereafter.

8. LBWL failed to complete and post, in accordance with 40 C.F.R. § 257.73(e) and (f), an initial stability assessment, by 10/17/2016, and periodic structural stability assessments

thereafter regarding whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in paragraphs (e)(1)(i) through (iv) of this section for the critical cross section of the embankment.

Document(s) used for this allegation: Initial Structural Stability and Safety Factor Assessment for Clear Water Pond (certified/dated 6/12/20) and Initial Structural Stability and Safety Factor Assessment for Forebay and Retention Basin (certified/dated 8/13/20) – posted on LBWL website. The applicable regulation required this assessment to be conducted by 10/17/16, but the Clear Water Pond assessment is dated 6/12/2020 and the Forebay & Retention Pond assessment is dated 8/13/2020. Initial Safety Factor assessments for all three units were not completed in the designated timeframe.

The allegation referenced above also results in a violation of Section 257.105(f)(12) because the assessment was not placed in the operating record as required. Also, additional potential violations by LBWL for not meeting notification and posting deadlines per 40 C.F.R. §§ 257.106(f)(11) and 257.107(f)(11) for the Clear Water Pond posting, require further documentation or explanation since this information was not made readily available at the time of the inspection or thereafter.

**LBWL – Erickson Station Ponds
Operating Criteria – Air Criteria (Dust Control); Inflow Design Flood Control; and
Inspection Requirements
Violations of 40 C.F.R. §§ 257.80, 82, and 83**

9. LBWL failed to prepare in accordance with 40 C.F.R. § 257.80(c), an annual fugitive dust control report that includes a description of the actions taken by the o/o to control CCR fugitive dust, a record of all citizen complaints, and a summary of any corrective measures taken. The initial annual report must be completed no later than 14 months after placing the initial CCR fugitive dust control plan in the facility's operating record. The deadline for completing a subsequent report is one year after the date of completing the previous report. For purposes of this paragraph (c), the o/o has completed the annual CCR fugitive dust control report when the plan has been placed in the facility's operating record as required by § 257.105(g)(2).

Document(s) used for this allegation: 2014 Initial Fugitive Dust Control Plan (dated July 2014; revised June 2018); 2016 Erickson CCR Fugitive Dust Annual Report (dated 6/11/18); 2017 Erickson CCR Fugitive Dust Annual Report (dated 6/11/18); 2018 Erickson CCR Fugitive Dust Annual Report (dated 8/5/19); 2019 Erickson CCR Fugitive Dust Annual Report (dated 1/6/20); and 2020 Erickson CCR Fugitive Dust Annual Report (dated 1/29/21) – posted on LBWL website. The placed documents did not provide a description of the actions taken to control CCR fugitive dust in the 2016, 2017, 2018, 2019, and 2020 annual reports. All of the annual reports described the actions taken to control CCR fugitive dust only in the following manner: "All of the measures described in the Erickson Station Fugitive Dust Control Plan for Coal Combustion Residuals were followed during this reporting period..." The initial

annual report (dated 6/11/18), indicated that LBWL received a Violation Notice on 8/26/16, following an on-site inspection from the Michigan Department of Environmental Quality (MDEQ) Air Quality Division (documenting general housekeeping issues around some of the dust collectors and the mass storage building and that the daily inspection checklists were not consistently filled out for one of the dust collectors). The annual report did not indicate what actions were taken to address the allegations in the Violation Notice. Also, the initial annual report (dated 6/11/18) was not completed no later than 14 months from the effective date of the regulation, April 17, 2015, or June 17, 2016. Furthermore, the 2018 and 2020 annual reports were not completed within one year after the date of completing the previous report.

The allegation referenced above also results in a violation of Section 257.105(g)(2) because the report was not placed in the operating record as required. Also, additional potential violations by LBWL for not meeting notification and posting deadlines per 40 C.F.R. §§ 257.106(g)(2) and 257.107(g)(2), require further documentation or explanation since this information was not made readily available at the time of the inspection or thereafter.

10. LBWL failed to design, construct, operate, and maintain, in accordance with 40 C.F.R. § 257.82(a)(1)-(3), an inflow design flood control system as specified in paragraphs (a)(1) and (2) of this section:

Paragraph (a)(1): The inflow design flood control system must adequately manage flow into the CCR unit during and following the peak discharge of the inflow design flood specified in paragraph (a)(3) of this section.

Paragraph (a)(2): The inflow design flood control system must adequately manage flow from the CCR unit to collect and control the peak discharge resulting from the inflow design flood specified in paragraph (a)(3) of this section.

Paragraph (a)(3): The inflow design flood is:

- (i) For a high hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the probable maximum flood;
- (ii) For a significant hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the 1,000-year flood;
- (iii) For a low hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the 100-year flood;...

Document(s) used for this allegation: Inflow Design Flood Control System Plan (certified/dated 6/9/20) – posted on LBWL website. Does not meet 40 C.F.R. § 257.82(a)(1): Inflow Design Flood Control System Plan for the facility's CCR units did not include modeling of a risk of the Retention Pond sending process water into the Former Impoundment during emergency conditions. The 06-09-2020 Erickson CCR

Inflow Design Flood Control Plan PDF, pages 10-11/178, states the following regarding the Retention Basin:

Additional process water from the plant sumps can be directly diverted to this basin via a 12-inch diameter by-pass operated by two (2) valves at the northwest corner of the retention basin. This by-pass is used only under emergency conditions and was excluded from the system hydraulic model.

The Retention Basin also has a 24-inch diameter emergency outfall pipe that discharges into the Former Impoundment at an invert elevation of 881.5 feet. Under design conditions, no water flows to the Former Impoundment, the pipe will carry water from the Retention Pond to the Former Impoundment when the water surface elevation exceeds an elevation of 881.5 feet.

In other words, overflow water only flows into the Former Impoundment if the Retention Pond's water elevation exceeds 881.5 feet. However, LBWL explicitly states it did not run its HydroCad model at times when the Power Plant has to activate the two bypass valves that directly diverts process water to the Retention Basin under emergency conditions. Thus, the risks associated with the situation where the Retention Pond is sending process water into the Former Impoundment during emergency conditions was not modeled as required.

11. LBWL failed to timely prepare, in accordance with 40 C.F.R. §§ 257.82(c)(1) and 257.82(c)(3)(i), an initial inflow design flood control system plan no later than 10/17/2016.

Document(s) used for this allegation: Inflow Design Flood Control System Plan (certified/dated 6/9/20 – posted on LBWL website). The Inflow Design Flood Control System Plan for the facility's CCR units was prepared and certified after the applicable regulatory deadline. The Plan was dated 6/9/2020, but the regulations required completion by 10/17/16.

The allegation referenced above also results in a violation of Section 257.105(g)(4) because the plan was not placed in the operating record as required. Also, additional potential violations of requirements by LBWL for not meeting notification and posting deadlines per 40 C.F.R. §§ 257.106(g)(4) and 257.107(g)(4), require further documentation or explanation because this information was not made readily available to EPA at the time of the inspection or thereafter.

12. LBWL failed to complete, in accordance with 40 C.F.R. § 257.83(b)(1)(iii), annual visual inspections by a qualified professional engineer, of any hydraulic structures underlying the base of the CCR unit for structural integrity and continued safe and reliable operation.

Document(s) used for this allegation: Initial Inspection Report Clear Water Pond (6/12/20); Initial Inspection Report Forebay and Retention Basin (8/10/20); Initial

Structural Stability and Safety Factor Assessment for Clear Water Pond (certified/dated 6/12/20); Initial Structural Stability and Safety Factor Assessment for Forebay and Retention Basin (certified/dated 8/13/20); Annual Inspection Report – 2021 (certified/dated 4/27/22); Annual Inspection Report – 2022 (certified/dated 5/2/22); and Annual Inspection Report – 2023 (certified/dated 2/24/23) – posted on LBWL website. LBWL failed to adequately complete and place initial subsequent annual inspection reports in the facility’s operating record. The Initial Inspection Report for the Clear Water Pond (dated 6/12/20) on pages 4 and 11 describes submerged structures that have not been visually inspected: page 11 states “The CCR Final Rule requires that the annual inspection include a visual inspection of any hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit for structural integrity and continued safe and reliable operation. Visual inspections (via remotely operated vehicle (ROV)) were not available for the buried or submerged pipes.” Page 4 of the Initial Inspection Report for the Clear Water Pond lists five hydraulic structures that extend through the embankment for Clear Water Pond. Also, the Initial Structural Stability Report for the Clear Water Pond on page 10 states that “... the interior of the pipes and submerged pipes were not observed and should be inspected internally via remotely operated vehicle (ROV).” The 2021, 2022, and 2023 annual inspection reports for the Clear Water Pond on pages 12 and 13 states “Visual inspections (either in the dewatered condition or via a remotely operated vehicle (ROV)) were not available for the buried or submerged pipes.”

The Initial Inspection Report for Forebay and Retention Basin (dated 8/10/20) on pages 4, 10 and 11 describes submerged structures that have not been visually inspected: pages 10-11 states “The CCR Final Rule requires that the annual inspection include a visual inspection of any hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit for structural integrity and continued safe and reliable operation. Visual inspections (either in the dewatered condition or via a remotely operated vehicle (ROV)) were not available for the buried or submerged pipes.” Page 4 of the Initial Inspection Report for the Forebay and Retention Basin lists nine hydraulic structures that extend through the embankments for the Forebay and Retention Basin. Also, the Initial Structural Stability Report for the Forebay and Retention Basin on page 12 states that “... The portions of the hydraulic structures that were underground or submerged were not inspected...” Also, the same report states that “The By-Pass Pipe was not observable during the inspection as it is buried and the outlet is submerged in the Retention Basin. It should be noted that the interior of the pipes and submerged pipes were not observed, and LBWL reported that no dewatered or remotely operated vehicle (ROV) internal inspections have been conducted.” The 2021, 2022, and 2023 annual inspection reports for the Forebay and Retention Basin on page 8 states “Visual inspections (either in the dewatered condition or via a remotely operated vehicle (ROV)) were not available for the buried or submerged pipes.”

13. LBWL failed to timely complete, in accordance with 40 C.F.R. §§ 257.83(b)(3)(i) and (4)(i), the initial annual inspection and periodic inspection reports required by paragraphs (b)(1) and (2) of this section no later than 01/19/2016 and thereafter on an annual basis, respectively. The date of completion of the initial inspection report sets the deadline for

subsequent annual inspections. In all cases, the deadline for completing annual inspection reports is based on the date of completion of the previous inspection report. For purposes of this section, the o/o has completed an inspection when the inspection report has been placed in the facility's operating record as required by § 257.105(g)(6).

Document(s) used for this allegation: Initial Inspection Report Clear Water Pond (6/12/20); Initial Inspection Report Forebay and Retention Basin (8/10/20); and Annual Inspection Report – 2021 (4/27/22) – posted on LBWL website. The Initial Inspection Report for the Clear Water Pond (dated 6/12/2020) and for the Forebay and Retention Basin (dated 8/10/2020) were due 1/19/16 but were not completed by that deadline. Also, there were no Surface Impoundment inspections or reports completed for 2016, 2017, 2018, 2019. LBWL did complete an annual inspection report for the Clear Water Pond, Forebay, and Retention Basin for 2021 that was dated 4/27/22, but it was not completed or placed in the facility's operating record by 6/12/2021 (one year after initial report was completed) and 8/10/2021 (one year after initial report was completed), respectively, for the Clear Water Pond and for the Forebay and Retention Basin. In addition, LBWL failed to post Periodic Surface Impoundment Inspection Reports for calendar years 2016 through 2019, in accordance with 40 C.F.R. § 257.107(g)(5), as referenced in 40 C.F.R. § 257.105(g)(6), which references 40 C.F.R. § 257.83(b)(2).

The allegation referenced above also results in a violation of Section 257.105(g)(6) because the report was not placed in the operating record as required. Also, an additional potential violation by LBWL for not meeting the notification deadlines per 40 C.F.R. §§ 257.106(g)(5) and 257.107(g)(5), requires further documentation or explanation since this information was not made readily available at the time of the inspection or thereafter.

**LBWL – Erickson Station Ponds
Groundwater Monitoring and Corrective Action – Applicability and Groundwater
Monitoring Report Certification Timeframes
Violations of 40 C.F.R. § 257.90**

14. LBWL failed to comply, in accordance with 40 C.F.R. § 257.90(b)(1)(i)-(iv), with the following groundwater monitoring requirements no later than October 17, 2017:
 - (i) Install the groundwater monitoring system as required by § 257.91;
 - (ii) Develop the groundwater sampling and analysis program to include selection of the statistical procedures to be used for evaluating groundwater monitoring data as required by § 257.93;
 - (iii) Initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background and downgradient well as required by § 257.94(b); and

(iv) Begin evaluating the groundwater monitoring data for statistically significant increases (SSI) over background levels for the constituents listed in appendix III of this part as required by § 257.94.

Document(s) used for this allegation: Groundwater Monitoring System Certification (certified/dated 5/4/20); Groundwater Monitoring System Certification (certified/dated 11/5/21); Groundwater Monitoring 2019 Annual Report (1/30/20); Groundwater Monitoring 2020 Annual Report (1/29/21); and Determination of Statistically Significant Increases over Background Memo – posted on LBWL website. The Groundwater Monitoring 2019 Annual Report did not include any groundwater monitoring samples. The Groundwater Monitoring System Certification mentions that monitoring wells (MW-1, MW-2, and MW-3) were not installed until October 2019 (5/4/2020, Groundwater Monitoring System Certification, p. 9). LBWL did not install its groundwater monitoring network until January 2020. In January 2020, LBWL installed three additional monitoring wells (MW-4, MW-5, and MW-6) to serve as the multi-unit monitoring network located along the perimeter of the impoundments and to serve as additional upgradient (MW-4) and downgradient wells (MW-5 and MW-6) (Groundwater Monitoring 2020 Annual Report, p. 1). The Groundwater Monitoring 2020 Annual Report (01/29/2021) was the first annual groundwater monitoring report as part of a multi-unit monitoring well network subject to groundwater monitoring and corrective action requirements, which was due no later than October 17, 2017, and therefore did not meet the timeframe for the groundwater monitoring requirements of 40 C.F.R. § 257.90(b)(1).

In addition, LBWL did not include MW-3 in the monitoring network and thus did not sample it (was utilized for water levels only). MW-3 should have been included for analytical sampling because the potentiometric plots show that there is a possible transport pathway through this well that would be missed by MW-5. LBWL therefore also did not meet the substantive groundwater monitoring requirements of 40 C.F.R. § 257.90(b)(1)(i)-(iv).

15. LBWL failed, in accordance with 40 C.F.R. § 257.90(d) to immediately, in the event of a release from a CCR unit, take all necessary measures to control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment. Under this provision, the o/o of the CCR unit must comply with all applicable requirements in § 257.96, among other requirements. Section 257.96 requires the o/o to initiate an assessment of corrective measures to prevent further releases, to remediate any releases and to restore affected area to original conditions.

Document(s) used for this allegation: Groundwater Monitoring 2020 Annual Report (1/29/21); Conceptual Site Model and Assessment of Corrective Measures (11/5/21) – posted on LBWL website. Timing Requirements per § 257.96: Within 90 days of finding Appendix IV constituents at statistically significant levels (SSL) above groundwater protection standards (GWPS), absent a 60-day extension, initiate an assessment of corrective measures. Based on LBWL's 2020 annual groundwater

monitoring report, Appendix IV constituents at SSL above GWPS (lithium detected above GWPS in MW-2, MW-5, and MW-6) were detected per the 11/6/20 monitoring event. Ninety days after 11/6/20 results in a deadline to initiate of 2/4/21. LBWL's 2021 Groundwater Monitoring Annual Report dated 1/31/22 states that on November 23, 2020, it initiated its assessment of corrective measures for lithium.

Per Section 257.96, the assessment of corrective measures must be certified complete within 90 days after initiation of the assessment. Ninety days after 2/4/21 results in a deadline for the completed certified assessment of 5/5/21).

Based on its 2022 annual groundwater monitoring report, LBWL certified as complete its assessment of corrective measures on 11/5/21. Therefore, LBWL certified as complete its assessment of corrective measures 6 months after the required certification date of 5/5/21.

The allegation referenced above also results in a violation of Section 257.105(h)(10) because the report was not placed in the operating record as required.

16. LBWL failed to prepare, in accordance with 40 C.F.R. § 257.90(e), annual groundwater monitoring and corrective action reports no later than 1/31/2018, and annually thereafter.

Document(s) used for this allegation: Groundwater Monitoring 2019 Annual Report (1/30/20); Groundwater Monitoring 2020 Annual Report (1/29/21) – placed on LBWL website. LBWL failed to complete groundwater monitoring reports for 2017 and 2018 by 01/31/2018 and 1/31/19, respectively.

LBWL's first Groundwater Monitoring Report was for 2019 and dated 1/30/2020. However, this report does indicate that any kind of background monitoring sampling was conducted. The only type of testing conducted and described in the 2019 Groundwater Monitoring Report was slug testing (to determine hydraulic conductivities of the screened intervals in wells) and groundwater level measuring (to establish an initial potentiometric surface). The 2019 Groundwater Monitoring Report states... "No groundwater samples have been collected. BWL intends to initiate background groundwater sampling and analysis in 2020...the new wells were drilled in early January 2020 and the monitoring will begin soon after." (2019 Annual Groundwater Report, 1/30/2020, p. 11). Therefore, while this report was timely filed, it did not contain adequate monitoring data results.

LBWL's second Groundwater Monitoring Report was for 2020 dated 1/29/2021. This monitoring report was the first monitoring report that included any groundwater monitoring samples. However, the facility did not include MW-3 in the monitoring network and thus did not sample it (was used for water levels only). MW-3 should be included for analytical sampling as the potentiometric plots show that there is a possible transport pathway through this well that would be missed by MW-5. Therefore, while this report was timely filed, it did not contain adequate monitoring data results.

The allegation referenced above also results in a violation of Section 257.105(h)(1) because the report was not placed in the operating record as required. Also, LBWL failed

to post Annual Groundwater Monitoring Reports by January 31, 2018, for calendar years 2016, 2017, and 2018 in accordance with 40 C.F.R. § 257.107(h)(1), as referenced in 40 C.F.R. § 257.90(e), which in turn references 40 C.F.R. § 257.105(h)(1).

**LBWL – Erickson Station Ponds
Groundwater Monitoring and Corrective Action – Monitoring System
Requirements
Violations of 40 C.F.R. § 257.91**

17. LBWL failed to timely install, in accordance with 40 C.F.R. § 257.91(a)(2), a groundwater monitoring system that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that accurately represents the quality of groundwater passing the waste boundary of the CCR unit. The downgradient monitoring system must be installed at the waste boundary that ensures detection of groundwater contamination in the uppermost aquifer. All potential contaminant pathways must be monitored to satisfy this requirement.

LBWL failed to comply with 40 C.F.R. § 257.91(c)(2), which requires the o/o of the groundwater monitoring system to include the minimum number of monitoring wells necessary to meet the performance standards specified in paragraph (a) of this section, based on the site-specific information specified in paragraph (b) of this section. The groundwater monitoring system must contain: Additional monitoring wells as necessary to accurately represent the quality of background groundwater that has not been affected by leakage from the CCR unit and the quality of groundwater passing the waste boundary of the CCR unit.

LBWL failed to comply with 40 C.F.R. § 257.91(d)(1), which permits the o/o of multiple CCR units to install a multiunit groundwater monitoring system instead of separate groundwater monitoring systems for each CCR unit only upon the condition that it is equally as capable of detecting monitored constituents at the waste boundary of the CCR unit as the individual groundwater monitoring system specified in paragraph (a) through (c) of this section for each CCR unit based on the following factors: Number, spacing, and orientation of each CCR unit.

Document(s) used for this allegation: Groundwater Monitoring 2020 Annual Report (1/29/21); Groundwater Monitoring System Certification (certified/dated 5/4/20); Groundwater Monitoring System Certification (certified/dated 11/5/21); and Conceptual Site Model and Assessment of Corrective Measures certified/dated 11/5/21) – placed on LBWL website. The current wells (MW-5, MW-2, MW-6) are 250 ft, 1,000 ft, and 700 ft, respectively downgradient of the limits of the active ash ponds. These wells are not located in areas that accurately represent “the quality of groundwater passing the waste boundary” by any measure. Additionally, well MW-3 should have been included as part of its groundwater monitoring system because the potentiometric plots show that there is a possible transport pathway through this well that would be missed by MW-5.

18. LBWL failed to timely comply, in accordance with 40 C.F.R. § 257.90(b)(1), with groundwater system monitoring requirements by October 17, 2017, and timely obtain, in accordance with 40 C.F.R. § 257.91(f), a groundwater monitoring system certification from a qualified professional engineer.

Document(s) used for this allegation: Groundwater Monitoring System Certification (certified/dated 5/4/20); Groundwater Monitoring System Certification (certified/dated 11/5/21); Groundwater Monitoring 2019 Annual Report (1/30/20); Groundwater Monitoring 2020 Annual Report (1/29/21); and Determination of Statistically Significant Increases over Background Memo – placed on LBWL website. LBWL's first Groundwater Monitoring System Certification was dated 5/4/2020 but was due under the aforementioned regulation by October 17, 2017. The Groundwater Monitoring 2019 Annual Report did not include any groundwater monitoring samples. The Groundwater Monitoring 2020 Annual Report (dated 1/29/2021) was the first annual groundwater monitoring report using a multi-unit monitoring well network subject to groundwater monitoring and corrective action requirements. However, for the reasons set out below, multi-unit monitoring well network was still being installed during 2020 and therefore was not fully designed and constructed to meet requirements of 40 C.F.R. § 257.91. The Groundwater Monitoring System Certification states that monitoring wells (MW-1, MW-2, and MW-3) were not installed until October 2019 (5/4/2020, Groundwater Monitoring System Certification, p. 9). In January 2020, LBWL installed three additional monitoring wells (MW-4, MW-5, and MW-6) to serve as the multi-unit monitoring network located along the perimeter of the impoundments and to serve as additional upgradient (MW-4) and downgradient wells (MW-5 and MW-6) (Groundwater Monitoring 2020 Annual Report, p. 1). In June of 2021, LBWL installed four additional monitoring wells (MW-7, MW-8, MW-9, and MW-10) to monitor downgradient groundwater quality conditions and water levels as close to the property boundary as possible (11/5/2021, Groundwater Monitoring System Certification, p. 9). The first detection monitoring event was conducted on October 19, 2020 (Determination of Statistically Significant Increases over Background Memo, p. 1, 11/19/20). Therefore, LBWL did not fully install its groundwater monitoring network for 2020 until June 2021.

The allegation referenced above also results in a violation of Section 257.105(h)(3) because the certification was not placed in the operating record as required. Also, additional potential violations by LBWL for not meeting notification and posting deadlines per 40 C.F.R. §§ 257.106(h)(2) and 257.107(h)(2) (at least for the 5/4/2020, Groundwater Monitoring System Certification), require further documentation or explanation since this information was not made readily available at the time of the inspection or thereafter.

**LBWL – Erickson Station Ponds
Groundwater Monitoring and Corrective Action – Sampling and Analysis
Violations of 40 C.F.R. § 257.93**

19. LBWL failed to install, in accordance with 40 C.F.R. § 257.90(b)(1)(ii), the groundwater monitoring system as required by 40 C.F.R § 257.91 by October 17, 2017, and failed to obtain, in accordance with 40 C.F.R § 257.93(f)(6), a statistical method certification from a qualified engineer stating that the selected statistical method is appropriate for evaluating the groundwater monitoring data for the CCR management area.

Document(s) used for this allegation: Background Water Quality Statistical Certification (certified/dated 11/19/20) – placed on LBWL website. The Background Water Quality Statistical Certification was dated 11/19/2020 but was due to be placed in the operating record by 10/17/17. This results in a violation of Section 257.105(h)(4) because the certification was not placed in the operating record as required.

Also, additional potential violations by LBWL for not meeting the notification and posting deadlines per 40 C.F.R. §§ 257.106(h)(3) and 257.107(h)(3), require further documentation or explanation since this information was not made readily available at the time of the inspection or thereafter.

**LBWL – Erickson Station Ponds
Groundwater Monitoring and Corrective Action – Detection Monitoring
Violations of 40 C.F.R. § 257.94**

20. LBWL failed to conduct, in accordance with 40 C.F.R. § 257.94(a), detection monitoring at all groundwater monitoring wells consistent with the requirements of this section, including, at a minimum, monitoring for all constituents listed in appendix III to this part.

Document(s) used for this allegation: Groundwater Monitoring 2020 Annual Report (1/29/21), and Conceptual Site Model and Assessment of Corrective Measures (11/5/21) – placed on LBWL website. MW-3 was determined to be cross-gradient (PDF p. 25/2845 of 2020 GW Report), (p. 18 of ACM) by LBWL. Well MW-3 was previously not monitored prior to EGLE request for inclusion in the monitoring network as a background well. EGLE and EPA have determined that MW-3 should have been monitored as a downgradient network monitoring well from at least 2020.

21. LBWL failed to conduct, in accordance with 40 C.F.R. § 257.94(b), groundwater monitoring for the constituents listed in appendix III to this part on at least a semiannual basis during the active life of the CCR unit and the post-closure period. For existing CCR landfills and existing CCR surface impoundments, a minimum of eight independent samples from each background and downgradient well must be collected and analyzed for the constituents listed in appendices III and IV to this part no later than October 17, 2017.

Document(s) used for this allegation: Groundwater Monitoring 2020 Annual Report

(1/29/21) – placed on LBWL website. Groundwater monitoring was due no later than 10/17/17, and the first round of detection monitoring did not commence until 10/19/20. Also, only one round of monitoring took place on 10/19/2020 for Appendix III constituents as there were no sampling for Appendix III constituents during the 11/6/2020 assessment monitoring event. Furthermore, MW-3 was not monitored for Appendix III and IV constituents during the 2020 detection and assessments sampling events.

**LBWL – Erickson Station Ponds
Groundwater Monitoring and Corrective Action – Assessment Monitoring
Violations of 40 C.F.R. § 257.95**

22. LBWL failed to sample and analyze, in accordance with 40 C.F.R. § 257.95(b), the groundwater for all constituents listed in appendix IV to this part within 90 days of triggering an assessment monitoring program, and annually thereafter. The number of samples collected and analyzed for each well during each sampling event must be consistent with § 257.93(e), and must account for any unique characteristics of the site, but must be at least one sample from each well.

Document(s) used for this allegation: Groundwater Monitoring 2020 Annual Report (1/29/21) – placed on LBWL website. LBWL's 2020 Groundwater Monitoring Report did not include sampling analysis results for MW-3. The unique characteristics of the site include the presence of three units that are being monitored as a single unit, and these characteristics require sampling analysis results from MW-3.

23. LBWL failed, in accordance with 40 C.F.R. § 257.95(d)(1), to sample, within 90 days of obtaining the results of sampling events required under § 257.94(b), and on at least a semiannual basis thereafter, to resample, all wells that were installed pursuant to the requirements of § 257.91; for the sample results, conduct analyses for all parameters in appendix III to this part and for those constituents in appendix IV to this part that are detected in response to paragraph (b) of this section; and record the sample result concentrations in the facility operating record. The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events must be consistent with § 257.93(e) and must account for any unique characteristics of the site but must be at least one sample from each background and downgradient well.

Document(s) used for this allegation: Groundwater Monitoring 2020 Annual Report (1/29/21) – placed on LBWL website. LBWL's 2020 Groundwater Monitoring Report did not include semi-annual samples (no Appendix III constituents were analyzed during 11/6/20 event).

24. As required by 40 C.F.R. § 257.95(d)(3), LBWL failed to include the recorded concentrations required by § 257.95(d)(1), identify the constituent concentrations established under § 257.94(b), and identify the GWPS established under § 257.95(d)(2) in the annual groundwater monitoring and corrective action report required by § 257.90(e).

Document(s) used for this allegation: Groundwater Monitoring 2020 Annual Report (1/29/21) – placed on LBWL website. LBWL failed to comply with the above

requirements by virtue of MW-3 not being sampled in the determination of constituent concentrations, as required.

25. LBWL failed to characterize, in accordance with 40 C.F.R. § 257.95(g)(1)(i)-(iv), the nature and extent of the release and any relevant site conditions that may affect the remedy ultimately selected when one or more constituents in appendix IV to this part are detected at SSL above the GWPS established under paragraph (h). The characterization must be sufficient to support a complete and accurate assessment of the corrective measures necessary to effectively clean up all releases from the CCR unit pursuant to § 257.96. Characterization of the release includes the following minimum measures:
- (i) Install additional monitoring wells necessary to define the contaminant plume(s);
 - (ii) Collect data on the nature and estimated quantity of material released including specific information on the constituents listed in appendix IV of this part and the levels at which they are present in the material released;
 - (iii) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (d)(1) of this section; and
 - (iv) Sample all wells in accordance with paragraph (d)(1) of this section to characterize the nature and extent of the release.

Document(s) used for this allegation: Groundwater Monitoring System Certification (certified/dated 5/4/20); Groundwater Monitoring System Certification (certified/dated 11/5/21); Groundwater Monitoring 2019 Annual Report (1/30/20); Groundwater Monitoring 2020 Annual Report (1/29/21); Groundwater Monitoring 2021 Annual Report (1/31/22) – placed on LBWL website.

40 C.F.R. § 257.95(g) applies because LBWL's sampling detected Appendix IV constituents at SSL above GWPS on several occasions (including lithium being detected above GWPS in MW-2, MW-5, and MW-6 and appendix IV constituents at SSL being detected on 11/6/20 and three rounds of assessment monitoring on 1/27/21, 5/4/21, and 8/3/21).

EPA has identified the need for additional wells closer to the individual unit boundaries. Not having wells located in appropriate locations results in LBWL being unable to adequately determine nature and extent of release and off-site contaminant movement. In addition, monitoring was inadequate by virtue of MW-3 not being sampled in characterizing groundwater movement and release.

26. LBWL failed to establish, in accordance with 40 C.F.R. § 257.95(h), a GWPS for each constituent in appendix IV to this part detected in the groundwater. The GWPS shall be:
- (1) For constituents for which a maximum contaminant level (MCL) has been established under §§ 141.62 and 141.66 of this title, the MCL for that constituent;
 - (2) For the following constituents:
 - (i) Cobalt 6 micrograms per liter (µg/l);
 - (ii) Lead 15 µg/l;
 - (iii) Lithium 40 µg/l; and
 - (iv) Molybdenum 100 µg/l.
 - (3) For constituents for which the background level is higher than the levels identified under paragraphs (h)(1) and (h)(2) of this section, the background concentration.

Document(s) used for this allegation: Groundwater Monitoring 2020 Annual Report (1/29/21); Groundwater Monitoring 2021 Annual Report (1/29/22); 2022 Annual Groundwater Monitoring Report and Corrective Action Report and Semi-Annual Remedy Selection and Design Progress Report (1/30/23) – placed on LBWL website. Failure to integrate MW-3 into the monitoring well network resulted in establishment of GWPS that did not consider all appendix IV constituents detected in the groundwater.

**LBWL – Erickson Station Ponds
Groundwater Monitoring and Corrective Action – Assessment of Corrective
Measures
Violations of 40 C.F.R. § 257.96**

27. LBWL failed to complete, in accordance with 40 C.F.R. § 257.96(a), an assessment of corrective measures within 180 days of finding that any constituent listed in Appendix IV to this part has been detected at a SSL exceeding the GWPS defined under § 257.95(h), or immediately upon detection of a release from a CCR unit. This assessment of corrective measures is required to prevent further releases, to remediate any releases and to restore affected area to original conditions. The assessment of corrective measures must be completed within 90 days, unless the o/o demonstrates the need for additional time to complete the assessment of corrective measures due to site-specific conditions or circumstances. The o/o must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority attesting that the demonstration is accurate. The 90-day deadline to complete the assessment of corrective measures may be extended for no longer than 60 days. The o/o must also include the demonstration in the annual groundwater monitoring and corrective action report required by §257.90(e), in addition to the certification by a qualified professional engineer or the approval from the Participating State Director or

the approval from EPA where EPA is the permitting authority.

Document(s) used for this allegation: Groundwater Monitoring 2020 Annual Report (1/29/21); Conceptual Site Model and Assessment of Corrective Measures (11/5/21) – placed on LBWL website.

Timing Requirements: Initiation: Within 90 days of finding Appendix IV constituents at SSL above GWPS (lithium detected on 11/6/20 above GWPS in MW-2, MW-5, and MW-6), LBWL was required to initiate an assessment of corrective measures for the appendix IV constituents at SSL detected 11/6/20 monitoring on 2/4/21 (11/6/20 + 90 days = 2/4/21 need to initiate). Assessment: The assessment of corrective measures must be completed within 90 days unless a 60-day extension is granted. No extension was requested so LBWL was required to complete its assessment by 5/5/21 (2/4/21 (initiation date) + 90 = 5/5/21). On 11/5/21, LBWL placed its completed assessment of corrective measures on its website, 6 months after the 5/5/21 compliance date.

The allegation referenced above also results in a violation of Section 40 C.F.R. § 257.105(h)(9) because the assessment was not placed in the operating record as required. Also, an additional potential violation by LBWL for not meeting notification deadlines per 40 C.F.R. § 257.106(h)(7), requires further documentation or explanation since this information was not made readily available at the time of the inspection or thereafter.

**LBWL – Erickson Station Ponds
Closure Requirements
Violations of 40 C.F.R. §§ 257.101 and 102**

28. LBWL failed to close or retrofit, in accordance with 40 C.F.R. § 257.101(a), existing unlined CCR surface impoundments.

Document(s) used for this allegation: Groundwater Protection Standards and Determination of SSLs per 40 CFR § 257.95(g) (certified/dated 11/23/20) – placed on LBWL website. An owner/operator of an existing unlined CCR surface impoundment must cease placing CCR in the unit and retrofit or close.

During the EPA inspection on 4/5/22, LBWL stated that closure activities reportedly will not begin until December 2022. Since then, LBWL has placed a revised closure plan titled “Erickson Power Station Forebay, Retention Basin, and Clear Water Pond Closure Work Plan”, that reflects a revised closure by removal preliminary schedule during the spring months of 2023, with all dewatered ash delivered to a landfill by September 2023.

29. LBWL failed to prepare, no later than 10/17/2016, in accordance with 40 C.F.R. § 257.102(b)(2)(i), the initial written closure plan for each unit consistent with the requirements specified in 40 C.F.R. § 257.102(b)(1).

Document(s) used for this allegation: Closure Plan (certified/dated 8/16/19) – placed on LBWL website. Closure Plan did not meet deadline. The Closure Plan was dated

8/16/19 and was due by 10/17/2016.

The allegation referenced above also results in a violation of Section 40 C.F.R. § 257.105(i)(4) because the plan was not placed in the operating record as required. Also, additional potential violations by LBWL for not meeting notification and posting deadlines per 40 C.F.R. §§ 257.106(i)(4) and 257.107(i)(4), require further documentation or explanation since this information was not made readily available at the time of the inspection or thereafter.