North Coast Regional Water Quality Control Board

NOTICE OF PUBLIC HEARING AND PROPOSED HEARING PROCEDURES
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R1-2017-0029

ISSUED TO
THE CITY OF EUREKA
ELK RIVER WASTEWATER TREATMENT PLANT
WDID No. 1B82151OHUM

HUMBOLDT COUNTY

SCHEDULED FOR AUGUST 17, 2017

Overview

On May 23, 2017, 2017, the Assistant Executive Officer of the North Coast Regional Water Quality Control Board (North Coast Water Board), issued Administrative Civil Liability ("ACL") Complaint No. R1-2017-0029 (Complaint), pursuant to Water Code section 13323, to the City of Eureka, Elk River Wastewater Treatment Plant (hereinafter "Discharger"). The Complaint alleges that the Discharger alleges six (6) effluent limit violations of WDRs Order No. R1-2009-0033 from October 1, 2015 (end of period included in Stipulation Order No. R1-2016-005), to July 31, 2016 (expiration date of WDRs Order No. R1-2009-0033), of which five (5) are subject to MMPs. Additionally, the Complaint alleges six (6) effluent limit violations of WDRs Order Numbers R1-2016-0001 from August 1, 2016 (effective date of WDRs Order No. R1-2016-0001), to December 31, 2016, of which four (4) are subject to MMPs. These nine violations are specifically listed in Attachment A of the Complaint. The Complaint proposes that the North Coast Water Board assess mandatory minimum penalties ("MMPs") in the amount of twenty-seven thousand dollars ($27,000) pursuant to California Water Code section 13385, subdivisions (h) and (i). A hearing is currently scheduled to be held before the North Coast Water Board during its August 17, 2017, meeting.

Purpose of Hearing

At the hearing, the North Coast Water Board will consider relevant evidence and testimony and decide whether to issue an ACL order assessing the proposed liability, or a higher or lower amount (up to the maximum penalty provided for by law), or reject the proposed liability. The public hearing will commence as announced in the North Coast Water Board meeting agenda (typically at 8:30 a.m.), or as soon thereafter as practical. The meeting will be held at: Regional Water Board office, 5550 Skylane Boulevard, Suite A, Santa Rosa, California or as noticed in the meeting agenda.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the North Coast Water Board's web page at:
http://www.waterboards.ca.gov/northcoast.

Advisory Team

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role ("Prosecution Team") by presenting evidence for consideration by the North Coast Water Board have been separated from those who will provide advice to the North Coast Water Board ("Advisory Team") prior to and during the hearing. 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 may act or have acted as advisors to the North Coast Water Board in other, unrelated matters, but they are not advising the North Coast Water Board in this proceeding. The Prosecution Team is subject to all applicable rules and regulations as any other party to this proceeding, including the prohibition on ex parte communications.

All submittals and communications to the Advisory Team shall be sent to:

Matthias St. John,
Executive Officer
Regional Water Quality Control Board,
North Coast Region
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95403
Matt.St.John@waterboards.ca.gov

Nathan Jacobsen, Attorney
Office of Chief Counsel
State Water Resources Control Board
1001 I Street
Sacramento, CA 95812
(916) 327-7507
Nathan.Jacobsen@waterboards.ca.gov

Any substantive communication to the Advisory Team must also be sent to the parties listed below.

Hearing Participation

Designated parties to the hearing may present evidence (e.g., photographs, eye-witness testimony, monitoring data), cross-examine witnesses and receive all correspondence related to the case. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may access hearing documents at the North Coast Water Board's website: http://www.waterboards.ca.gov/northcoast.

Persons who wish to participate in the hearing as a designated party may submit a request in writing (with copies to already designated parties) so that it is received by the Advisory Team no later than 5 p.m. on June 12, 2017. The request shall include a brief explanation of how the person will be affected by the potential action by the North Coast Water Board, the person's need to present evidence and/or cross-examine witnesses, and why an already

designated party will not adequately represent the person's interest. Any objection to the request must be received by the Advisory Team, all parties and the person requesting party status by 5 p.m. on June 23, 2017. The parties will be notified by 5 p.m. on July 7, 2017, whether the request has been granted or denied. If no objection is timely received, and/or Advisory Team does not otherwise make any modifications, designated party status is automatically granted. The new designated party shall be added to the list below and subject to all the requirements in this Notice. Additional persons may be designated as parties after the deadline at the discretion of the hearing officer, for good cause shown, and subject to appropriate conditions as determined by the hearing officer.

Parties are advised to read and adhere to the attached important deadlines and hearing procedures carefully. Failure to comply with the deadlines and requirements contained herein may result in the exclusion of documents and/or testimony.

Parties

Prosecution Team:	Discharger:
Shin-Roei Lee, Assistant Executive Officer Shin-Roei.Lee@waterboards.ca.gov Diana Henrioulle, Senior Engineer Diana.Henrioulle@waterboards,ca.gov Cecile Morris, Water Resource Control Engineer Cecile.Morris@waterboards.ca.gov Regional Water Quality Control Board, North Coast Region 5550 Skylane Boulevard, Suite A Santa Rosa, CA 95403 (707) 576-2220	City of Eureka, Elk River WWTP Mr. Brian Gerving, Director of Public Works Chief Building Official 531 K Street Eureka, CA 95501 (707) 441-4203 bgerving@ci.eureka.ca.gov
Susie Loscutoff, Attorney Susan.Loscutoff@waterboards.ca.gov State Water Resources Control Board Office of Enforcement 801 K Street, Suite 2300 Sacramento, CA 95814 (916) 327-0140	

Important Deadlines

All required submissions must be received by the Advisory Team by 5:00 p.m. on the due date listed. Unless otherwise specified, electronic correspondence is satisfactory. Additional paper copies of certain submittals are also required, as specified below. Parties shall send electronic copies of all submittals to each other unless a party specifically requests paper copies.

The Advisory Team has discretion to modify the deadlines below and may schedule additional pre-hearing conferences to resolve objections or any other outstanding pre-hearing issues, if needed. Pre-hearing conferences may be held telephonically.

May 23, 2017	Prosecution Team issues ACL Complaint to Discharger(s) and sends copy to Advisory Team, posts Hearing Notice and Procedures with copies to Discharger(s) and Advisory Team.
June 5, 2017	Parties Submit any Objections to Hearing Notice.
June 12, 2017	Deadline to Request Designated Party Status.
June 23, 2017	Parties Submit any Objections to Requests for Designated Party Status.
June 23, 2017	Deadline for Discharger to Submit Signed Form Waiving Right to Hearing within 90 Days.
July 5, 2017	Prosecution Team Submits Case in Chief (15 hard copies to Advisory Team).
July 7, 2017	Advisory Team issues decision on requests of designated party status.
July 18, 2017	Remaining Designated Parties, including Discharger(s) Submit Case in Chief (15 hard copies to Advisory Team).
July 28, 2017	Parties Submit Any Rebuttal Evidence and Written Rebuttal to Legal Argument, and all Evidentiary Objections (15 hard copies)
August 7, 2017	Parties Submit Any Responses to Objections
August 17, 2017	Adjudicatory Hearing Commences

In the event that Parties agree to postpone the hearing to engage in settlement discussions, Prosecution Team may withdraw the Hearing Notice. The hearing officer may request that Parties appear before the North Coast Water Board and provide an update on the status of

the case. Prosecution Team may reissue the Hearing Notice if a hearing is still necessary. In that event, Prosecution Team shall calculate due dates as if the ACL Complaint was issued 90 days from the new hearing date. Due dates that Parties previously met need not be extended.

General Hearing Procedures

The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/laws_regulations.

Unless otherwise determined by the hearing officer, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officer, parties may also be afforded the opportunity to present closing statements or submit briefs. The North Coast Water Board encourages parties with common interests to work together to make the hearing process more efficient. In addition, parties are encouraged to stipulate to facts not in dispute, if appropriate. The hearing officer reserves the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Hearing Time Limits

Each party shall have a combined 30 minutes to present evidence (including evidence presented by witnesses called by the party), cross-examine witnesses (if warranted), and provide a closing statement. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the hearing officer (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Party could not adequately provide the testimony, comments or legal argument in the time provided. The hearing officer will consider and may approve any reasonable alternative hearing agenda agreed upon by the parties if appropriate.

Submission of Evidence

In accordance with California Code of Regulations, title 23, section 648.4, the North Coast Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the North Coast Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure.

Excluded evidence and testimony will not be considered by the North Coast Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Parties must provide the Advisory Team with a printed copy of such materials at or before the hearing, for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Case in Chief: Parties shall submit the following information in writing in advance of the hearing:

1. All legal and technical arguments or analysis (limited to 15 pages, double spaced).
2. All documentary evidence (except rebuttal documents) proposed to be offered at the hearing.
3. The name of each fact and/or expert witness, if any, whom the party intends to call at the hearing, a brief summary of the subject of each witness's 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. Include the qualifications of any expert witness.

Advisory Team may request all testimony in writing in advance of the hearing as necessary to conduct the hearing in a reasonable time period.

Rebuttal: "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other designated parties' submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Ex Parte Contacts

There shall be no *ex parte* communications with North Coast Water Board members or Advisory Team regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to the submission of evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.** Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and their addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural

matters are permissible and should be directed to staff on the Advisory Team, not North Coast Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from the State Water Board website at:

http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

Rules of Evidence

Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the North Coast Water Board office. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the North Coast Water Board's Chair. Many of these documents are also posted on-line at http://www.waterboards.ca.gov/northcoast/board_decisions/tentative_orders/index.shtml Although the web page is updated regularly, to assure access to the latest information, you may contact the Prosecution Team (contact information above).

Questions

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