California Regional Water Quality Control Board
San Francisco Bay Region

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Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

NO. [enter complaint number]
ISSUED TO
[enter company name]
[enter facility description]
[enter location]
[enter county]

SCHEDULED FOR [enter hearing date/dates]

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

Background

The Assistant Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13323 against [name] ("Discharger") alleging that it has violated Water Code Section(s) [enter section number(s)] by [describe conduct]. The ACL Complaint proposes that administrative civil liability [if applicable, add "(including a mandatory minimum penalty)"] in the amount of [enter amount] be imposed as authorized by Water Code Section(s) [enter penalty section(s)].

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Water 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. An agenda for the meeting will be issued at least ten days before the meeting and posted on the Water Board's web site (www.swrcb.ca.gov/sanfranciscobay/).

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been pre-approved by the Water Board's Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Water Board may be found at Title 23 of the California Code of Regulations (CCR), Section 648 et seq., and is available at http://www.waterboards.ca.gov or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

The procedures and deadlines herein may be amended by the Advisory Team in its discretion. **Any objections to this Hearing Procedure must be received by the Advisory Team by [DAY 10 (days refer to number of days after issuance of ACL Complaint; see "Important Deadlines" at the end)], or they will be waived.**

Hearing Participants

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

The following participants are hereby designated as parties in this proceeding:

(1) Water Board Prosecution Team

(2) [Entity name], referred to as the Discharger
[enter names, email addresses, addresses, and phone numbers of Discharger (and attorney if known)]

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party (who have not been designated as parties above) must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on [DAY 20] to [insert Advisory Team contact information]. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on [DAY 30]. The parties will be notified by 5 p.m. on [DAY 40] in writing whether the request has been granted or denied.

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Water Board (Prosecution Team) have been separated from those who will provide advice to the Water Board (Advisory Team). Members of the Advisory Team and the Prosecution Team are:

Advisory Team:
[enter names, titles, email addresses, addresses, and phone numbers of Executive Officer, attorney, and technical staff (if applicable). Identify the primary contact for the Advisory Team.]

Prosecution Team:
[enter names, titles, email addresses, addresses, and phone numbers of Assistant Executive Officer(s), attorney, and all staff who will be testifying. Identify the primary contact for Prosecution Team. Identify any who will be testifying as an expert.]

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. Members of the Prosecution Team may have acted as advisors to the Water Board in other, unrelated matters, but they are not advising the Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

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

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 30 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have three 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 [insert date that is 15 days prior to scheduled Water Board hearing]. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

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

1. All evidence (other than witness testimony to be presented orally at the hearing) that the designated party would like the Water Board to consider. Evidence and exhibits already in the public files of the Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of designated party members, title and/or role, and contact information (email addresses, addresses, and phone numbers).
4. 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 qualifications of each expert witness.
5. (Discharger only) If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Water Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

Designated parties shall submit one hard copy of their information and one electronic copy of the information to [insert Advisory Team contact information] so that they are received by 5 p.m. on [DAY 30]. The Prosecution Team shall include all applicable information listed above with the complaint.

The Prosecution Team may submit information that rebuts the information previously submitted by other designated parties by submitting one hard copy of their rebuttal information and one electronic copy of the information to [insert Advisory Team contact information] so that they are received by 5 p.m. on [insert date that is 30 days prior to scheduled Water Board hearing].

The Discharger may submit information that rebuts the rebuttal information submitted by the Prosecution Team by submitting one hard copy of the rebuttal information and one electronic copy of the information to [insert name of primary Advisory Team contact] so that they are received by 5 p.m. on [insert date that is 20 days prior to scheduled Water Board hearing].

Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

In addition to the foregoing, each designated party shall submit (1) one copy of the above information to each of the other designated parties so that it is received by 5 p.m. on the deadlines specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team to [insert Advisory Team contact information] so that they are received by 5 p.m. on [DAY 30]. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

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

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to the Advisory Team and all other designated parties so that it is received by 5 p.m. on [insert date that is 15 days prior to scheduled Water Board hearing]. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The ACL Complaint and related evidentiary documents are on file and may be inspected or copied at the Water Board's 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 Water Board Chair. Many of these documents are also posted on the Water Board's web site. Although the web page is updated regularly, to assure access to the latest information, you may contact [assigned Prosecution Team member].

Questions

Questions concerning this proceeding may be addressed to [assigned Advisory Team member].

IMPORTANT DEADLINES

(Note: the Water Board is required to provide a hearing within 90 days of issuance of the ACL Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the Discharger waives that requirement.)

DAY 1 Prosecution Team issues ACL Complaint to Discharger.

DAY 10 Deadline for objections, if any, to this Hearing Procedure.

DAY 20 Deadline for requests for designated party status.

DAY 30 Deadline for oppositions to requests for designated party status.

DAY 30 Discharger's deadline for waiving right to hearing within 90 days.

DAY 30 Discharger's deadline for all information required under "Submission of Evidence and Policy Statements."

DAY 30 Interested persons deadline for submission of written non-evidentiary policy statements.

DAY 40 Advisory Team issues decision on requests for designated party status, if any.

DAY 45 Remaining designated parties' deadline for all information required under "Submission of Evidence and Policy Statements."

30 DAYS PRIOR TO SCHEDULED WATER BOARD HEARING
Prosecution Team deadline for information that rebuts information previously submitted by other designated parties.

20 DAYS PRIOR TO SCHEDULED WATER BOARD HEARING
Designated parties' deadline for information that rebuts information previously submitted by other designated parties.

15 DAYS PRIOR TO SCHEDULED WATER BOARD HEARING
Deadline for any designated party to submit an objection to written evidence or exhibits submitted by another designated party.

[signature]_____ _____
[Name] Date
[Title]
Prosecution Team