
Central Valley Regional Water Quality Control Board

March 4, 2015

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The Central Valley Water Board's Advisory Team has reviewed the proposed Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order R5-2015-0510, which represents a settlement of potential liability related to the unpermitted discharge of ten (10) to twenty (20) barrels of stimulation treatment fluid to six unlined sumps in the South Belridge Oil Field in Kern County.

Though the Central Valley Water Board's Advisory Team acknowledges that the settlement appears to be entered into in good faith by both the Prosecution Team and BreitBurn Operating L.P., the Board's Advisory Team nonetheless believes that the Central Valley Water Board should be given an opportunity to deliberate on an appropriate liability assessment for these alleged violations at a future Board meeting. In the Advisory Team's judgment, the current controversies involving the regulatory oversight of energy development activities such as those described in Administrative Civil Liability Complaint R5-2015-0510 merit consideration by the full Board.

Therefore, after consulting with the Board Chair, the Board's Advisory Team, to whom the Board has delegated the authority to sign and finalize Administrative Civil Liability settlements, rejects

BreitBurn Operating L.P.
ACL R5-2015-0510

the proposed settlement and instructs the Prosecution Team to issue a proposed ACL Order for consideration at the Board's June Meeting. The proposed ACL Order shall be substantively based on the allegations made in ACL Complaint R5-2015-0510, but may contain revisions to reflect evidence submitted to the Board after the initial ACL Complaint was issued. The Prosecution Team is instructed to circulate the proposed ACL Order to individuals, government agencies, and organizations that have expressed interested in the Board's oversight of well stimulation activities by providing the web address where the proposed ACL Order and supporting documentation (including the attached Hearing Procedure) may be found.

While the Board's Prosecution Team and BreitBurn Operating L.P. may opt to proceed in a cooperative manner to present a settlement to the Board that is substantially similar to the rejected settlement, please be aware that the Board may conclude that an appropriate application of the factors in the State Water Board's Enforcement Policy to the facts at issue in this matter should result in a higher assessment of liability than that proposed in the settlement agreement. Furthermore, the enclosed Hearing Procedure, which the Board's Advisory Team hereby issues to facilitate the Board's adjudication of a civil liability assessment for the alleged violations, preserves the Board's full discretion to issue a liability assessment based on the administrative record before the Board.

Sincerely,



Pamela C. Creedon
Executive Officer

Attached: Hearing Procedure for ACL Order R5-2015-0510

cc: Andrew Altevogt, Central Valley Water Board
(Via email to Andrew.Altevogt@waterboards.ca.gov)
Robert L'Heureux, Central Valley Water Board
(Via email to Robert.LHeureux@waterboards.ca.gov)
Patrick Pulupa, State Water Board, Office of Chief Counsel
(Via email to Patrick.Pulupa@waterboards.ca.gov)

CENTRAL VALLEY WATER QUALITY CONTROL BOARD

HEARING PROCEDURE
FOR PROPOSED ADMINISTRATIVE CIVIL LIABILITY ORDER
R5-2015-0510

ISSUED TO
BREITBURN OPERATING L.P.
DOW CHANSLOR LEASE
SOUTH BELRIDGE OIL FIELD, KERN COUNTY

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

The Central Valley Water Board's Advisory Team has rejected a proposed settlement that would have resolved violations related to Breitburn Operating L.P.'s alleged discharge of stimulation treatment fluid in the South Belridge Oil Field in Kern County. The Board's Advisory Team has instructed the Board's Prosecution Team to issue a proposed Administrative Civil Liability (ACL) Order for the Board's consideration at a hearing to be scheduled for the following Board meeting:

4/5 June 2015

Central Valley Water Board Offices
11020 Sun Center Drive, Suite 200
Rancho Cordova, California

At the hearing, the Central Valley Water Board will consider evidence and testimony regarding the alleged violations. After considering the evidence, the Board may assess the proposed liability, assess a higher or lower amount, decline to assess any liability, or continue the hearing to a later date. If less than a quorum of the Board is available, this matter may be conducted before a hearing panel. The public hearing will commence as announced in the Board's meeting agenda, which will be issued at least ten days before the meeting and which will be posted on the Board's web page at:

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

The hearing will be conducted in accordance with this Hearing Procedure. The regulations governing adjudicatory hearings before the Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available online at: <http://www.waterboards.ca.gov>. Copies will be provided upon request. Any procedures not provided by this Hearing Procedure are deemed waived. Except as provided in Section 648(b) and herein, Chapter 5 of the Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

<p>The Discharger shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.</p>
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Hearing Participants

Participants in this proceeding are considered either "Designated Parties" or "Interested Persons." Designated Parties may present evidence and cross-examine witnesses and are subject to cross-examination. Interested Persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). At the hearing, both

Designated Parties and Interested Persons may be asked to respond to questions from the Board, staff, or others at the discretion of the Board Chair.

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

1. Central Valley Water Board Prosecution Team
2. BreitBurn Operating L.P.

Anyone that wishes to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of how the issues to be addressed at the hearing affect the person and why the parties listed above do not adequately represent the person's interest.

Please note that in order to ensure the fairness of the hearing, the Board staff that are acting in a prosecutorial role and that will be presenting evidence of the violations to the Board (the "Prosecution Team") have been separated from the Board staff that will be providing unbiased legal and technical advice to the Board (the "Advisory Team"). Members of the Prosecution Team have not communicated with the members of the Central Valley Water Board or the Board's Advisory Team regarding any substantive matter at issue in the proceeding.

In order to maintain the impartiality of the Board, all Designated Parties and Interested Persons are forbidden from communicating with any Board Member or a member of the Board's Advisory Team regarding the issues involved in the ACL Complaint and proposed ACL Order unless the communication is made in a manner open to all other persons; prohibited communications of this type are referred to as "ex parte" contacts. Communications regarding non-controversial procedural matters are not considered ex parte contacts and are not restricted.

Contact Information

BOARD ADVISORY TEAM	
Adam Laputz, Assistant Executive Officer Central Valley Water Board 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 Phone: (916) 464-4726 Adam.Laputz@waterboards.ca.gov	Patrick Pulupa, Attorney III State Water Board, Office of Chief Counsel P.O. Box 100 Sacramento, CA 95812 Phone: (916) 341-5189 Patrick.Pulupa@waterboards.ca.gov
BOARD PROSECUTION TEAM	
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BREITBURN MANAGEMENT COMPANY, LLC	
Martha Brock, EHS Manager BreitBurn Management Company, LLC 515 S. Flower St., 48 th Floor Los Angeles, CA 90071 Phone: (213) 225-5900 x223	Daniel Clifford, Counsel Clifford Brown, A Professional Corporation Bank of America Building 1430 Truxtun Ave, Suite 900 Bakersfield, CA 93301 Phone: (661) 322-6023

Hearing Time Limits

The following time limits apply at the hearing: each Designated Party shall have a **combined 30 minutes** to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses, and to provide a closing statement. Each Interested Person shall have **3 minutes** to present a non-evidentiary policy statement. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

Evidentiary Documents and File

The ACL Complaint and related documents may be inspected or copied at the Central Valley Water Board office at 1685 E Street, Fresno, CA 93706. This file shall be considered part of the official administrative record for this hearing. All timely submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling. Many of these documents are also posted online at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml

Although the web page is updated regularly, to ensure access to the latest information, you may contact the Prosecution Team for assistance obtaining copies.

Submission of Evidence and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following 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 Board to consider. Evidence and exhibits already in the Board's public files may be submitted by reference, as long as the exhibits and their location are clearly identified. Board members will not generally receive copies of materials incorporated by reference unless copies are provided.
2. All legal and technical arguments or analysis.
3. The name of each witness (including Board staff) whom the Designated Party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

Prosecution Team: The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger. This must include a list of all evidence on which the Prosecution Team relies, including all documents cited in the ACL Complaint or proposed ACL Order.

Designated Parties (including the Discharger): All other Designated Parties must submit any comments and/or additional supporting evidence not cited by the Board's Prosecution Team no later than the deadline listed under "Important Deadlines" below. Failure to timely submit evidence may be grounds for excluding the evidence from the Board's administrative record.

Rebuttal: Any Designated Party that would like to submit evidence, legal analysis, or policy statements to rebut information previously submitted by other Designated Parties (including the Prosecution Team) shall submit rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict

other submissions. Rebuttal information that is not responsive to information previously submitted may be excluded.

Copies: Board members will receive copies of all submitted materials. The Board Members' hard copies will be printed in black and white on 8.5"x11" paper from the Designated Parties' electronic copies. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra nine paper copies for the Board Members. For voluminous submissions, Board Members may receive copies in electronic format only. Electronic copies will also be posted on the Board's website. Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Board will not reject materials solely for failure to provide electronic copies.

Written Comments by Interested Persons: Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them as early as possible, but they must be received by the deadline listed under "Important Deadlines" to be included in the Board's agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing. All Designated Parties, including the Board's Prosecution Team, may respond to written comments submitted by Interested Persons by the deadline listed under "Important Deadlines" below. Such responses shall not exceed the scope of materials already submitted.

Other Matters: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) for the Board in advance of the Hearing. The Summary Sheet shall clearly state that it was prepared by the Prosecution Team, shall summarize the ongoing controversies involved in the proceeding, and shall summarize the positions taken by each of the Designated Parties. The Prosecution Team may also revise the proposed ACL Order by the deadline listed under "Important Deadlines" below to reflect the evidence submitted to the Board subsequent to the issuance of the ACL Complaint.

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

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

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

Questions

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

IMPORTANT DEADLINES

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

March 4, 2015	<ul style="list-style-type: none"> ▪ Advisory Team issues Hearing Procedure and Instructs Prosecution Team to develop and issue proposed ACL Order based on ACL Complaint R5-2015-0510
March 12, 2015	<ul style="list-style-type: none"> ▪ Prosecution Team issues proposed ACL Order <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team Primary Contact and Attorney</p>
March 17, 2015	<ul style="list-style-type: none"> ▪ Objections due on Hearing Procedure ▪ Deadline to request "Designated Party" status <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Primary Contact and Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact</p>
March 23, 2015	<ul style="list-style-type: none"> ▪ Advisory Team issues decision on Requests for Designated Party Status and on Hearing Procedure Objections.
March 27, 2015	<ul style="list-style-type: none"> ▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements," above. <p>▪ <u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team Primary Contact and Attorney</p>
April 20, 2015	<ul style="list-style-type: none"> ▪ Remaining Designated Parties' (including the Discharger's) deadline to submit all information required under "Submission of Evidence and Policy Statements" above. This includes all written comments regarding the proposed ACL Order. ▪ Interested Persons' written comments are due. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Primary Contact and Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact</p>
May 1, 2015	<ul style="list-style-type: none"> ▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. ▪ Deadline to submit requests for additional time. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Primary Contact and Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact</p>
May 14, 2015 [†]	<ul style="list-style-type: none"> ▪ Prosecution Team submits Summary Sheet, revised ACL Order ▪ All Designated Parties may submit responses to written comments submitted by Interested Persons <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team Primary Contact and Attorney</p>
4/5 June 2015	<ul style="list-style-type: none"> ▪ Hearing

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