
North Coast Regional Water Quality Control Board

Notice of Public Hearing and Tentative Hearing Procedure

Proposed Cease and Desist Order No. R1- 2021-0027

Dean Soiland Doing Business As BoDean Co. Inc.
Santa Rosa Hot Plant, 1060 Maxwell Drive, Santa Rosa
Sonoma County

Notice of Public Hearing
August 19/20, 2021
Remote and In-Person Meeting
(see instructions below)

Draft Cease and Desist Order

On June 18, 2021, the Executive Officer of the North Coast Regional Water Quality Control Board (Regional Water Board) was notified that Regional Water Board staff had issued a Proposed Cease and Desist Order, (CDO or Order) to Dean Soiland, doing business as, BoDean Co. Inc. (Discharger). The Discharger is currently regulated under State Water Resources Control Board Order No. 2014-0057 DWQ, NPDES Order No. CAS00001, General Permit for Storm Water Discharges Associated with Industrial Activities (Industrial General Permit or Permit). The proposed CDO requires that the Discharger cease and desist from discharging waste or threatening to discharge waste in violation of the Permit. The CDO requires that the Discharger implement improved Best Management Practices, update its Storm Water Pollution Prevention Plan, and comply with enhanced monitoring and reporting requirements.

Pursuant to Water Code section 13301, the Regional Water Board is required to hold a hearing to adopt, modify or rescind a CDO. The Board has therefore scheduled a hearing to consider the matter at its upcoming public meeting scheduled for August 19/20, 2021. At the public hearing the Regional Water Board will consider whether to affirm, reject, or modify the proposed CDO.

Video and Teleconference Meeting During the COVID-19 emergency

As a result of the COVID-19 emergency and the Governor's Executive Order No. N-08-21, allowing a transition to customary open meeting requirements, this meeting is

scheduled to occur with both a physical meeting location and an option for the public to participate from a remote location.

Live video and audio broadcasts of the public hearing will be available via the internet and can be accessed at the CalEPA Public meeting live webcasts page (<https://video.calepa.ca.gov>). The public hearing will be recorded.

At this time, this meeting is scheduled to occur on August 19/20, and this matter could be heard on either day. In accordance with the Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.), an agenda will be posted to the Board's website at least 10 days in advance of the meeting. The agenda will specify the particular day of the hearing.

Please follow the Regional Water Board website at www.waterboards.ca.gov/northcoast for updates.

Hearing Procedure

Attached to the Notice are Tentative Hearing Procedures that will apply to the proceedings related to the Regional Water Board's consideration of the CDO.

The Prosecution Team and Dischargers shall have the opportunity to comment on the tentative Hearing Procedures and propose changes to the Procedures or due dates for prehearing submittals.

To be considered by the Advisory Team, all comments on the Hearing Procedures must be submitted via email to Nathan Jacobsen, Nathan.Jacobsen@waterboards.ca.gov, no later than **July 16, 2021**. On, or shortly after that date, the Hearing Procedures will be finalized. Once finalized by the Advisory Team, the parties will receive a copy of the approved Hearing Procedures by email and/or certified email. The Procedures will also be posted on the Regional Water Board's website.

Opportunity for Public Participation

The Regional Water Board will consider written comments submitted by members of the public that are interested in the pending matter (Interested Parties or Persons). Interested Persons who are not the parties to the proceeding will be permitted to submit formal written comments. All written comments shall be submitted as early as possible, and in no case later than **5:00 pm** on **July 20, 2021**.

Interested Persons will also be provided the opportunity to orally present general policy statements to the Regional Water Board members at the hearing. Such statements will generally be limited to **5 minutes** per Interested Person, though the Board may grant additional time upon request. Interested Persons do not need to submit written statements in order to speak at the hearing. Interested Persons who wish to be

considered designated parties to the proceeding please see the attached Hearing Procedures for instructions. Please follow the Regional Water Board's website and posted agenda for this Board meeting for instructions on how to participate in this meeting remotely.

Document Review

The proposed Order and related documents, including any comments that are received on the proposed Order are part of the Regional Water Board's public file for this matter and may be inspected or copied at the Regional Water Board's office, 5550 Skylane Blvd, Suite A, Santa Rosa, CA. You may contact the Regional Water Board at 707-576-2220 to arrange for a file review. Additionally, copies of the file record can be obtained by contacting the Prosecution Team.

The proposed Order and most associated documents will also be available on the Regional Water Board's website.

Accessibility

Anyone requiring reasonable accommodation to participate in the public meeting should contact Patti Corsie at 707-576-2220 at least five days prior to the scheduled meeting. The Regional Water Board hearing room is accessible. TTY users may contact the California Relay Service at 800-735-2929 or voice line at 800-735-2922.

Questions

Questions regarding the proposed CDO, this public notice, or the hearing procedures should be directed to Nathan Jacobsen, Nathan.Jacobsen@waterboards.ca.gov, or 916-996-8800.

Matthias St. John
Executive Officer

Attachment: Tentative Hearing Procedure

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Tentative Hearing Procedure

This Hearing Procedure is tentative and will become final after consideration of any comments received from the Prosecution Team or Discharger. **Comments on the Hearing Procedure must be received by 5 p.m. on July 16, 2021.**

Proposed Action: Issuance of Cease and Desist Order No. R1- 2021-0027

Hearing Date: August 19/20, 2021 (specific date will be provided no later than 10 days prior to the hearing.)

Location: 1) North Coast Regional Water Quality Control Board, 5550 Skylane Blvd., Santa Rosa, California 95043; and 2) Zoom Videoconferencing (online)

Discharger: Dean Soiland, Doing Business as BoDean Co. Inc. Santa Rosa Hot Plant.

IF EITHER PARTY INTENDS TO PARTICIPATE IN THE HEARING REMOTELY, PLEASE CONTACT THE ADVISORY TEAM TO OBTAIN SPECIFIC INSTRUCTIONS ON HOW TO PARTICIPATE REMOTELY VIA VIDEOCONFERENCE OR TELEPHONE

A. Applicable Laws and Regulations

This hearing constitutes an “adjudicative proceeding.” This proceeding is governed by the following statutes, regulations, and policies:

- (1) Title 23, sections 648 through 648.8, available on the State Water Board’s laws and regulations page (https://www.waterboards.ca.gov/laws_regulations);
- (2) Chapter 4.5 of the Administrative Procedure Act (Gov. Code, § 11400 et seq.);
- (3) Evidence Code sections 801 through 805;
- (4) Government Code section 11513; and
- (5) State Water Resources Control Board’s Water Quality Enforcement Policy (https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf).

B. Parties and Separation of Functions

To ensure that the Dischargers receive a fair hearing, Regional Water Board staff and counsel have undertaken a separation of functions. Board members will be advised by an “Advisory Team” comprised of staff and counsel that have not participated in development of the Proposed CDO. The Regional Water Board staff and attorneys that have issued the CDO (the Prosecution Team) have been separated from the Advisory Team regarding the development of the CDO. Members of the Prosecution Team have not communicated with the Regional Water Board nor the Advisory Team regarding any substantive matter at issue 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 with the Regional Water Board and members of the Advisory Team.

The members of the Advisory Team, Prosecution Team and Discharger are listed below with contact information for each.

Advisory Team

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

Nathan J. Jacobsen
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Christopher Watt
Senior Engineering Geologist,
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Prosecution Team

Catherine Hawe
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Laura Drabandt,
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Claudia Villacorta, North Coast Regional Water Quality Control Board,
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Heaven Moore, North Coast Regional Water Quality Control Board,
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Charles Reed, North Coast Regional Water Quality Control Board,
Charles.Reed@waterboards.ca.gov

Diana Henriouille, North Coast Regional Water Quality Control Board,
Diana.Henriouille@waterboards.ca.gov

Farzad Kasmaei, North Coast Regional Water Quality Control Board,
Farzad.Kasmaei@waterboards.ca.gov

Discharger

Dean Soiland
President, BoDean Co Inc.
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Santa Rosa, CA 95401
dsoiland@bodeanco.com

Mr. Soiland is considered the Discharger's primary point of contact for this matter. If another, or additional, person should be the primary contact, please submit this request to the Advisory Team.

Anthony Boyle, BoDean Co. Inc.,
aboyle@bodeanco.com

Arthur Deicke, EPS,
epsolns@gmail.com

Josh Leask, BoDean Co. Inc.,
jleask@bodeanco.com

C. Ex Parte Contacts Prohibited

To maintain the Regional Water Board's impartiality, ex parte contacts are prohibited. (See, e.g., Gov. Code, § 11430.10 et seq.) Ex parte contacts are those communications that are directed at the Regional Water Board members or the Advisory Team members, regarding the pending matter, and which are not communicated in a manner open to all other persons. Communications regarding non-controversial procedural matters are not considered ex parte contacts, and are therefore not restricted under this Hearing Procedure.

To avoid ex parte contacts in pre-hearing communications, the Dischargers should ensure that the Prosecution Team is copied on all correspondence directed to the Advisory Team, and *vice-versa*.

D. Interested Persons

The Regional Water Board will consider written comments submitted by members of the public who are interested in the pending matter (Interested Persons). The parties to the proceeding will be permitted to submit formal written responses to Interested Person written comments. To allow for such responses, all written comments shall be submitted as early as possible, and in no case later than 5:00 pm on July 20, 2021. Interested Persons will also be provided the opportunity to orally present general policy statements to the Regional Water Board at the hearing. Such statements will be limited to 5 minutes, though the Board Chair may grant additional time on a case-by-case basis. Interested Persons do not need to submit written statements in order to speak at the hearing.

1. Request for Designated Party status

By default, the only parties to an adjudicative enforcement proceeding are: (1) the Prosecution Team; and (2) the Dischargers named in the proposed order. In some circumstances, however, it may be appropriate for certain Interested Persons to participate directly in the proceeding as a "Designated Party." Such determinations shall be made discretionarily on a case-by-case basis by the Executive Officer, in consultation with the Board Chair.

To request "Designated Party" status, Interested Persons must submit a written request to the Advisory Team no later than 5:00 pm on July 16. The request shall include a brief explanation of how the person will be affected by the potential action by the Regional Water Board, the person's need to present evidence and/or cross examine witnesses, and why a previously Designated Party (Prosecution Team or Discharger) will not adequately represent the person's interest. The parties will be notified whether the request has been granted or denied. In the event that "Designated Party" status is granted, this Hearing Procedure may be revised as appropriate.

E. Pre-Hearing Submittals

To avoid the introduction of surprise testimony and exhibits (title 23, § 648.4, subd. (a)), and to minimize the need for oral argument and testimony at the hearing, this Hearing Procedure requires the parties to submit documentary evidence, witness information, and legal/technical memoranda to the Advisory Team prior to the hearing. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude materials that are not submitted in accordance with this Hearing Procedure. Excluded materials will not be considered by the Board. (§ 648.4, subd. (e).)

1. Submittals shall be submitted electronically

All communications and pre-hearing submittals related to this proceeding shall be submitted electronically via email, per the email addresses listed in section B "Parties". All emails and submissions to the Advisory Team shall be directed to the attorney for

the Advisory Team, who shall serve as the primary point of contact for the Advisory Team; the parties may elect to include other members of the advisory team on submissions. Communications to the Prosecution Team shall, at a minimum, be sent to the attorneys for the Prosecution Team.

2. Prosecution and Discharger Submittals

The following items shall be submitted prior to the hearing by the dates specified:

(1) The Prosecution Team shall submit all documentary evidence supporting adoption of the proposed order. The Discharger shall submit all documentary evidence that supports its position with respect to the proposed order. Each document submitted shall be separately designated as sequentially-numbered exhibit (i.e., Exhibit 1, Exhibit 2, Exhibit 3, etc.).

(2) [OPTIONAL] The Prosecution Team and Discharger may submit a memorandum articulating the party's legal arguments and technical analyses in support of its position on the proposed order.

(3) The Prosecution Team and Discharger shall submit a Witness Information Sheet containing the name of each witness the party intends to call to testify at the hearing; the subject matter of their testimony and the estimated time required for each witness.

The Prosecution Team shall submit items (1)-(3) above no later than **5:00 pm on July 26, 2021** to the Advisory Team with a copy provided to the Discharger:

The Discharger shall submit these items no later than **5:00 pm on July 30, 2021**, to the Advisory Team with a copy provided to the Prosecution Team.

(4) The Prosecution Team issued a proposed CDO on June 18, 2021. The Discharger may submit its own proposed CDO to the Advisory Team by **5 p.m. August 10, 2021**. The Prosecution Team may submit revisions to its Proposed CDO by **5 p.m. August 10, 2021**.

(5) Slide Presentations [OPTIONAL]. Slide presentations (e.g., PowerPoint) may be used at the hearing provided their contents do not exceed the scope of previously submitted material. Regional Water Board administrative staff will be running the presentation at the party's direction. Copies of the slide presentation must be provided to the Advisory Team by **5 p.m. the day prior to the hearing**.

(6) Rebuttal Evidence and responses to any written comments received from Interested Parties. Both Parties may submit Rebuttal evidence. "Rebuttal" means evidence, analysis, or comments offered to disprove or contradict other Designated Parties' submissions. Both parties may also submit written responses to comments received from Interested Parties. Rebuttal and responses to comments from Interested Parties

must be received by **August 6, 2021**. Parties may rebut oral testimony offered at the hearing.

F. Conduct of Hearing

1. The following Time Limits apply to the hearing.

Prosecution Team: 20 Minutes

Discharger: 20 Minutes

Interested Parties [*if any*]: 5 minutes

The above time limits are proposed by the Advisory Team based on a review of the proposed CDO and in consideration of title 23, section 648.5, subd. (a), which specifies that adjudicative proceedings be conducted with a view toward securing relevant information expeditiously without unnecessary delay and expense to the parties and the Board. The parties may propose alternative limits for the Advisory Team's consideration.

The parties may allocate their allotted time as they see fit between presenting evidence and testimony, cross-examining adverse witnesses, making opening and closing statements. A timer will be used to track how much time has elapsed. This timer will be paused during Board questions and party responses to Board questions. Additional time may be provided at the discretion of the Board Chair (at the hearing), upon a showing that additional time is necessary.

2. Witness Testimony

All witnesses who have submitted written testimony shall be available to appear during the hearing to affirm that the written testimony is true and correct, and shall be subject for cross-examination. All persons intending to testify at the hearing shall take the oath administered by the presiding officer. (Gov. Code, § 11513; Cal. Code Regs., tit. 23, § 648.5, subd. (a)(3).)

3. Rules of Evidence

The proceeding shall be conducted in accordance with the provisions and rules of evidence set forth in 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. Evidence already in the Regional Water Board's files may be submitted by reference if the location of the evidence is clearly identified. (Cal. Code Regs., tit. 23, § 648.3.)

G. Important Deadlines

The following list summarizes the important deadlines in this matter. The parties may request extensions or modifications to the deadlines, however any granting or denial of a request shall be at the discretion of the Advisory Team. The Advisory Team may schedule additional pre-hearing conferences to resolve objections or any other outstanding prehearing issues, if needed. Pre-hearing conferences will be held telephonically or through videoconferencing.

Due Dates:

July 16: Submit any comments or objections to the Tentative Hearing Procedures. Interested Parties submit requests to be Designated Parties.

July 23: Interested Parties submit written comments.

July 26: Prosecution Team submits supporting evidence, legal/technical memorandum, witness list.

July 30 Discharger submits supporting evidence, legal/technical memorandum, witness list.

August 6: Parties submit written rebuttal evidence, responses to Interested Parties' comments.

August 10: Discharger submits proposed CDO, Prosecution Team submits revisions to CDO, if any.

Day before hearing: Parties submit presentation slides

cc: [via Email Only]

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