
North Coast Regional Water Quality Control Board

Notice of Public Hearing and Hearing Procedure

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2023-0047A, ISSUED TO:

BO DEAN CO. INC, SONOMA COUNTY, 4611 PORTER CREEK ROAD

Notice of Public Hearing
October 2,3,4, 2024
Remote and In-Person Meeting
(see instructions below)

Administrative Civil Liability Complaint

On September 14, 2023, the Advisory Team of the North Coast Regional Water Quality Control Board (Regional Water Board) was notified that Regional Water Board Prosecution Team staff had issued an Administrative Civil Liability Complaint (ALCLC or Complaint) to Bo Dean Co. Inc. (Respondent). On October 2, 2023, the Advisory Team was notified that the Respondent had received the Complaint and waived its right to a hearing within 90 days of receipt of the Complaint.

The Prosecution Team's Complaint seeks penalties of \$8,589,406 for violations of the Statewide Industrial General Permit (Permit) and Investigative Order No. R1-2019-0029. The Board has therefore scheduled a hearing to consider the matter at its upcoming public meeting scheduled for October 2,3,4, 2024. At the public hearing the Regional Water Board will consider whether to issue an order requiring payment of the full amount recommended in the complaint, to issue an order requiring payment of a reduced amount or a higher amount, decide not to impose penalties, or it may refer the matter to the Attorney General's Office. The Regional Water Board may also elect to continue the hearing to a later date or take the matter under submission.

Video and Teleconference Meeting

This meeting is scheduled to occur with both a physical meeting location and an option for parties to the hearing and the public to participate from a remote location. The physical meeting location is: 5550 Skylane Blvd. Suite A, Santa Rosa, CA 95403.

The hearing is also scheduled to include a site visit to the Respondent's facility located at 4611 Porter Creek Road, Santa Rosa. Follow the Regional Water Board website for details regarding this off-site meeting 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) (<https://video.calepa.ca.gov>). The public hearing will be recorded.

At this time, this matter is scheduled to occur on October 2,3,4 2024. 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 any updates to the meeting format.

Please follow the [Regional Water Board website](http://www.waterboards.ca.gov/northcoast) at (www.waterboards.ca.gov/northcoast) for updates, including notice of any changes to meeting time, location and format.

Hearing Procedure

Attached to this Notice is a Hearing Procedure that will apply to the proceedings related to the Regional Water Board's consideration of the Complaint.

The Prosecution Team and Respondent (Parties) have had the opportunity to comment on Tentative Hearing Procedure and propose changes to the Procedure or due dates for prehearing submittals. The Procedure has been modified based on the Parties comments and consistent with rulings from the Board. The parties held a pre-hearing conference with the Advisory Team on January 10, 2024, and February 25, 2024 and discussed deadlines for the hearing procedure. The Advisory Team and Board Chair have taken discussions during these conferences into consideration in issuing this Notice of Public Hearing and Hearing Procedure.

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 Persons). Interested Persons who are not the parties to the proceeding will be permitted to submit formal written comments. All written comments by Interested Persons shall be submitted as early as possible, and in no case later than **5 p.m. August 26, 2024**

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 Procedure 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 Complaint and related documents, including any comments that are received on the Complaint 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 Complaint 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 Deidre Wilkerson 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 this Public Notice or the Hearing Procedure should be directed to Nathan Jacobsen, Nathan.Jacobsen@waterboards.ca.gov , or 916-341-5181.

Valerie Quinto

Executive Officer

Attachments: Hearing Procedure

Hearing Procedure

Proposed Action: Consideration of Amended Administrative Civil Liability Complaint No. R1- 2021-0047-A.

Hearing Date: October 2,3,4, 2024

Location: 1) 5550 Skylane Blvd. Suite A, Santa Rosa CA 95403; and 2) Zoom Videoconferencing (online)

Respondent: Bo Dean Co. Inc. (Bo Dean)

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 and 649.6, 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;
- (5) Water Code sections 1075-1106; and
- (6) [State Water Resources Control Board’s 2017 Water Quality Enforcement Policy](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf) (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 Respondents 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 Complaint. The Regional Water Board staff and attorneys that have issued the Complaint (the Prosecution Team) have been separated from the Advisory Team regarding the development of the Complaint. 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 Respondent are listed below with contact information for each. Email communications will be the primary method of communication for this proceeding.

Advisory Team

Valerie Quinto

Executive Officer, North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A, Santa Rosa, CA 95043

Valerie.Quinto@waterboards.ca.gov

Nathan Jacobsen

Attorney for North Coast Regional Water Quality Control Board
State Water Resources Control Board
1001 I Street Sacramento, CA 95814

(916) 341-5181

Nathan.Jacobsen@waterboards.ca.gov

Kaete King

Environmental Scientist, North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403

Kaete.King@waterboards.ca.gov

The parties will be notified of any updates to the Advisory Team list.

Prosecution Team

All contacts from the Complaint have been listed. Please provide to the Advisory Team a list of primary contacts that should be copied on communications.

Catherine Hawe, Attorney III, Office of Enforcement
State Water Resources Control Board
Sacramento, CA

(916) 322-3538

Catherine.Hawe@waterboards.ca.gov

Naomi Rubin, Attorney IV, Office of Enforcement
State Water Resources Control Board
Sacramento, CA

(916) 341-5677

Naomi.Rubin@waterboards.ca.gov

Bryan Elder, Senior Water Resources Control Engineer, Office of Enforcement
State Water Resources Control Board
Sacramento, CA
Bryan.Elder@Waterboards.ca.gov

Claudia Villacorta, P.E. Assistant Executive Officer,
Claudia.Villacorta@waterboards.ca.gov

Kason Grady, P.E. Supervisor, Cannabis and Enforcement Division
Kason.Grady@waterboards.ca.gov

Jeremiah Puget, Senior Environmental Scientist
Jeremiah.Puget@waterboards.ca.gov

Heaven Moore, Senior WRCE
Heaven.Moore@waterboards.ca.gov

Charles Reed, Supervising WRCE
Charles.Reed@waterboards.ca.gov

Farzad Kasmaei, WRCE
Farzad.Kasmaei@waterboards.ca.gov

Matthew Herman, WRCE
Matthew.Herman@waterboards.ca.gov

Paul Nelson, Engineering Geologist
Paul.Nelson@waterboards.ca.gov

Heidi Bauer, Senior Engineering Geologist
Heidi.M.Bauer@waterboards.ca.gov

North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A, Santa Rosa, CA 95043

Respondent

The Respondent must identify a primary point of contact or contacts for this matter. Please provide this information to the Advisory Team. These last known physical addresses were provided by the Prosecution Team.

Bo Dean Company Inc.
Anthony Boyle
4611 Porter Creek Road
Santa Rosa, CA 95404
ABoyle@bodeancompany.com

Bo Dean Company Inc.
Dean Soiland
1060 North Dutton Road
Santa Rosa CA 95401
DSoiland@bodeancompany.com

Sean K. Hungerford Esq.
SHungerford@hthjlaw.com

Ryan Thomason Esq.
RThomason@hthjlaw.com

Mark Harrison Esq.
MHarrison@hthjlaw.com

Harrison Temblador Hungerford and Guernsey
2801 T Street
Sacramento, CA 95816

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 Respondents 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 that 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 Interested Person written comments shall be submitted as early as possible, and in no case later than August 26, 2024. 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 this adjudicative enforcement proceeding are: (1) the Prosecution Team; and (2) the Respondents named in the Complaint. 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 February 12, 2024. 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 Respondent) 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. No person requested Designated Party status for this hearing, the Parties to this proceeding are the Prosecution Team and Respondent, Bo Dean.

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. Communications to the Advisory Team shall be submitted via email, per the email addresses listed in section B. 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 Respondent Pre-Hearing Submittals

The following numbered items shall be submitted prior to the hearing by the dates specified. These prehearing submittals shall be submitted to the Regional Water

Board's FTP site. Instructions for uploading and downloading documents on the FTP site will be provided. Parties shall provide notice via email to the Advisory Team when documents are uploaded to the FTP site. **Notice of document uploads shall be provided to all parties with known email addresses.**

(1) The Prosecution Team shall submit all documentary evidence supporting the Complaint. The Respondent shall submit all documentary evidence that supports its position with respect to the Complaint. Each document submitted shall be clearly titled to identify as a Prosecution Team or Respondent submittal and separately designated as a sequentially-numbered exhibit (i.e., Exhibit 1, Exhibit 2, Exhibit 3, etc.). The parties must provide an index of submitted exhibits.

(2) The Prosecution Team and Respondent may submit a memorandum articulating the party's legal arguments and technical analyses in support of its position on the Complaint.

(3) The Prosecution Team and Respondent 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 **June 24, 2024**, to the Board's FTP site with notice of submittal provided to the Respondent and Advisory Team.

The Respondent shall submit these items no later than **August 26, 2024**, to the Board's FTP site with notice of submittal provided to the Prosecution Team and Advisory Team.

(4) Rebuttal Evidence and responses to any written comments received from Interested Persons. 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 Persons. Rebuttal evidence and responses to comments from Interested Persons must be received by **September 3, 2024**. Parties may rebut oral testimony offered at the hearing.

(5) Written Evidentiary objections from the Parties must be received by **September 3, 2024**.

(6) Parties deadline to submit requests for additional hearing time, objections to rebuttal evidence must be received by **September 10, 2024**.

(7) Both parties submit Proposed Findings of Fact and Conclusions of Law to the Advisory Team by **September 17, 2024**.

(8) 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 **12 p.m. the day prior to the hearing.**

F. Conduct of Hearing

1. The following Time Limits apply to the hearing.

Prosecution Team: 300 Minutes

Respondent: 300 Minutes

Interested Persons [*if any*]: 5 minutes

The above time limits are proposed by the Advisory Team based on a review of the Complaint and in consideration of title 23, section 648.5, subdivision (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. The Board Chair may revise this Procedure after notice and opportunity for parties to be heard.

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 party complies with the requirements in California Code of Regulations, title 23, section 648.3. The Regional Water Board may also take official notice of certain facts as provided in California Code of Regulations, title 23, section 648.2.

4. Hearing Site Visit

At the Respondent's request during the Pre-Hearing Conference held on January 10, 2024, the Board plans to conduct a site visit during the hearing. The site visit is tentatively planned for the first day of the hearing, October 2, 2024. The hearing procedure requires the Respondent to submit a proposed site visit plan for Board approval on July 29, 2024. The Prosecution Team may comment on the proposed site visit plan by August 5, 2024. The site visit does not count against a party's allotted time to present their case.

5. Objections and Motions

Written objections to evidence are due by the date specified in "Important Deadlines" section. Parties may raise objections or motions, either prior to, or at the hearing, and such objections and Board responses do not count against the party's allotted time.

Hearing Order

The hearing will generally proceed in the order listed below, subject to modification by the Board Chair:

- i. Opening Statements (Prosecution followed by Respondent)
- ii. Prosecution Team Case Presentation and Direct Testimony from Witnesses
- iii. Cross-Examination of Prosecution Witnesses
- iv. Respondent Case Presentation and Direct Testimony from Witnesses
- v. Cross-examination of Respondent witnesses
- vi. Rebuttal (Prosecution followed by Respondent)
- vii. Closing Arguments
- viii. Public Comments
- ix. Board deliberation and consideration, the Board may meet in closed session

Note: The Parties are allowed to use their time for re-direct, or re-cross examination.

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 in consult with the Board Chair. All submissions are due at 5 p.m. on the listed date, unless otherwise noted.

Discovery deadlines related to specific discovery requests may be addressed in a separate Chair/Advisory Team ruling or through agreement by the parties.

January 29, 2024: Advisory Team issues Public Notice of Hearing and Tentative Hearing Procedure

February 12, 2024: Parties Submit any comments or objections to the Tentative Hearing Procedure. Interested Persons deadline to submit requests to be Designated Parties.

February 26, 2024: Parties' deadline to submit objections to party status request

April 29- May 10, 2024: Advisory Team holds management conference(s) on status of pre-hearing discovery, hearing preparation.

May 26, 2024: Respondent submits waiver of ability to pay or statement that it intends to raise ability to pay defense

June 14, 2024: Parties' deadline to serve notices of written discovery.

June 24, 2024: Prosecution Team deadline to submit prehearing evidence excluding rebuttal.

July 29, 2024: Respondent submits site visit plan.

August 5, 2024: Prosecution Team submits comments on site visit plan.

August 9, 2024: Deadline to complete witness depositions, all responses to written discovery requests due.

August 26, 2024: Respondent deadline to submit pre-hearing evidence excluding rebuttal.

August 26, 2024: Deadline for Interested Persons to submit non-evidentiary policy statements.

September 3, 2024: Parties deadline to issue subpoenas for witnesses to attend hearing

September 3, 2024: Parties deadline to submit written objections to evidence, rebuttal evidence.

September 10, 2024: Parties deadline to submit requests for additional hearing time, written objections to rebuttal evidence.

September 17, 2024: Parties deadline to submit Proposed Findings of Fact and Conclusions of Law, Parties deadline to submit responses to Interested Persons comments, surrebuttal due, if any.

Day before hearing: Parties submit Presentation slides by 12 p.m.

Hearing Date: October 2,3,4 2024

H. Prehearing Conferences and Summary Report

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. Prior to the hearing, the Advisory Team will prepare an Executive Officer Summary Report summarizing the matters involved in the proceeding, and the positions taken by each of the other parties. Once finalized, the Summary Report will be provided to the parties and included in the agenda materials for the proceeding.