



San Francisco Bay Regional Water Quality Control Board

NOTICE OF FINAL HEARING PROCEDURE
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R2-2024-1032
SODA LLC
MARIN COUNTY

PUBLIC HEARING
October 9, 2024, at 3:00 pm
Elihu M. Harris Building
First Floor Auditorium
1515 Clay Street
Oakland, CA

Complaint for Administrative Civil Liability

On July 16, 2024, San Francisco Bay Water Quality Control Board (Regional Water Board) staff issued an Administrative Civil Liability Complaint (ACL Complaint) to SODA LLC (Discharger) regarding a construction project at 3825 Paradise Drive in Tiburon that was regulated under State Water Resources Control Board Order 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction Stormwater General Permit). The ACL Complaint alleges that the Discharger failed to submit its 2022–2023 annual report as required under the Construction Stormwater General Permit and proposes imposing civil liability in the amount of \$2,910.00.

Pursuant to Water Code section 13323, subdivision (b), the Regional Water Board is required to conduct a hearing on the ACL Complaint within 90 days of service, unless the named parties waive this obligation. The Regional Water Board Executive Officer will hold a hearing to consider the matter on **October 9, 2024, at 3:00 pm** at the address listed above.

At the hearing, the Executive Officer will consider evidence regarding the violation alleged in the ACL Complaint. After considering the evidence, the Executive Officer may impose the proposed civil liability, modify the amount of the civil liability and impose it, decline to impose any civil liability, or continue the hearing to a later date.

Final Hearing Procedure

The Hearing Procedure that follows includes provisions that will govern the conduct of proceedings related to consideration of the ACL Complaint. The Prosecution Team and the Discharger had an opportunity comment on the tentative Hearing Procedure. No comments were received from either party.

Opportunity for Public Participation

The ACL Complaint is available on the Regional Water Board's website at https://www.waterboards.ca.gov/sanfranciscobay/public_notices/enforcement_db.html#SEP. Members of the public or organizations that are not a party to the proceeding (Interested Persons) may submit written comments or statements on the ACL Complaint. Comments must be submitted to the "Primary Contacts" listed on page 9 of the Hearing Procedure by **5:00 pm** on **August 23, 2024**. Electronic submittal is encouraged.

Interested Persons may also provide oral comments or statements at the hearing. Oral comments and statements will be limited to **3 minutes** per Interested Person.

Individuals who require special accommodations or need interpreter services should contact the Executive Assistant at 510-622-2399 at least 10 be days before the hearing. TTY users may contact the California Relay Service at 800-735-2929 or voice line at 800-735-2922.

Please direct questions regarding this notice to Teresita Sablan at teresita.sablan@waterboards.ca.gov or (916) 341-5174.

California Regional Water Quality Control Board, San Francisco Bay Region

**FINAL HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R2-2024-1032**

**ISSUED TO
SODA LLC
MARIN COUNTY**

**HEARING SCHEDULED FOR
OCTOBER 9, 2024, AT 3:00 PM**

The California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board or Board) has the authority under Water Code section 13323 to administratively impose a fine, called administrative civil liability, against persons who violate water quality requirements. The Regional Water Board has delegated authority to its Executive Officer to hold evidentiary hearings for administrative civil liability complaints brought under Water Code section 13399.33 and to issue administrative civil liability orders for such complaints. (See Regional Water Board Resolution Nos. 70-11 and R2-2021-0003.) The Regional Water Board's Prosecution Team has issued Administrative Civil Liability Complaint R2-2024-1032 (ACL Complaint) and proposes the Board impose civil liability under Water Code section 13399.33 against SODA LLC (Discharger) for the violation alleged in the ACL Complaint.

I. Hearing Date and Location

Pursuant to Water Code section 13323, subdivision (b), the Regional Water Board must hold a hearing on the ACL Complaint within 90 days of service of the ACL Complaint unless the Discharger waives this right. The Executive Officer has scheduled a hearing to consider this matter **on October 9, 2024, at 3:00 pm**.

The hearing will be held at:

**Elihu M. Harris Building
First Floor Auditorium
1515 Clay Street
Oakland, CA**

At the hearing, the Executive Officer will consider evidence regarding the alleged violation in the ACL Complaint. After considering the evidence, the Executive Officer may impose the proposed civil liability, modify the amount of the civil liability and impose it, decline to impose any liability, or continue the hearing to a later date.

II. Hearing Waiver and Postponement of Hearing

A. Waiver Form

The Prosecution Team provided the Discharger with a Waiver Form for the ACL Complaint (Waiver Form). To waive the hearing requirement and pay the proposed liability amount, the Discharger should complete and submit the Prosecution Team's Waiver Form by **August 15, 2024**.

B. Postponement Request

To request postponement of the hearing for any other reason than that set forth in the Waiver Form, the Discharger must submit a request for postponement by **August 9, 2024**. The request must include the basis for the request and a waiver of the Discharger's right to have a hearing within 90 days of service of the ACL Complaint. Additional reasons to postpone the hearing could include time needed to discuss settlement with the Prosecution Team or time needed to prepare for the hearing.

III. Adjudicatory Hearing Regulatory Framework

A. Applicable Statutes and Regulations

The following statutes and regulations govern the hearing on the ACL Complaint:

- (1) California Water Code section 13323
- (2) California Code of Regulations, title 23, section 648 et seq. (available online at https://www.waterboards.ca.gov/laws_regulations)
- (3) Chapter 4.5 of the Administrative Procedure Act (Gov. Code, § 11400 et seq.), excluding Article 8 (*Language Assistance*), Article 13 (*Emergency Decision*), Article 14 (*Declaratory Decision*) and Article 16 (*Administrative Adjudication Code of Ethics*)
- (4) Evidence Code sections 801 through 805
- (5) Government Code section 11513
- (6) State Water Resources Control Board (State Water Board) Water Quality Enforcement Policy (available online at https://www.waterboards.ca.gov/water_issues/programs/enforcement/water_quality_enforcement.html)

Except for Government Code section 11513 (see above), Chapter 5 of the California Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing. Any statutory or regulatory requirements not provided by this Hearing Procedure are not applicable to this hearing.

B. Separation of Prosecutorial and Advisory Function

Board staff and attorneys that have issued the ACL Complaint (Prosecution Team) have been separated from the Board staff and attorneys that will advise the Executive Officer on the ACL Complaint (Advisory Team). (Gov. Code, § 11425.10, subd. (a)(4).) The Prosecution Team will present evidence for consideration by the Executive Officer. The Advisory Team will provide legal and technical advice to the Executive Officer. Members of the Advisory Team and Prosecution Team are as follows—

Advisory Team:

Joseph Martinez, Environmental Scientist
Teresita Sablan, Attorney IV
Yuri Won, Attorney V

Prosecution Team:

Thomas Mumley, Assistant Executive Officer
Ross Steenson, Assistant Executive Officer
Bill Johnson, Environmental Program Manager I
Brian Thompson, Senior Engineering Geologist
Margaret Monahan, Senior Water Resource Control Engineer
Deirdre Ryan, Environmental Scientist
Jerry Xu, Water Resource Control Engineer
Asa Standfeldt, Attorney III

C. Ex Parte Communications

Any communication regarding the ACL Complaint that is directed at the Executive Officer or the Advisory Team by a participant in the hearing and that is not made in a manner open to all other persons is considered an “ex parte” communication. All “ex parte” communications are prohibited. (Gov. Code, § 11430.10.) Communications regarding non-controversial procedural matters are not considered ex parte communications and are permitted.

IV. Parties and Other Interested Persons

Participants in the ACL hearing are considered either “Parties” or “Interested Persons.”

A. Parties

Parties are the primary participants in the hearing. (See Gov. Code, § 11405.60; Cal. Code Regs., tit. 23, § 648.1, subd. (a).) Parties may present evidence, including witness testimony; cross-examine opposing witnesses, and provide closing statements. Parties may be asked to respond to clarifying questions from the Executive Officer and Advisory Team. (Cal. Code Regs., tit. 23, § 648.1 et seq.)

The following hearing participants are Parties in this proceeding:

- (1) Regional Water Board Prosecution Team
- (2) SODA LLC

B. Interested Persons (Non-Parties)

Interested Persons include any person or organization that is interested in the outcome of the hearing but who has not been designated as a party. Interested Persons may present written or oral non-evidentiary comments and policy statements but may not submit evidence (e.g., photographs, eye-witness testimony, and monitoring data). Interested Persons are not subject to cross-examination, but the Executive Officer and Advisory Team may ask them clarifying questions. (Cal. Code Regs., tit. 23, § 648.1.)

C. Requesting Party Status

Consistent with Government Code section 11440.50 and California Code of Regulations, title 23, section 648.1, subdivision (a), persons who wish to participate in the hearing as a party must submit a request in writing by **August 9, 2024**. This deadline is set as early as practicable in advance of the hearing. (Gov. Code, § 11440.50, subd. (b)(2).) The request must include facts demonstrating how the person will be substantially affected by the proceeding and why the Parties listed above do not adequately represent the person's interest. (Gov. Code, § 11440.50 (b)(3).)

The Advisory Team, in consultation with the Executive Officer, will promptly respond to any timely written requests for party status. The Executive Officer will not grant a request for party status if she determines the designation of the requestor as a party will impair the interests of justice and the orderly and prompt conduct of the proceeding. The Executive Officer, when granting a request for party status, may impose restrictions on the requestor's hearing participation, including limiting or excluding the use of cross-examination and other procedures to promote the orderly and prompt conduct of the proceeding. (Gov. Code, § 11440.50, subd. (c).)

V. Prehearing Submission of Written Comments and Statements by Interested Persons

It is the policy of the State Water Board that a 30-day public comment period shall be posted on the Board's website prior to the settlement or imposition of any ACL. (State Water Board Enforcement Policy, Appendix A, p. 6.) Interested Persons who would like to submit written non-evidentiary policy statements or comments must submit these statements or comments by **August 23, 2024**. (Cal. Code Regs., tit. 23, § 648.1, subd. (d).) Interested Persons do not need to submit written statements to speak at the hearing.

VI. Prehearing Submissions by Parties

A. Witnesses, Exhibits, and Arguments

The Prosecution Team and the Discharger must submit the following information by **August 30, 2024, and September 13, 2024, respectively**:

1. The name of each witness whom the Party intends to call at the hearing
2. The subject(s) that will be covered by each witness' proposed testimony
3. The estimated time required by each witness to present direct testimony
4. The qualifications of each expert witness, if any
5. Copies of exhibits (i.e., evidence) the Party would like the Board to consider
6. All legal and technical arguments

B. Rebuttal Evidence

Rebuttal evidence is evidence offered to disprove or contradict evidence presented by an opposing party. While generally not required to be submitted in advance of the hearing, pre-hearing submission of rebuttal evidence allows the Regional Water Board to consider relevant information ahead of the hearing and furthers the Board's policy against surprise evidence. Pre-hearing submission of such evidence may result in a more efficient and expedited hearing. (Cal. Code Regs., tit. 23, §§ 648.4, 648.5.)

To maintain fairness, ensure an orderly and prompt proceeding, and avoid "surprise evidence," the Parties must submit rebuttal evidence, if any, by **September 20, 2024**. Rebuttal evidence shall be limited to rebutting the scope of previously submitted materials; rebuttal evidence that is not responsive to previous submittals may be excluded. The requirement to submit rebuttal evidence in advance of the hearing applies only to rebut timely submitted written evidence; the Parties will have the opportunity to rebut oral testimony submitted at the hearing. (See Gov. Code, § 11520.10, subd. (a)(1).)

C. Incorporation by Reference

Evidence already in the Board's files may be submitted by reference if the location of the evidence is clearly identified. (Cal. Code Regs., tit. 23, § 648.3.)

D. Prohibition on Surprise Evidence

It is the policy of the Regional Water Board to discourage the introduction of surprise testimony and exhibits. (Cal. Code Regs., tit. 23, § 648.4, subd. (a).) The Executive Officer may refuse to admit proposed exhibits or testimony that are not submitted in accordance with this Hearing Procedure and shall refuse to do so when there is a showing of prejudice to any Party or the Board. (Cal. Code Regs., tit. 23, § 648.4, subd. (e).) Excluded material will not be considered.

E. Proposed Administrative Civil Liability Order

Pursuant to Government Code section 11425.10, subdivision (a)(6), the Regional Water Board's decision on the ACL Complaint shall be in writing, be based on the record, and include a statement of factual and legal basis of the decision. (See also Gov. Code, § 114250.20.) Each Party may submit a proposed ACL Order for the Executive Officer's consideration by **September 27, 2024**.

VII. Hearing Procedure

A. Order of Proceedings

The hearing on the ACL Complaint will be conducted in the general order listed under California Code of Regulations, title 23, section 648.5, except that the Executive Officer may modify the order for good cause.

The following is a preliminary order of proceeding, subject to modification by the Executive Officer:

1. Executive Officer opening statement
2. Identification of all persons wishing to participate in the hearing
3. Administration of oath to persons who intend to testify
4. Presentation of evidence by the Parties
 - a. Prosecution Team
 - b. Discharger
5. Cross-examination of parties' witnesses by other parties and by the Executive Officer or Advisory Team
6. Comments by Interested Persons, if any
7. Closing statements
 - a. Prosecution Team
 - b. Discharger

Questions from the Executive Officer and the Advisory Team are in order at any time.

B. Administration of Oath

All persons intending to testify at the hearing are required to take the oath administered by the Executive Officer. (Gov. Code, § 11513; Cal. Code Regs., tit. 23, § 648.5, subd. (a)(3).)

C. Rules of Evidence

The proceeding will be conducted in accordance with the provisions and rules of evidence set forth in Government Code section 11513. Hearsay evidence is admissible subject to the provisions of Government Code section 11513.

D. Witnesses

All witnesses who have submitted written testimony in advance of the hearing must appear at the hearing to affirm that the testimony is true and correct and be available for cross-examination. (Cal. Code Regs., tit. 23, § 648.4, subd. (d).)

E. Hearing Time Limits

To secure relevant information expeditiously without unnecessary delay and expense to the Parties and the Board, the time limits below will apply to this proceeding. (Cal. Code Regs., tit. 23, § 648.5.)

Parties: Each Party will have a combined total of **15 minutes** to present evidence, including witness testimony; cross-examine adverse witnesses; and provide a closing statement.

Interested Persons: Each Interested Person will have **3 minutes** to present a non-evidentiary policy statement.

A timer will be used but will not run during questions from the Executive Officer or Advisory Team and the responses to such questions, or during discussions of procedural issues. Hearing participants may request additional time to be considered at the discretion of the Executive Officer.

F. Visual Presentations

Each Party may use PowerPoint and other visual presentations at the hearing. The presentation content shall not exceed the scope of previously submitted written material. The Parties must submit their presentations, if any, by **October 2, 2024**.

VIII. Miscellaneous

A. Submission Format

All documents submitted pursuant to this Hearing Procedure must be received by 5:00 p.m. on the respective due date identified herein and summarized in the “Important Dates” table below. All submittals must be sent to the “Primary Contacts,” identified below. Electronic copies are encouraged. Please include all Parties on communications to the Advisory Team to avoid ex parte communications.

B. Availability of Documents

The ACL Complaint and all documents submitted pursuant this Hearing Procedure may be obtained by contacting the Advisory Team attorney (contact information on the following page). The ACL Complaint is also available on the Regional Water Board’s website at https://www.waterboards.ca.gov/sanfranciscobay/public_notices/enforcement_db.html#SEP.

Interested Persons may request to be included in the transmission of all submittals by contacting the Advisory Team.

C. Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney primary contact (contact information on the following page).

PRIMARY CONTACTS

Advisory Team:

Joseph Martinez, Environmental Scientist
San Francisco Bay Regional Water
Quality Control Board
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Prosecution Team:

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Discharger:

SODA LLC
ATTN: Daniel Rabin
21 Locust Avenue, Suite 1
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daniel.rabin@rabin.com

SODA LLC
ATTN: Kendra Campagna
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Mill Valley, CA 94641
kendra.campagna@rabin.com
(415) 248-2002

IMPORTANT DATES

July 16, 2024	<ul style="list-style-type: none"> ▪ Prosecution Team issued Administrative Civil Liability Complaint R2-2024-1032
July 23, 2024	<ul style="list-style-type: none"> ▪ Advisory Team circulated tentative Hearing Procedure
August 9, 2024	<ul style="list-style-type: none"> ▪ Parties' deadline to submit comments on the tentative Hearing Procedure ▪ Discharger's deadline to request postponement of the hearing under Section II.B ▪ Deadline for non-parties to request party status under Section IV.C
August 15, 2024	<ul style="list-style-type: none"> ▪ Discharger's deadline to submit Prosecution Team's Waiver Form under Section II.A
August 20, 2024	<ul style="list-style-type: none"> ▪ Advisory Team issuance of Final Hearing Procedure
August 23, 2024	<ul style="list-style-type: none"> ▪ Interested Persons' deadline to submit written comments and statements under Section V
August 30, 2024	<ul style="list-style-type: none"> ▪ Prosecution Team's deadline to submit evidence under Section VI.A
September 13, 2024	<ul style="list-style-type: none"> ▪ Discharger's deadline to submit evidence under Section VI.A
September 20, 2024	<ul style="list-style-type: none"> ▪ Parties' deadline to submit rebuttal evidence under Section VI.B
September 27, 2024	<ul style="list-style-type: none"> ▪ Parties' deadline to submit Proposed Administrative Civil Liability Order under Section VI.E
October 2, 2024	<ul style="list-style-type: none"> ▪ Parties' deadline to submit copy of visual presentations under Section VII.F
October 9, 2024, at 3:00 pm	<ul style="list-style-type: none"> ▪ Hearing on ACL Complaint R2-2024-1032