

NOTICE OF PUBLIC HEARING
TO CONSIDER ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

NO. R9-2008-0080
ISSUED TO

City of San Marcos

NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD
BEFORE THE REGIONAL WATER QUALITY CONTROL BOARD,
SAN DIEGO REGION, ON DECEMBER 10, 2008

Background

The Assistant Executive Officer of the Regional Water Quality Control Board, San Diego Region (Regional Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code section 13268 (CWC) to the City of San Marcos (City) alleging that it has violated Water Code section 13267 by failing to provide a complete and adequate Report of Waste Discharge, as required by Water Quality investigative Order No. R9-2006-0040, as amended. The Complaint proposes that administrative civil liability in the amount of \$59,975 be imposed as authorized by Water Code section 13268(b)(1). Unless the City waives its right to a hearing and pays the proposed liability, a hearing will be held before the Regional Board during its meeting of December 10, 2008, in San Diego.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Regional Board will consider whether to adopt, modify, or reject the proposed assessment, or whether to refer the matter to the Attorney General's Office to seek recovery of judicial civil liability. If it adopts an assessment, the Regional Board will issue an Administrative Civil Liability Order.

The public hearing on December 10, 2008, will commence as announced in our Regional Board meeting agenda. The meeting will be held at the Regional Board Office at 9174 Sky Park Court, Suite 100, in San Diego. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Regional Board's web page at: www.waterboards.ca.gov/sandiego.

Hearing Procedures

A copy of the procedures governing an adjudicatory hearing before the Regional Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the Regional Board. This Notice provides additional requirements and deadlines related to the proceeding. THIS NOTICE MAY BE AMENDED BY THE ADVISORY STAFF AS NECESSARY. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY FROM THE HEARING.

Hearing Participation

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 may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Board.

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

- (1) San Diego Regional Water Board Prosecution Staff
- (2) City of San Marcos

Contacts

Advisory Staff:

Catherine George, Esq.
Senior Staff Counsel
Regional Water Quality Control Board, San Diego Region
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Executive Officer
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Discharger:

Mr. Mike Mercereau
Director of Public Works

City of San Marcos
201 Mata Way
San Marcos, CA 92069-2949

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 Regional Board (Prosecution Staff) have been separated from those who will provide advice to the Board (Advisory Staff). Members of the Advisory Staff are: Catherine George, Senior Staff Counsel, and John Robertus, Executive Officer. Members of the Prosecution Staff are: David Boyers, Senior Staff Counsel, Michael McCann, Assistant Executive Officer, Mark Alpert, Pollution Prevention Section Manager, Bob Morris Senior Water Resources Control Engineer, Amy Grove Engineering Geologist and Julie Chan Supervising Engineering Geologist. **Unless the City objects to and/or comments on this notice to Advisory Staff Member Catherine George by October 3, 2008, or the Advisory Staff issues an alternative Notice of Hearing Procedure, the procedures set forth herein will govern the December 10, 2008 ACL Complaint Hearing.**

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 Staff or members of the Regional 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 party on the one hand, and a Regional Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party, and not already listed above, shall request party status by submitting a request in writing (with copies to the designated parties) no later than 5 p.m. on **October 10, 2008**, to Catherine George, Senior Staff Counsel, at the address set forth above. 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 Regional Board affect the person) 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 submitted by 5 p.m. on **October 17, 2008**. The parties will be notified by 5 p.m. on **October 22, 2008**, as to whether the request has been granted or denied.

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 30 minutes to testify, present evidence, and cross-examine witnesses, and each interested person shall have 3 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. Additional time may be provided at the discretion of the hearing officer upon a showing that additional time is necessary.

Written Evidence, Exhibits and Policy Statements

Designated parties shall submit in writing 20 copies of the following information to Catherine George at the above-referenced address no later than 5 p.m. on **November 21, 2008**.

1. All documentary evidence and exhibits proposed to be offered at the hearing.
2. All legal and technical arguments or analysis.

In addition to the foregoing, each designated party shall send (1) one copy of the above written materials to each of the other designated parties at the address or addresses provided above by 5 p.m. on **November 21, 2008**.

Interested persons may submit one (1) copy of non-evidentiary policy statements by the close of the hearing.

Evidentiary Objections

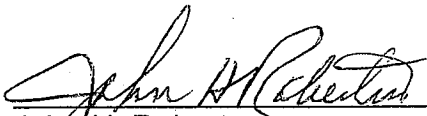
A designated party objecting to evidence proposed by another party must submit a written objection by 5 p.m. on **December 1, 2008**, to Catherine George, Senior Staff Counsel, at the above-referenced address, with a copy to all other designated parties. The Advisory Staff will notify the parties about further action to be taken on such objections.

Questions

Questions concerning this proceeding may be addressed to Catherine George, Senior Staff Counsel, Regional Water Quality Control Board, San Diego Region, 9174 Sky Park Court, Suite 100, San Diego, CA 92123-4353.

IMPORTANT DEADLINES

September 26, 2008	ACL Complaint issued to Discharger by Prosecution Team; Prosecution Team Sends draft Hearing Notice to Discharger and Advisory Team.
October 3, 2008	Comments due on draft Hearing Notice
October 10, 2008	Deadline for submission of request for designated party status.
October 17, 2008	Deadline for opposition to request for designated party status.
October 23, 2008	Decision issued on request for designated party status, if any.
November 21, 2008	Deadline for submission of evidence and legal argument.
December 1, 2008	Deadline for submission of evidentiary objections.
December 8, 2008	Rulings on evidentiary objections, if any.
December 10, 2008	Hearing Date



John H. Robertus
Executive Officer

09/23/2008
DATE