
San Diego Regional Water Quality Control Board

**In the Matter of Complaint No. R9-2015-0110 for Administrative Civil Liability
Against San Altos-Lemon Grove, LLC
Valencia Hills Construction Site, Lemon Grove, California**

ORDER OF PROCEEDINGS

The hearing on Administrative Civil Liability Complaint No. R9-2015-0110 will be conducted in accordance with this Order or Proceedings and the Revised Hearing Procedures issued February 8, 2016.¹ The general procedures applicable to adjudicative hearings before the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may be found at Title 23, California Code of Regulations, section 648, et seq., chapter 4.5 of the Administrative Procedures Act (commencing with section 11400 of the Government Code), sections 801-805 of the Evidence Code and section 11513 of the Government Code. Except as provided in section 648 and herein, Chapter 5 of the Administrative Procedures Act (commencing with Government Code section 11500) does not apply to this hearing. The Designated Parties (San Diego Water Board Prosecution Team and San Altos-Lemon Grove, LLC) are reminded that this proceeding is not and will not be conducted as a civil trial.

The procedures herein may be amended by the Chair in his discretion.

Hearing Participation

Participants in this proceeding are either “designated 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. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony or monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the San Diego Water Board members, Advisory Team or others, at the discretion of the San Diego Water Board Chair.

The following participants are Designated Parties for this hearing:

1. San Diego Water Board Prosecution Team
2. San Altos-Lemon Grove, LLC.

¹ The Revised Hearing Procedures issued February 8, 2016, are consistent with this Order of Proceedings. This Order of Proceedings supplements but does not replace the Revised Hearing Procedures.

Interested Person Non-evidentiary Policy Statements were due February 19, 2016. One submittal title "non-evidentiary policy statement" from Business Industry Association was timely submitted.

Hearing Time Limits

Each Designated Party shall have a combined 90 minutes to present evidence, cross-examine witnesses (if warranted) and provide a closing statement; and each interested person shall have three minutes to present a non-evidentiary policy statement. An interested person need not have submitted a written policy statement to comment. The Parties are reminded that any cross-examination by a party of another party's witnesses is counted against the cross-examining party's hearing time.

Additional time may be provided at the discretion of the Chair or San Diego Water Board at the hearing upon a showing that additional time is necessary.

Affirmation of Testimony, Testimony Format and Cross-Examination

Any witness who has submitted written testimony for the hearing shall appear at the hearing to affirm the truth of the written testimony and correct and shall be available for cross-examination and Board Member questions. Deposition transcripts or excerpts that were included in prior written submittals are included in the record for this matter without the deponent's personal appearance, but may be considered hearsay and limited consistent with Government Code section 11513, subdivision (d). Transcripts of an adverse party deponent are not hearsay. (Code Civ. Proc., § 2025.620.)

At the commencement of a Designated Party's testimony, the Designated Party may ask all of its witnesses who have submitted a written declaration or whose deposition transcript has been submitted to affirm the truth of their written testimony. Narrative testimony rather than question and answer format testimony is permitted and encouraged to conserve hearing time. Oral direct testimony by witnesses that goes beyond the scope of written submissions will be excluded. A Designated Party's witnesses are subject to cross-examination by the other Designated Party. The scope of cross-examination is not limited to testimony presented during direct examination or the evidence and testimony presented by the Designated Party as long as it concerns a matter relevant to the issues.

The Designated Party conducting cross-examination may either direct questions to a particular witness or may pose the question to the testifying party's witnesses as a panel and allow the testifying party to designate which witness should answer. Designated Parties' witnesses may be asked to respond to questions from Board Members or Advisory Team staff or others. Questions of a Designated Party or its witnesses and responses to questions do not count against the Designated Party's hearing time.

PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record.

Order of Hearing

1. Board Member Disclosures
2. Chair's Opening Statement
3. Preliminary matters, if any
4. Administration of oath to all persons intending to testify
5. Testimony by Prosecution Team [followed by cross-examination of Prosecution Team, if any]
6. Testimony by San Altos-Lemon Grove, LLC [followed by cross-examination of San Altos-Lemon Grove, LLC, if any]
7. Comments by interested persons
8. Closing statement by San Altos-Lemon Grove, LLC
9. Closing statement by Prosecution Team

At the conclusion of the hearing, the San Diego Water Board intends to adjourn to closed session to deliberate on evidence received in the proceeding, as authorized by Government Code section 11126(c)(3). The San Diego Water Board may complete deliberations on March 9 or may continue its deliberations to a subsequent noticed Board meeting. A proposed order will be prepared, consistent with a decision by the San Diego Water Board, and noticed for public comment prior to consideration at a subsequent meeting.



Henry Abarbanel, Ph.D., Chair and
Presiding Officer for Prehearing Proceedings

February 26, 2016