

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION

**SECOND REVISED HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
No. R9-2023-0013**

**ISSUED TO
QUALITY INVESTORS 1 2016 LLC AND DAVID G. EPSTEIN
COUNTY OF SAN DIEGO**

HEARING SCHEDULED FOR SEPTEMBER 13, 2023

**PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH
THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN
THE EXCLUSION OF YOUR SUBMITTAL.**

California Water Code section 13323 authorizes the California Regional Water Quality Control Board, San Diego Region (Regional Board) to impose a fine, called administrative civil liability, against any person who violates water quality requirements. The Regional Board's Prosecution Team has issued an Administrative Civil Liability (ACL) Complaint that proposes the Regional Board impose civil liability against Quality Investors 1 2016 LLC and David G. Epstein (collectively, Respondents) for the violations alleged in the ACL Complaint.

I. Hearing Date and Location

The Regional Board has scheduled a hearing to consider this matter on September 13, 2023. At the hearing, the Regional Board will consider evidence regarding the violations alleged in the ACL Complaint. After considering the evidence, the Regional Board may impose the proposed civil liability, impose a higher or lower amount, or decline to impose any liability.

The hearing will be held at the following date, time, and location:

Wednesday, September 13, 2023 at 9:00 a.m.
San Diego Regional Water Quality Control Board
Board Meeting Room
2375 Northside Drive, Suite 108
San Diego, California 92108
And via Video and Teleconference
(Gov. Code, § 11133)

The Regional Board's meeting agenda will be issued at least ten days before the meeting and posted on the Regional Board's website at https://www.waterboards.ca.gov/sandiego/board_info/agendas/. The hearing may be rescheduled or continued to a later date. Please check the Regional Board's website for the most up-to-date information. Any person desiring to receive future notices about changes to

the date, time, location, or format of the public hearing should sign up for the Board's Lyris e-mail list.¹

II. Presiding Officer

For the purposes of this Hearing Procedure, the Presiding Officer is the Chair of the Regional Board or another member of the Regional Board designated in writing by the Chair of the Regional Board.

III. Hearing Waiver

Water Code section 13323, subdivision (b), requires a hearing on the ACL Complaint within 90 days of service of the ACL Complaint; however, the Respondents may waive this right. The Respondents may decide to waive the hearing requirement and pay the full proposed liability amount and settle the ACL Complaint, contingent on the Regional Board's approval of the settlement. Alternatively, the Respondents may decide to waive the right to a hearing within 90 days to (1) engage in settlement discussions or (2) seek additional time to prepare for the hearing.

To waive the hearing requirement for any of the above reasons, the Respondents should complete and submit the Waiver Form for Administrative Civil Liability Complaint (Waiver Form), included with the ACL Complaint, by the deadline listed under "Important Deadlines" below. If there are multiple Respondents, each of them must submit a separate waiver. Any request to postpone the hearing must be approved by the Presiding Officer.

IV. Adjudicatory Hearing Regulatory Framework

A. Applicable Statutes and Regulations

The following statutes and regulations, as implemented by this Hearing Procedure, govern the hearing on the ACL Complaint:

1. California Water Code section 13323.
2. 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*).
3. Evidence Code sections 801 through 805.
4. Government Code section 11513.
5. California Code of Regulations, title 23, section 648 et seq.

¹ To sign up for the Board's Lyris e-mail list, please visit:

https://www.waterboards.ca.gov/resources/email_subscriptions/reg9_subscribe.html.

6. State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy).

These statutes and regulations are available online at https://www.waterboards.ca.gov/laws_regulations. Except for Government Code section 11513, Chapter 5 of the California Administrative Procedure Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

B. Separation of Prosecutorial and Advisory Function

Regional Board staff and attorneys that have prepared the ACL Complaint (Prosecution Team) have been separated from Regional Board staff and attorneys that will advise the Regional Board on the ACL Complaint (Advisory Team). The Prosecution Team will present evidence for consideration by the Regional Board. The Advisory Team provides legal and technical advice to the Regional Board. Members of the Advisory Team and Prosecution Team are identified below.

Advisory Team:²

David Gibson, Executive Officer
California Regional Water Quality Control Board, San Diego Region
2375 Northside Drive, Suite 100
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² Additional staff may be designated as Advisory Team members at a later date.

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Prosecution Team:

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Erica Ryan, Water Resources Control Engineer

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C. Ex Parte Communications

Any communication regarding any issue in this proceeding to a Regional Board member or member of the Advisory Team by a Party or Interested Person that is made without notice and opportunity for all Parties to participate in the communication is considered an “ex parte” communication. Ex parte communications are prohibited, except as authorized by statute (e.g., communications regarding non-controversial procedural matters). (Gov. Code, § 11430.10 et seq.)

D. Evidentiary Standards

Government Code section 11513 and Evidence Code sections 801 through 805 apply to this proceeding.

The technical rules of evidence do not apply to this proceeding. The Parties may submit any relevant evidence that is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

Hearsay evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible

over objection in civil actions. An objection is timely if made before conclusion of all testimony or closing statement if one is provided.

V. Hearing Participants

A. Parties

Parties are the primary participants in the hearing. Parties may present written evidence, offer witness testimony, cross-examine witnesses, and provide closing statements. Parties may be asked to respond to questions from the Regional Board and Advisory Team.

The following are Parties to this proceeding:

1. Prosecution Team
2. David G. Epstein
213 Park Avenue
Laguna Beach, CA 92651
depstein@icloud.com
3. Quality Investors 1 2016 LLC
Attn: David G. Epstein
213 Park Avenue
Laguna Beach, CA 92651
depstein@icloud.com
4. Any other person or entity designated as a party by the Presiding Officer in accordance with Section V.C.

B. Interested Persons (Non-Parties)

Interested Persons include any persons or entities that are interested in the outcome of the proceeding but that have not been designated as a party. Interested Persons may present written or oral non-evidentiary policy statements. Interested Persons are not subject to cross-examination but may be asked to respond to clarifying questions from the Regional Board and Advisory Team.

Interested Persons may not submit evidence (e.g., photographs, eye-witness testimony, and monitoring data). Any person or entity that would like to submit evidence should request to be designated as a party pursuant to Section V.C.

C. Requesting Party Status

Any Interested Person who wishes to participate in the hearing as a party must submit a request in writing by the deadline listed under “Important Deadlines” below. The request must include the following information at a minimum:

1. How the issues to be addressed at the hearing substantially affect the requestor's interests, and
2. Why the existing Parties do not adequately represent the requestor's interests.

The request for party status must also include any requested revisions to the Hearing Procedure.

A Party must submit any written objection to a request for party status by the deadline listed under "Important Deadlines" below.

Following the deadline to submit objections to party status requests, the Presiding Officer will promptly respond to any timely written requests for party status. The Presiding Officer will not grant a request for party status if the Presiding Officer determines the designation of the requestor as a party will impair the interests of justice or the orderly and prompt conduct of the proceeding. The Presiding 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. Unless and until an Interested Person is granted party status, the deadlines for Interested Persons shall continue to apply.

VI. Prehearing Submittal of Non-Evidentiary Policy Statements by Interested Persons

A. Non-Evidentiary Policy Statements

Interested Persons must submit any written non-evidentiary policy statements regarding the ACL Complaint by the deadline listed under "Important Deadlines" below.

Interested Persons are not required to submit written statements to speak at the hearing.

B. Responding to Interested Person Non-Evidentiary Policy Statements

A Party must submit any response to Interested Person written policy statements by the deadline listed under "Important Deadlines" below.

VII. Prehearing Submittals by Parties

A. Prehearing Evidence and Argument Submittals (Excluding Rebuttal Evidence)

The Parties must submit the following information by the deadline listed under “Important Deadlines” below:

1. All evidence, excluding witness testimony to be presented orally at the hearing, and an exhibit list providing an exhibit number and brief description of each exhibit. Evidence already in the Regional Board’s public files may be submitted by reference as long as the evidence and location are clearly identified. The file names of any electronic copies of exhibits must identify the Party submitting the exhibit, the exhibit number, and a brief identification of the exhibit (e.g., “Resp Ex. 1 - Permit.pdf”).
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the Party intends to call at the hearing; the subject of each witness’ proposed testimony; and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

B. Prehearing Rebuttal Evidence Submittals

Rebuttal evidence is evidence offered to disprove or contradict evidence presented by an opposing Party.

The Parties must submit any rebuttal evidence in advance of the hearing by the deadline listed under “Important Deadlines” below. 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 by the Presiding Officer.

The requirement to submit rebuttal evidence in advance of the hearing applies only to rebut timely-submitted written evidence. Rebuttal evidence pertaining to an issue raised solely during oral testimony need not be submitted in advance of the hearing.

C. Prehearing Objections to Evidentiary Submittals

A Party must submit any objections to prehearing evidentiary submittals by the deadlines listed under “Important Deadlines” below.

These deadlines do not apply to objections to late-submitted evidence. Objections to late-submitted evidence must be made within seven days of the late submittal or at the hearing, whichever is earlier.

D. Prehearing Proposed Findings of Fact and Conclusions of Law

The Prosecution Team must submit, and the other Parties may submit, Proposed Findings of Fact and Conclusions of Law for consideration by the Regional Board and Advisory Team. The Proposed Findings of Fact and Conclusions of Law must include the Party's proposed penalty calculation, using the methodology prescribed by the Enforcement Policy. The Parties may use this opportunity to highlight specific evidence and argument for the Regional Board's consideration.

Proposed Findings of Fact and Conclusions of Law must be submitted in Microsoft Word format by the deadline listed under "Important Deadlines" below. The Presiding Officer may prescribe a page limit for the Proposed Findings of Fact and Conclusions of Law.

E. Prohibition on Surprise Evidence

It is the policy of the Regional Board to discourage surprise testimony and exhibits. The Presiding 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 Regional Board. Excluded material will not be considered.

VIII. Revisions to Hearing Procedures and Prehearing Conference

A. Revision to Hearing Procedure

The Presiding Officer may revise this Hearing Procedure for good cause (1) on the Presiding Officer's own motion or (2) upon request from any Party or Interested Person seeking party status. A Party or Interested Person seeking party status requesting revisions to this Hearing Procedure must submit the request in writing by the deadline listed under "Important Deadlines" below. Before revising this Hearing Procedure, the Presiding Officer will provide the Parties an opportunity to comment.

B. Prehearing Conference

The Presiding Officer or its designee, upon its own motion or upon request from a Party, may schedule a Prehearing Conference with the Parties to discuss any prehearing matter, such as revisions to this Hearing Procedure, designation of additional parties, or evidentiary objections.

IX. Hearing

A. Order of Proceedings

The Presiding Officer will conduct the hearing on the ACL Complaint generally in the order listed under California Code of Regulations, title 23, section 648.5. The Presiding Officer may modify the order of proceeding for good cause.

B. Administration of Oath

All persons intending to testify at the hearing must take the oath administered by the Presiding Officer.

C. Witnesses

Any witness providing written testimony must appear at the hearing and affirm that the written testimony is true and correct and be available for cross-examination. Witnesses are encouraged to provide their testimony in person at the hearing. Upon stipulation of the Parties and a showing of good cause, the Presiding Officer may issue an order to allow specific witnesses to appear virtually.

D. Hearing Time Limits

Parties: Each Party will have a combined total of 60 minutes to present evidence (including examining witnesses), cross-examine witnesses, and provide a closing statement.

Interested Persons: Each Interested Person will have 3 minutes to present oral, non-evidentiary comments or policy statements.

Questions from the Regional Board and the Advisory Team, responses to such questions, and discussion of procedural issues do not count against these time limits.

E. Requesting Additional Hearing Time

Hearing participants who would like additional time must submit their request by the deadline listed under “Important Deadlines” below. Additional time may be provided at the discretion of the Presiding Officer upon a showing that additional time is necessary.

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 the deadline listed under “Important Deadlines” below.

Interested Persons may use a visual presentation as an aid to their oral, non-evidentiary comments or policy statements only with the Presiding Officer’s prior approval.

X. Miscellaneous

A. Submittal Timing and Format

All submittals made pursuant to this Hearing Procedure must be received by 5:00 p.m. on the respective due date within the “Important Deadlines” below. All submittals must be sent to the

“Primary Contacts,” identified below. Electronic submittals via the San Diego Water Board’s FTP site are encouraged. For larger electronic submissions, contact the Advisory Team attorneys for instructions on submitting electronic evidence via a thumb drive or FTP or similar file sharing site. Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Presiding Officer will not reject materials solely for failure to provide electronic copies.

B. Availability of Documents

The ACL Complaint and all submittals made in accordance with this Hearing Procedure are available upon request by contacting the Prosecution Team, identified in the “Primary Contacts” below.

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

C. Questions

Questions concerning this Hearing Procedure may be addressed to the Advisory Team attorney, identified in the “Primary Contacts” below.

PRIMARY CONTACTS

Advisory Team:

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Attn: David G. Epstein
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IMPORTANT DEADLINES

Note: Where a deadline falls on a weekend or state holiday, the deadline is extended to the following business day.

Deadline	Event	Requirement
November 10, 2022	Prosecution Team issued ACL Complaint and other related materials.	
November 17, 2022	Advisory Team issued Tentative Hearing Procedure.	
November 17, 2022	Notice of Public Hearing and Opportunity to Comment on ACL Complaint issued for Interested Persons.	
December 1, 2022	Parties' deadline to request revisions to Tentative Hearing Procedure.	Section VIII.A
December 1, 2022	Interested Parties deadline to request party status and request revisions to Tentative Hearing Procedures.	Section V.C
December 8, 2022	Parties' deadline to submit objections to party status requests.	Section V.C
December 16, 2022	Respondents' deadline to submit <i>Waiver Form</i> .	Section III
December 18, 2022	Interested Persons' deadline to submit written non-evidentiary policy statements.	Section VI.A
March 17, 2023	Advisory Team issued Final Hearing Procedures	
April 10, 2023	Prosecution Team's deadline to submit prehearing evidence and argument (excluding rebuttal evidence).	Section VII.A
May 31, 2023	Remaining Parties' (including the Respondents') deadline to submit evidence and argument under (excluding rebuttal evidence).	Section VII.A
July 5, 2023	Parties' deadline to submit prehearing rebuttal evidence.	Section VII.B
July 5, 2023	Parties' deadline to submit responses to Interested person non-evidentiary policy statements.	Section VI.B
July 5, 2023	Parties' deadline to submit objections to prehearing evidence submittals (excluding rebuttal evidence).	Section VII.C
July 5, 2023	Deadline to submit requests for additional hearing time.	Section IX.E
July 19, 2023	Parties' deadline to submit objections to prehearing rebuttal evidence.	Section VII.C
July 19, 2023	Parties' deadline to submit Proposed Findings of Fact and Conclusions of Law.	Section VII.D

September 11, 2023	Parties' deadline to submit copy of visual presentations.	Section IX.F
September 13, 2023	Hearing Date.	