
San Francisco Bay Regional Water Quality Control Board

September 22, 2015

Ms. Elizabeth Wells
California Regional Water Board
San Francisco Bay
Advisory Staff
Elizabeth.Wells@waterboards.ca.gov

Via Electronic Mail Only

Dear Ms. Wells,

**SUBJECT: PROSECUTION TEAM'S RESPONSE TO MR. FRANK HAMEDI'S REQUEST TO
WAIVE THE 90-DAY HEARING REQUIREMENT AND REQUEST FOR A PREHEARING
CONFERENCE, ACL COMPLAINT R2-2015-1012**

The San Francisco Bay Regional Water Board ("Water Board") Prosecution Team ("Prosecution Team") hereby submits its response to Mr. Frank Hamedí's request to waive the 90-day hearing requirement and request for a prehearing conference on Administrative Civil Liability Complaint R2-2015-1012 ("Complaint"). The Complaint alleges that Mr. Hamedí failed to comply with Task C.2 of Final Site Cleanup Requirements Order 01-108 (Order).

The Prosecution Team does not object to Mr. Hamedí's submission of Waiver Form Option 2 (waiver of the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines). The Prosecution Team respectfully requests that the Water Board Advisory Team approve the time extension and determine the appropriate amendments to the Complaint's Hearing Procedure ("Hearing Procedure").

As explained below, the Prosecution Team objects to Mr. Hamedí's request for a prehearing conference (the "Request"). The Request lists a series of questions related to the Order. Because these questions do not relate to procedural matters, this response assumes that Mr. Hamedí, through his attorney, submitted the Request to clarify and/or narrow the scope of issues before the Board. The Prosecution Team expressly reserves the right to supplement this response at any time prior to when the Water Board reaches a final decision on the Complaint.

Background Information

Water Board members, or their designees, may carry out prehearing conferences to address any of the matters set forth in Government Code section 11511.5, subdivision (b) with respect to matters within the Water Board's jurisdiction (Wat. Code, § 13228.15.). A prehearing conference may deal with the clarification of issues and/or procedural matters enumerated in Government

Code section 11511.5, subdivision (b).¹ The purpose of a prehearing conference in agency adjudication is to clear away procedural issues and is a means for efficient case management. Prehearing conferences do not resolve central issues that should be decided by the Water Board.

The Prosecution Team Objects to Mr. Hamedí's Request for a Prehearing Conference because the Request Seeks Clarifications on Either Irrelevant Issues or the Central Issue

The Complaint alleges that Mr. Hamedí failed to comply with Task C.2 of the Order. The Request seeks clarifications on either irrelevant issues or the central issue to the Complaint.

- **Irrelevant Issues**

As alleged in the Complaint, Mr. Hamedí is primarily responsible for compliance with Task C.2 of the Order. The request for clarifications on other Tasks required under the Order, or for clarifications on other responsible parties' compliance with the Order (i.e., Velcon Filters, Inc.), are irrelevant to resolving the alleged violation. Therefore, a prehearing conference is not a proper venue to clarify the issues identified in Request paragraphs:

- (a) Is Velcon Filters, Inc. still named as a discharger [in the Order]?
- (c) With respect [to the Order,] what specific requirements of [the Order] has Velcon Filters, Inc., failed to comply with?
- (d) Other than a Deed Restriction what other institutional constraints required by Velcon Filters, Inc. to perform have not been performed by Velcon Filters, Inc.?
- (f) Have the tasks identified in [the Order] as C1 and all of its subparagraphs been complied with and if not which tasks identified as C1 and its subparagraphs have not been complied with?
- (k) With respect to Task C3 of [the Order] what is meant by the words "Technical Report" [and] "institutional constraints" and who was to cooperate with Frank Hamedí?
- (l) Were tasks C4 through C9 of [the Order] timely completed and if not the dates each of these Tasks were to be completed and whether the person or entity responsible for completing these Tasks were fined and/or assessed a penalty for their failure to timely complete each Task and if so the amount of such fine or penalty?

¹ "A prehearing conference may deal with one or more of the following matters: (1) exploration of settlement possibilities; (2) preparation of stipulations; (3) clarification of issues; (4) rulings on identity and limitation of the number of witnesses; (5) objections to proffers of evidence; (6) order of presentation of evidence and cross-examination; (7) rulings regarding issuance of subpoenas and protective orders; (8) schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing; (9) exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing; (10) motions for intervention; (11) exploration of the possibility of using alternative dispute resolution provided in Article 5 (commencing with Section 11420.10) of, or the informal hearing procedure provided in Article 10 (commencing with Section 11445.10) of, Chapter 4.5, and objections to use of the informal hearing procedure. Use of alternative dispute resolution or of the informal hearing procedure is subject to subdivision (d); and (12) any other matters as shall promote the orderly and prompt conduct of the hearing." (Govt. Code, § 11511.5, subd. (b).)

- **The Central Issue**

The request for clarifications on Mr. Hamedí's responsibility and on requirements for institutional constraints under Task C.2 all relate to the Complaint's central issue: whether Mr. Hamedí committed the alleged violation. Therefore, a prehearing conference is not a proper venue to clarify the issues identified in Request paragraphs:

- (b) Is Frank Hamedí still named as a secondarily responsible party?
- (e) Other than the Deed Restriction what other institutional constraints required by Frank Hamedí to perform have not been performed?
- (g) With respect to Task C2 what is meant by the term "technical report"? Has Velcon Filters, Inc. submitted a technical report required in Task C2 of [the Order]?
- (h) Whether the Deed Restriction signed and delivered by Frank Hamedí included:
 - i. The prohibition of the use of shallow groundwater as a source of drinking water;
 - ii. Whether the Deed Restriction specified any engineering controls implemented to meet cleanup standards contained in [Order] Section B.3 for the protection of groundwater;
 - iii. Whether the Deed Restriction included a ban on the use of the site for residential development;
 - iv. The date the first proposed Deed Restriction was presented to Frank Hamedí for his signature and the date the last proposed Deed Restriction was presented to Frank Hamedí for his signature.
- (i) If any of the actions identified in Paragraph (h) (i-iii) above have not been completed which action(s) were required to be completed by Velcon Filters, Inc. and which actions were required to be completed by Frank Hamedí[?]
- (j) In what way do the words "[i]f the Regional Board, pursuant to [the Order] and any amendments, modifications, or rescissions of [the Order], replaced by a new Order of the Regional Board concerning the Burdened Property, has the effect of closing the site cleanup and thereafter a new site cleanup plan is opened due to acts or omissions of Velcon Filters, Inc., then in such event the Regional Board shall name Velcon Filters, Inc., its successors and assigns as the primary discharger responsible for all further investigations and remediation of the site" limit the Water Board's authority and discretion in determining responsible parties under the Water Code[?]
- (m) With reference to Task C11 of [the Order] (Secondarily Responsible Dischargers) how does the inclusion of the added language of the Deed Restriction limit the Water Board's authority and discretion in determining the responsible parties under the Water Code?

The Prosecution Team will address the above issues in its "Submission of Evidence and Policy Statements" as required by the Hearing Procedure. The Prosecution will submit its evidence and policy statements according to the schedule provided in the Hearing Procedure or any amendments thereto should the Water Board Advisory Team approve Mr. Hamedí's request to extend the hearing date and/or hearing deadlines.

Conclusion

The Prosecution Team does not object to Mr. Hamed's submission of Waiver Form Option 2. The Prosecution Team objects to the request for a prehearing conference because the questions raised therein do not involve matters set forth in Government Code section 11511.5, subdivision (b).

Please contact me if you any questions. The Prosecution Team looks forward to the Advisory Team's response on the above matters.

Sincerely,



Paul Ciccarelli

Staff Counsel

Paul.Ciccarelli@waterboards.ca.gov

cc: (provided on next page)

cc: (via electronic mail only)

Advisory Team

Bruce Wolfe
Executive Officer
Bruce.Wolfe@waterboard.ca.gov

David Coupe
Senior Staff Counsel
David.Coupe@waterboards.ca.gov

Prosecution Team

Dyan C. Whyte
Assistant Executive Officer
Dyan.Whyte@waterboards.ca.gov

Lila Tang
Division Chief
Lila.Tang@waterboards.ca.gov

Brian Thompson
Section Leader
Brian.Thompson@waterboards.ca.gov

Jack Gregg
Technical Staff
Jack.Gregg@waterboards.ca.gov

Tamarin Austin
Staff Counsel
Tamarin.Austin@waterboards.ca.gov

Responsible Party

Frank Hamed
info@envirosoiltech.com

S. Jack Chevlen
Attorney for Frank Hamed
jackchevlen@comcast.net