
State Water Resources Control Board

REVISED NOTICE OF PUBLIC HEARING AND TENTATIVE HEARING PROCEDURE

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

ADVANCED GEO, INC., ADVANCED GEOENVIRONMENTAL, INC.,
AND ROBERT MARTY

The State Water Resources Control Board
will hold a Public Hearing
on

January 26, 2022~~October 14, 2021~~

Commencing at 9:00 a.m.

Remote Meeting Only - No Physical Meeting Location

**(Authorized by Government Code section 11425.20, 11440.30 (as effective
January 1, 2022))**

~~(Authorized by and in furtherance of
Executive Order [N-08-21](#).)
(see instructions below)~~

Purpose of Hearing

The State Water Resources Control Board (State Water Board) will hold a hearing to consider the allegations brought by the Prosecution Team (Prosecution Team, defined further below) in the instant matter. The Prosecution Team has issued an Administrative Civil Liability Complaint (Complaint) alleging that Advanced Geo, Inc. (AGI), a Delaware corporation, Advanced GeoEnvironmental, Inc. (AGE), a dissolved California corporation, and Robert Marty, who has served as officer for the two entities (collectively, Respondents), intentionally misrepresented costs to the Underground Storage Tank Cleanup Fund (Fund). The Prosecution Team recommends the State Water Board impose administrative civil liability upon the named Respondents in the amount of one million one hundred sixty-five thousand dollars (\$1,165,000). The Prosecution Team recommends that the State Water Board disqualify the Respondents, as well as Metamorphic, Inc. (MMI), Joshua Ong and James Colson (AGE directors), and Robert Loeffler (AGE director, AGI secretary), from receiving Fund or Fund subaccount money. Finally, the Prosecution Team recommends the State Water Board file complaints with the Board for Professional Engineers, Land Surveyors, and

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Geologists against Mr. Ong (professional license not specified) and Mr. Loeffler (AGE, AGI Professional Engineer), and with the Contractors State License Board against AGE and Mr. Marty, as well as against MMI.

At the hearing, the State Water Board will receive evidence regarding the alleged violations, as well as evidence regarding any legal theories relevant to the prosecution or defense of the allegations. After weighing and considering the evidence, the State Water Board has the option to impose civil liability at the amount recommended or at a lower or higher amount up to the maximum amount allowed by law, and if so, as to any person found liable, to impose Fund disqualification and to file complaints with licensing boards, or some combination thereof; to decline to impose liability; or to take any other action it deems necessary.

The State Water Board may impose civil liability on any person who makes a misrepresentation in any claim submitted to the Fund. (Health & Saf. Code, § 25299.80, subds. (a) & (c).) The State Water Board may impose civil liability administratively in the same manner that it is authorized to impose civil liability pursuant to article 2.5 (commencing with section 13323) of chapter 5 of division 7 of the Water Code. (Health & Saf. Code, § 25299.80, subd. (c).) It may permanently disqualify a person found liable under these provisions from receiving any money from the Fund, it may bar a claimant from submitting invoices to the Fund for any work performed or directed by the disqualified person that is a contractor or consultant, and it may permanently disqualify the contractor or consultant from participation in the Fund, including for Fund claims not the subject of the civil liability. (Health & Saf. Code, § 25299.71.) The State Water Board shall file a complaint with any applicable licensing board against any person found liable under these provisions who is licensed or regulated by a licensing board. (Health & Saf. Code, § 25299.80, subd. (h).)

Key Issues

The State Water Board's decision will be based upon evidence in the record developed at the hearing. Parties should submit exhibits and testimony responsive to the following issues:

1. The legal and factual basis for imposition of the proposed administrative civil liability, Fund disqualification, and/or licensing board complaints, including documentation of service of process, on the following:
 - a. AGI;
 - b. AGE;
 - c. Mr. Marty;
 - d. MMI;
 - e. Mr. Loeffler;
 - f. Mr. Ong; and
 - g. Mr. Colson.
2. The legal and factual basis for assessing the amount of penalties and imposition of Fund disqualification under the criteria applicable to such assessment.

3. Any other issues relevant to the prosecution or defense of the allegations.

Hearing Officer and Advisory Team

State Water Board Member Laurel Firestone will preside as the Hearing Officer for this proceeding. Other members of the State Water Board may be present during the hearing.

State Water Board staff and attorneys (the Advisory Team) will assist the Hearing Officer and other members of the State Water Board throughout this proceeding, providing legal and technical advice.

Advisory Team members from the Office of Chief Counsel are Therese Barakatt, Merswind Reyer, and Anne Hartridge.

Advisory Team members from the Division of Financial Assistance are David Deaton and Bruce Locken.

Prosecution Team and Separation of Functions

The State Water Board separates prosecutorial and adjudicative functions in matters that are prosecutorial in nature. State Water Board staff and attorneys that have developed and issued the Administrative Civil Liability Complaint (the Prosecution Team) have been separated from the Advisory Team.

Prosecution Team members from the State Water Board's Office of Enforcement are Nickolaus Knight, Amantha Henkel, Michael D'Anna, and Mayumi Okamoto.

The Prosecution Team member from the State Water Board's Office of Chief Counsel is Julie Osborn.

The Prosecution Team member from the State Water Board's Division of Financial Assistance is Diane Barclay.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Further, members of the Advisory Team have not exercised any authority over the Prosecution Team, or advised them with respect to this matter, or vice versa. The State Water Board's Office of Enforcement is not advising the Hearing Officer or the State Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the State Water Board in other, unrelated matters, but they are not advising the Hearing Officer or the State Water Board in this proceeding.

Ex Parte Communications

To maintain the State Water Board's impartiality, ex parte contacts are prohibited. (See, e.g., Gov. Code, § 11430.10 et seq.) Ex parte contacts are those communications that are directed at the Hearing Officer, other State Water Board members, or the Advisory

Team members, regarding the pending matter, and which are not communicated in a manner open to all other parties. Communications regarding non-controversial procedural matters issues are not considered ex parte contacts, and are therefore not restricted.

Members of the Prosecution Team have not communicated with the Hearing Officer, other members of the State Water Board, or the Advisory Team regarding any substantive matter at issue in the proceeding.

To avoid ex parte contacts in pre-hearing communications, Respondents should ensure that the Prosecution Team is copied on all correspondence directed to the Advisory Team, and vice-versa.

Approval of Hearing Procedure

Attached to this Notice is a ~~Tentative~~ Hearing Procedure that, ~~once final~~, will govern the conduct of proceedings related to consideration of the Complaint. ~~The Prosecution Team and Respondents shall have the opportunity to (a) comment on the Tentative Hearing Procedure; (b) propose changes to deadlines and other substantive provisions; (c) provide alternative preferred contact information; and (d) object to service of hearing documents via email to the identified primary point(s) of contact, which otherwise will be the default method of service. To be considered by the Advisory Team, all comments and proposed revisions shall be submitted via email to Therese.Barakatt@waterboards.ca.gov no later than 12:00 p.m. on **August 5, 2021**, and shall be provided to the other parties via email and/or certified mail. The parties will be provided a copy of the Hearing Procedure via email and/or certified mail. The Hearing Procedure will also be posted to the State Water Board's website. (https://www.waterboards.ca.gov/public_notices/ustcf_aclp.html).~~

For the purposes of California Code of Regulations, title 23, section 648 et seq., the Hearing Procedure (including any subsequent revisions thereto) shall be incorporated as part of this Notice. ~~Should~~ Once the Hearing Procedure ~~is finalized~~ **be amended**, this Notice may be reissued.

Opportunity for Public Participation

Water Code section 13323, subdivision (e), provides that “[i]nformation relating to hearing waivers and the imposition of administrative civil liability, as proposed to be imposed and as finally imposed, under this section shall be made available to the public by means of the Internet.” In accordance with section 13323, information pertaining to this proceeding will be made available on the State Water Board's website.

The State Water Board will consider written comments submitted by members of the public that are interested in the pending matter (Interested Persons). The parties to the proceeding will be permitted to submit formal written responses to written comments from Interested Persons. To allow for this, all written comments shall be submitted to the Advisory Team, and to the Parties, as early as possible, and in no case later than 12:00 p.m. on **December 10, 2021** ~~August 31, 2021~~.

Interested Persons will also be provided the opportunity to orally present general policy statements to the State Water Board at the hearing. Such statements will generally be limited to 3 minutes per Interested Person, though the Hearing Officer may grant additional time upon request. Interested Persons do not need to submit written statements in order to speak at the hearing.

Unless formally recognized as a “Designated Party” per the Hearing Procedure, an Interested Person is not a party entitled to participate directly in the proceeding, except as provided above. Interested Persons will not be permitted to present evidence (e.g., photos, eyewitness testimony, etc.). They are also not subject to cross-examination. Although the State Water Board will consider comments from Interested Persons on matters of general policy, such comments are not admissible as evidence.

Requests for “Designated Party” Status

The Hearing Procedure will govern the process by which Interested Persons apply for “Designated Party” status. The deadline to apply for this status is **December 1, 2021** ~~shall be no earlier than August 25, 2021~~, and may be extended at the discretion of the Hearing Officer.

Instructions for Access to Remote Meeting

The hearing on the Complaint will be conducted remotely via the ZOOM video conferencing platform and may also be broadcasted via livestream. Named parties and any Designated Parties intending to appear at the hearing will automatically be provided ZOOM information.

If you are an Interested Person and do not intend to speak at the hearing, you can watch the meeting via livestream if available. The livestream URL will be posted to the State Water Board website approximately two weeks before the first day of the hearing. If livestream is not available, or If you are an Interested Person and intend to speak at the hearing, you will need access to the ZOOM virtual meeting using the Meeting ID and Passcode. The Meeting ID and phone numbers will be on the State Water Board’s website approximately two weeks before the first day of the hearing. To obtain the Passcode, you will need to follow directions to be provided on the State Water Board’s website, and State Water Board staff will send you the Passcode.

Opportunity for Settlement

The Prosecution Team and the Respondents may, at their discretion, engage in private settlement discussions and may include other persons in those discussions. Due to the separation of functions discussed previously, the Advisory Team cannot participate in settlement discussions. Should the Prosecution Team and the Respondents reach settlement, they must notify the Advisory Team as soon as possible.

Questions

Questions concerning non-controversial procedural matters should be directed to Advisory Team member Therese Barakatt at Therese.Barakatt@waterboards.ca.gov.

If you have any legal or technical questions concerning the allegations, or if you wish to discuss settlement prior to hearing, you may contact Prosecution Team member Nickolaus Knight, at Nickolaus.Knight@waterboards.ca.gov.

October 11, 2021
Date

ORIGINAL SIGNATURE ON FILE
Jeanine Townsend
Clerk to the Board

Attachment:
~~Tentative Hearing Procedure~~

~~[TENTATIVE]~~ HEARING PROCEDURE

This document contains a ~~proposed~~ Hearing Procedure **that will govern conduct of the proceedings related to the Complaint**, for consideration by the Respondents and Prosecution Team, and shall have no effect until approved by the Hearing Officer for this proceeding. Notably, substantive requirements, time allotments, and deadlines are subject to change based on input from the Parties. ~~Once approved,~~ **T**he final Hearing Procedure will be posted to the State Water Board's website. (https://www.waterboards.ca.gov/public_notices/ustcf_aclp.html.)

Effective Date: **October 11, 2021** ~~Upon approval by the Hearing Officer~~

Proposed Action: Assessment of Civil Liability per Administrative Civil Liability Complaint Regarding Advanced Geo, Inc. (AGI), Advanced GeoEnvironmental, Inc. (AGE), and Robert Marty

Hearing Date: **January 26, 2022** ~~October 14, 2021~~

Location: Zoom Videoconferencing Platform

Respondents: AGI, AGE, and Robert Marty

A. Applicable Laws and Regulations

For purposes of California Code of Regulations, title 23, section 648 et seq., this hearing constitutes an "adjudicative proceeding." This proceeding is governed by the following statutes and regulations:

- (1) Article 7 of chapter 6.75 of division 20 of the Health and Safety Code;
- (2) Water Code sections 13323 – 13328;
- (3) Title 23, sections 648 – 648.8, available for review on the State Water Board's laws and regulations webpage (https://www.waterboards.ca.gov/laws_regulations);
- (4) 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*);
- (5) Evidence Code sections 801 – 805; and
- (6) Government Code section 11513.

Except for Government Code section 11513 (see above), chapter 5 of the Administrative Procedure Act (commencing with section 11500 of the Government Code) does not apply to this hearing.

Any procedures not provided by this Hearing Procedure are not applicable to this hearing.

B. Remote Hearing Location Only

The Administrative Procedures Act allows all or part of a hearing to be conducted by telephone, television, or other electronic means. (Gov. Code, §§ **11425.20**, 11440.30 **(as effective January 1, 2022)**). ~~Although a party may ordinarily object to conduct of the hearing by electronic means, this provision has been **suspended** per [Executive Order N-63-20](https://www.gov.ca.gov/wp-content/uploads/2020/05/5.7.20-EO-N-63-20-text.pdf) (<https://www.gov.ca.gov/wp-content/uploads/2020/05/5.7.20-EO-N-63-20-text.pdf>), which was issued by California Governor Gavin Newsom on May 7, 2020, and extended in relevant part by Executive Order N-08-21 on June 11, 2021.~~

The hearing on the Complaint will be conducted remotely via the ZOOM video conferencing platform and may also be broadcasted via livestream. Named parties and any Designated Parties intending to appear at the hearing will automatically be provided ZOOM information.

If you are an Interested Person and do not intend to speak at the hearing, you can watch the meeting via livestream if available. The livestream URL will be posted to the State Water Board website approximately two weeks before the first day of the hearing. If livestream is not available, or if you are an Interested Person and intend to speak at the hearing, you will need access to the ZOOM virtual meeting using the Meeting ID and Passcode. The Meeting ID and phone numbers will be on the State Water Board's website approximately two weeks before the first day of the hearing. To obtain the Passcode, you will need to follow directions to be provided on the State Water Board's website, and State Water Board staff will send you the Passcode.

C. Parties and Separation of Functions

To ensure that Respondents receive a fair hearing, State Water Board staff and counsel have undertaken a separation of functions. State Water Board staff and counsel that have issued the Administrative Civil Liability Complaint (Prosecution Team) have been separated from the State Water Board staff and attorneys that will advise the State Water Board on the Administrative Civil Liability Complaint (Advisory Team). (Gov. Code, § 11425.10, subd. (a)(4).) This separation of functions also applies to the supervisors of each team. The Prosecution Team will present evidence for consideration by the State Water Board. The Advisory Team will provide legal and technical advice to the State Water Board.

The Advisory Team, Prosecution Team, Respondents, and Designated Parties (if any) are listed below:

Hearing Officer and Advisory Team

Laurel Firestone, Hearing Officer, Board Member, State Water Board
Therese Barakatt, Attorney IV, State Water Board, Office of Chief Counsel
Merswind Reyer, Attorney III, State Water Board, Office of Chief Counsel
David Deaton, Associate Government Program Analyst, State Water Board, Division of
Financial Assistance
Bruce Locken, Water Resources Control Engineer, State Water Board, Division of
Financial Assistance
Anne Hartridge, Assistant Chief Counsel, State Water Board, Office of Chief Counsel

Prosecution Team

Nickolaus Knight, Attorney IV, State Water Board, Office of Enforcement
Diane Barclay, Assistant Deputy Director, State Water Board, Division of Financial
Assistance
Julie Osborn, Attorney IV, State Water Board, Office of Chief Counsel
Amantha Henkel, Chief, Fraud Prevention Unit, State Water Board, Office of
Enforcement
Michael D'Anna, Engineering Geologist, State Water Board, Office of Enforcement
Mayumi Okamoto, Assistant Chief Counsel, State Water Board, Office of Enforcement

Respondents

Advanced Geo, Inc.
Advanced GeoEnvironmental, Inc.
Robert Marty

Designated Parties

Parties to be designated in accordance with Section F.

D. Ex Parte Contacts Prohibited

Any communication regarding the Administrative Civil Liability Complaint that is directed at the Hearing Officer, other State Water Board members, or the Advisory Team by a participant in the hearing and that is not made in a manner open to all other parties is considered an "ex parte" contact. All "ex parte" contacts are prohibited. (Gov. Code, § 11430.10.) Communications regarding non-controversial procedural matters are not considered ex parte contacts and are permitted.

E. Interested Persons (Non-Parties)

The Hearing Officer will consider written comments submitted by members of the public that are interested in the pending matter (Interested Persons). The Parties to the proceeding will be permitted to submit formal written responses to Interested Person

written comments. To allow for such responses, all written comments shall be submitted to the Advisory Team, and to the parties, via the email contacts provided below and with the subject line “Public Comment – ~~01/26/22~~10/14/21-ACLC AGI Hearing,” as early as possible, and in no case later than 12:00 p.m. on ~~December 10, 2021~~ **August 31, 2021**.

Interested Persons will also be provided the opportunity to orally present general policy statements to the Hearing Officer at the hearing. Such statements will be limited to 3 minutes per Interested Person for this hearing, though the Hearing Officer may grant additional time on a case-by-case basis. Interested Persons do not need to submit written statements in order to speak at the hearing.

Unless they are formally recognized as a “Designated Party” per the Hearing Procedure, Interested Persons are not parties entitled to directly participate in the proceeding, except as provided above. Interested Persons will not be permitted to present evidence (e.g., photos, eyewitness testimony, etc.). They are also not subject to cross-examination, but may be asked to respond to clarifying questions from the Hearing Officer or the Advisory Team. Although the State Water Board will consider comments from Interested Persons on matters of general policy, such comments are not admissible as evidence.

F. Applications for “Designated Party” Status

By default, the only parties to an adjudicative enforcement proceeding are: (1) the Prosecution Team; and (2) the Respondents named in the Complaint. (See Gov. Code, § 11405.60; Cal. Code Regs, tit. 23, § 648.1, subd. (a).) In some circumstances, however, it may be appropriate for certain Interested Persons to participate directly in the proceeding as a “Designated Party.” (Gov. Code, § 11440.50; Cal. Code Regs, tit. 23, § 648.1, subd. (a).) Such determinations shall be made discretionarily on a case-by-case basis by the Hearing Officer.

To request “Designated Party” status, Interested Persons must submit a written request to the Advisory Team, by email to Therese.Barakatt@waterboards.ca.gov, and serve the request on all parties to the proceeding via email and/or certified mail, no later than 12:00 p.m. on ~~December 1, 2021~~ **August 25, 2021**. The written request must include the following information:

- (1) An explanation of how the issues to be addressed at the hearing substantially affect the person requesting Designated Party status (Applicant);
- (2) Why the Applicant believes that the Prosecution Team and Respondents will not adequately represent their interests;
- (3) A summary of the evidence that the Applicant seeks to present at the hearing, including whether they seek to present their own witness testimony; and
- (4) Whether the Applicant seeks to cross-examine the other parties’ witnesses.

The Advisory Team will promptly respond to all timely written requests for Designated Party status. The Advisory Team may request further information before the determination is made. A request for Designated Party status shall not be granted if, in the totality of circumstances, it appears that such designation will impair the interests of justice and the orderly and prompt conduct of the proceeding. The Hearing Officer 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).)

In the event that "Designated Party" status is granted, this Hearing Procedure may be revised as appropriate.

G. Pre-Hearing Submittals

To avoid the introduction of surprise testimony and exhibits, and to minimize the need for oral argument and testimony at the hearing, this Hearing Procedure requires the parties to submit all documentary evidence, witness information, and legal/technical memoranda to the Advisory Team prior to the hearing. (Cal. Code Regs, tit.23, § 648.4, subds. (a), (b), & (c).) Absent a showing of good cause and lack of prejudice to the parties, the Hearing Officer may exclude materials that are not submitted in accordance with this Hearing Procedure. (Cal. Code Regs, tit. 23, § 648.4, subd. (d).) Excluded materials will not be considered by the State Water Board. (Cal. Code Regs, tit. 23, § 648.4, subd. (e).)

1. Electronic Submittals to Advisory Team [All Parties]

All pre-hearing submittals and rebuttals to the Advisory Team under this Hearing Procedure shall occur electronically via File Transfer Protocol (FTP) (<https://ftp.waterboards.ca.gov/>), except as otherwise provided below. Submittals to the FTP site must not contain confidential information. Parties may obtain FTP log-in information from the Advisory Team.

Once a party has uploaded its materials to the FTP site, the party shall notify the Advisory Team and all other parties via email, and identify each of the files that have been uploaded.

Exhibits shall be uploaded as sequentially numbered pdf files with file names in all lower case, and following the naming conventions set forth below:

Prosecution Team: **pt_exh_###_xxxx.pdf**
Respondent: **resp_exh_###_xxxx.pdf**

In the event that there are additional Designated Parties participating in the proceeding, the Advisory Team will provide additional instructions regarding file naming.

2. Submittal Index [All Parties]

Except as otherwise expressly provided below, each pre-hearing submittal shall be accompanied by a table listing each document included as part of the submittal. The table shall include the following columns: *Document Title*; *PT/Respondent Exhibit Number*; *Exhibit Date* (i.e., when the document was generated); and *File Name*.

3. Prosecution Team Submittals

No later than 12:00 p.m. on **December 10, 2021**~~September 1, 2021~~, the Prosecution Team shall submit the following materials to the Advisory Team, via the process described above:

- (1) All documentary evidence supporting the Complaint, with each document separately designated as a sequentially-numbered exhibit (i.e., Exhibit 1, Exhibit 2, Exhibit 3, etc.). Each allegation in the Complaint shall be supported by an exhibit and/or witness testimony to be offered at the hearing.
- (2) [OPTIONAL] A memorandum articulating the Prosecution Team's legal arguments and technical analyses in support of the Complaint.
- (3) A Witness Information Sheet containing the name of each witness the Prosecution Team intends to call to testify at the hearing; the subject matter of their testimony; and the estimated time required for each witness. If any of the proposed witnesses will be testifying as an expert (see Evid. Code, § 800 et seq.), the memorandum shall also include the witnesses' qualifications as an expert.

4. Respondent and Designated Party Submittals

No later than 12:00 p.m. on **December 22, 2021**~~September 15, 2021~~, the Respondents and any Designated Parties shall submit the following materials to the Advisory Team, via the process described above:

- (1) Any additional documentary evidence that supports the submitting party's position with respect to the Complaint. These materials shall be separately designated as sequentially-numbered exhibits, starting with "Exhibit 1."
- (2) [OPTIONAL] A memorandum articulating the submitting party's legal arguments and technical analyses in support of their position(s) with respect to the Complaint.
- (3) A Witness Information Sheet containing the name of each witness the submitting party intends to call to testify at the hearing; the subject matter of their testimony and the estimated time required for each witness. If any of the proposed witnesses will be testifying as an expert (see Evid. Code, § 800 et seq.), the memorandum shall also include the witnesses' qualifications as an expert.

5. Rebuttal Evidence [All Parties; Upon Parties' Agreement]

Notwithstanding the pre-hearing evidence submission deadlines specified above, the parties will be permitted to introduce additional evidence necessary to disprove or contradict evidence submitted by another party (Rebuttal Evidence).

By default, California Code of Regulations, title 23, section 648.4, subdivision (f) permits parties to introduce Rebuttal Evidence for the first time during the hearing. However, the Hearing Procedure may waive this provision and require pre-submission of Rebuttal Evidence. (Cal. Code Regs., tit. 23, § 648, subd. (d).)

To maintain fairness, ensure orderly conduct of the proceeding, and avoid “surprise evidence” (see Cal. Code Regs., tit. 23, § 648.4, subd. (a)), this Hearing Procedure requires that Rebuttal Evidence be submitted to the Advisory Team and other parties, via the process described above, no later than 12:00 p.m. on **January 14, 2022**~~October 1, 2021~~. 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.

6. Responses to Interested Person Written Comments [All Parties; Optional]

The parties may elect to submit written responses to written comments from Interested Persons. All such responses must be submitted to the Advisory Team, and to the other parties, no later than 12:00 p.m. on **January 14, 2022**~~October 1, 2021~~. This submittal may occur via email and need not be accompanied by an updated index table. In lieu of a written response, the parties may also address such comments at the hearing.

7. Proposed Administrative Civil Liability Order [All Parties; Optional]

Pursuant to Government Code section 11425.10, subdivision (a)(6), the State Water Board's decision on the Complaint shall be in writing, based on the record, and include a statement of the factual and legal basis of the decision.

No later than 12:00 p.m. on **February 4, 2022**~~October 25, 2021~~, the Prosecution Team and the Respondents may submit a proposed Administrative Civil Liability Order (Proposed Order) for review by the Advisory Team and transmittal to the State Water Board for consideration.

These submittals shall occur via email with email service to the other parties and need not be accompanied by an updated index table. The Proposed Order shall be submitted both as a Microsoft Word file and as a PDF.

8. Presentation Slides [All Parties; Mandatory if Slides Are Used]

No later than 12:00 p.m. on **January 19, 2022**~~October 8, 2021~~, the parties shall provide the Advisory Team with their presentation slides for use at the hearing, as a PowerPoint file and PDF (for inclusion in the administrative record). This submittal shall occur via email and need not be accompanied by an updated index table. If the party does not

intend to present slides at the hearing, no PowerPoint submittals are required from the party.

H. Conduct of Hearing

1. Hearing Time Limits

“Adjudicative proceedings shall be conducted in a manner ... deem[ed] most suitable to the particular case with a view toward securing relevant information expeditiously without unnecessary delay and expense to the parties and to the [State Water] Board.” (Cal. Code Regs., tit. 23, § 648.5, subd. (a).) To that end, it has been determined that the following time limits shall apply to the parties at the hearing.

Prosecution Team: **120**~~60~~ Minutes

Respondents (**collectively**): **120**~~60~~ Minutes

Designated Parties [if any]: **120**~~60~~ Minutes

~~The above time limits have been proposed by the Advisory Team. The parties may propose alternative time limits for the operative Hearing Procedure.~~

~~The above time limits are based on the Advisory Team’s review of the allegations within the Complaint, and based on experience in similar enforcement proceedings, and any input from the parties.~~

The parties may allocate their allotted time as they see fit between presenting evidence and testimony, cross-examining adverse witnesses, and making an **an opening and/or** closing statement. Discussions on procedural issues will not count against the parties’ allotments. A timer will be used to track how much time has elapsed. This timer will be paused during Hearing Officer and Advisory Team questions and party responses to those questions. Additional time may be provided at the discretion of the Hearing Officer (at the hearing), upon a showing that additional time is necessary.

2. Witness Testimony

At the hearing, witness testimony shall be limited to those subjects previously specified in the party’s Witness Information Sheet (see above). Upon request, the Hearing Officer may permit testimony on additional subjects, provided that it will not result in undue prejudice to the other parties.

All witnesses who have submitted written testimony shall be available to appear during the hearing (to affirm that the testimony is true and correct), and shall be subject to cross-examination. The failure of a witness to be available during the hearing may result in the submitted testimony being treated as hearsay. (Cal. Code Regs., tit. 23, § 648.4, subds. (d)-(e).)

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

3. Rules of Evidence

The proceeding shall be conducted in accordance with the provisions and rules of evidence set forth in Government Code section 11513.

Hearsay shall be admissible as evidence, subject to the provisions of Government Code section 11513.

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

4. Presentations

Slide presentations (e.g., PowerPoint) may be used at the hearing, provided their contents do not exceed the scope of previously submitted material, and provided the presentations have timely been provided to the Advisory Team as specified above. State Water Board administrative staff will be running the presentation at the party's direction.

I. Requests for Extensions

Parties may request the extension of any deadline specified in this Hearing Procedure. Such requests shall be made via email to the Advisory Team, with the other parties copied on the email. The granting or denial of a request shall be exclusively within the discretion of the Hearing Officer.

J. Modifications to Hearing Procedure

This Hearing Procedure may be revised by the Hearing Officer after appropriate notice and opportunity to be heard. For the purposes of this section, the extension of a deadline shall not be construed as a revision to the Hearing Procedure.

K. Communication via Email

To the extent practicable, all communications between the parties prior to the hearing shall occur via email, per the email addresses listed under the **Contact Information** section below. Unless a party has indicated that it is not willing to accept electronic service of hearing documents, email shall be the default method for such service.

At a minimum, all emails to the Prosecution Team shall include the attorney for the Prosecution Team listed below, who shall serve as the primary point of contact for the Prosecution Team (i.e., in lieu of including all members on the email). Alternatively, the parties may elect to include each Prosecution Team member on each email.

All emails to the Advisory Team shall be directed to the attorneys for the Advisory Team listed below, who shall serve as the primary points of contact for the Advisory Team; the parties may elect to include other members of the Advisory Team as well. See Section C for prohibition on ex parte contacts.

Except as directed otherwise in writing by the Respondents, Davina Pujari and Sean Herman, attorneys for the Respondents, shall serve as the primary point(s) of contact for the Respondents, and shall be conclusively presumed to have provided the named Respondents with notice of the email communication.

L. Settlements

The Prosecution Team and Respondents may, at their discretion, engage in private settlement discussions and may include other persons in those discussions. Respecting separation of functions, the Advisory Team cannot participate in settlement discussions. Should the Prosecution Team and Respondent reach settlement, they must notify the Advisory Team as soon as possible.

[TENTATIVE] SUMMARY OF DEADLINES

Table 1—Deadlines

DATE	REQUIRED ACTIONS / DEADLINES
June 8	OE issues ACL complaint
~October 11 July 22	Advisory Team issues Revised Notice and Tentative Hearing Procedure
October 11 - December 1 July 22 – August 25	Requests for Designated Party status accepted
August 5	Parties provide comments on Tentative Hearing Procedure
August 17	Advisory Team reissues Notice and final Hearing Procedure
December 10 August 31	Interested Person comments due
December 10 September 4	Prosecution Team submittals due
December 22 September 15	Respondent, Designated Parties submittals due
January 14 October 1	All parties submit pre-hearing rebuttal evidence (if parties agree) All parties respond to Interest Person comments (optional)
January 19 October 8	All parties submit presentations to be used at hearing [All parties attend ZOOM test meeting - date TBD]
January 26 October 14	Hearing
February 4 October 25	All parties submit proposed ACL order (optional)

CONTACT INFORMATION

Advisory Team

Therese Barakatt

Attorney IV, State Water Board, Office of Chief Counsel
1001 I Street, 22nd Floor
Sacramento, CA 95814
Therese.Barakatt@waterboards.ca.gov

Merswind Reyer

Attorney III, State Water Board, Office of Chief Counsel
1001 I Street, 22nd Floor
Sacramento, CA 95814
Merswind.Reyer@waterboards.ca.gov

Prosecution Team

Nickolaus Knight

Attorney IV, State Water Board, Office of Enforcement
801 K Street, 21st Floor
Sacramento, CA 95814
Nickolaus.Knight@waterboards.ca.gov

Respondents AGI, AGE, and Robert Marty

Davina Pujari

Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
DPujari@hansonbridgett.com

Sean Herman

Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
SHerman@hansonbridgett.com