



North Coast Regional Water Quality Control Board

Reissued Notice of Public Hearing and Tentative Hearing Procedure

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2021-0047, ISSUED TO
DEAN SOILAND DOING BUSINESS AS BO DEAN CO., INC. FOR THE MARK WEST
QUARRY LOCATED AT 4611 PORTER CREEK ROAD, SANTA ROSA, SONOMA
COUNTY

Notice of Public Hearing
December 2 and 3, 2021
Remote and In-Person Meeting
(see instructions below)

Administrative Civil Liability Complaint

On September 10, 2021, the Executive Officer of the North Coast Regional Water Quality Control Board (Regional Water Board) was notified that Regional Water Board staff had issued an Administrative Civil Liability Complaint (ACLC or Complaint) to Dean Soiland, doing business as, BoDean Co. Inc. (Discharger). The Discharger is currently regulated under State Water Resources Control Board Order No. 2014-0057 DWQ, NPDES Order No. CAS00001, General Permit for Storm Water Discharges Associated with Industrial Activities (Industrial General Permit or Permit).

The Complaint seeks penalties of \$4,500,000 for violations of the Permit. Pursuant to Water Code section 13323 subdivision (c), the Regional Water Board is required to hold a hearing on the Complaint within 90 days of issuance. The Board has therefore scheduled a hearing to consider the matter at its upcoming public meeting scheduled for December 2 and 3, 2021. At the public hearing the Regional Water Board will consider whether to issue an order requiring payment of the full amount recommended in the complaint, to issue an order requiring payment of a reduced amount or a higher amount, decide not to impose penalties, or it may refer the matter to the Attorney General's Office. The Regional Water Board may also elect to continue the hearing to a later date or take the matter under submission.

GREGORY A. GIUSTI , CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

Video and Teleconference Meeting During the COVID-19 emergency

As a result of the COVID-19 emergency, and as authorized by Government Code section 11133, this meeting is scheduled to occur with both a physical meeting location and an option for parties to the hearing and the public to participate from a remote location.

Live video and audio broadcasts of the public hearing will be available via the internet and can be accessed at the CalEPA Public meeting live webcasts page (<https://video.calepa.ca.gov>). The public hearing will be recorded.

At this time, this meeting is scheduled to occur on December 2 and 3, and this matter could be heard on either day. In accordance with the Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.), an agenda will be posted to the Board's website at least 10 days in advance of the meeting. The agenda will specify the particular day of the hearing, and any updates to the meeting format.

Please follow the Regional Water Board website at www.waterboards.ca.gov/northcoast for updates, including notice of any changes to meeting time, location and format.

Hearing Procedure

Attached to the Notice is a Tentative Hearing Procedure that will apply to the proceedings related to the Regional Water Board's consideration of the Complaint.

The Prosecution Team and Discharger shall have the opportunity to comment on the Tentative Hearing Procedure and propose changes to the Procedure or due dates for prehearing submittals.

To be considered by the Advisory Team, all comments on the Hearing Procedure must be submitted via email to Nathan Jacobsen, Nathan.Jacobsen@waterboards.ca.gov, no later than **5 p.m. on October 4, 2021**. On, or shortly after that date, the Hearing Procedure will be finalized. Once finalized by the Advisory Team, the parties will receive a copy of the approved Hearing Procedure by email and/or certified mail. The final Procedure will also be posted on the Regional Water Board's website.

Opportunity for Public Participation

The Regional Water Board will consider written comments submitted by members of the public that are interested in the pending matter (Interested Parties or Persons). Interested Persons who are not the parties to the proceeding will be permitted to submit formal written comments. All written comments by Interested Parties shall be submitted as early as possible, and in no case later than **5 p.m. on November 1, 2021**.

Interested Persons will also be provided the opportunity to orally present general policy statements to the Regional Water Board members at the hearing. Such statements will generally be limited to **5 minutes** per Interested Person, though the Board may grant additional time upon request. Interested Persons do not need to submit written statements in order to speak at the hearing. Interested Persons who wish to be considered Designated Parties to the proceeding please see the attached Hearing Procedure for instructions. Please follow the Regional Water Board's website and posted agenda for this Board meeting for instructions on how to participate in this meeting remotely.

Document Review

The Complaint and related documents, including any comments that are received on the Complaint are part of the Regional Water Board's public file for this matter and may be inspected or copied at the Regional Water Board's office, 5550 Skylane Blvd, Suite A, Santa Rosa, CA. You may contact the Regional Water Board at 707-576-2220 to arrange for a file review. Additionally, copies of the file record can be obtained by contacting the Prosecution Team.

The Complaint and most associated documents will also be available on the Regional Water Board's website.

Accessibility

Anyone requiring reasonable accommodation to participate in the public meeting should contact Patti Corsie at 707-576-2220 at least five days prior to the scheduled meeting. The Regional Water Board hearing room is accessible. TTY users may contact the California Relay Service at 800-735-2929 or voice line at 800-735-2922.

Questions

Questions regarding the Complaint, this public notice, or the Hearing Procedure should be directed to Nathan Jacobsen, Nathan.Jacobsen@waterboards.ca.gov, or 916-996-8800.

Matthias St. John

Executive Officer

Attachments: Tentative Hearing Procedure

Tentative Hearing Procedure

This Hearing Procedure is tentative and will become final after consideration of any comments received from the Prosecution Team or Discharger. **Comments on the Hearing Procedure must be received by 5 p.m. on October 4, 2021.**

Proposed Action: Consideration of Administrative Civil Liability Complaint No. R1-2021-0047

Hearing Date: December 2/3, 2021 (specific date will be provided no later than 10 days prior to the hearing.)

Location: 1) North Coast Regional Water Quality Control Board, 5550 Skylane Blvd., Santa Rosa, California 95043; and/or 2) Zoom Videoconferencing (online)

Discharger: Dean Soiland, Doing Business as BoDean Co. Inc.

IF EITHER PARTY INTENDS TO PARTICIPATE IN THE HEARING REMOTELY, PLEASE CONTACT THE ADVISORY TEAM TO OBTAIN SPECIFIC INSTRUCTIONS ON HOW TO PARTICIPATE REMOTELY VIA VIDEOCONFERENCE OR TELEPHONE

A. Applicable Laws and Regulations

This hearing constitutes an “adjudicative proceeding.” This proceeding is governed by the following statutes, regulations and policies:

- (1) Title 23, sections 648 through 648.8, available on the State Water Board’s laws and regulations page (https://www.waterboards.ca.gov/laws_regulations);
- (2) Chapter 4.5 of the Administrative Procedure Act (Gov. Code, § 11400 et seq.);
- (3) Evidence Code sections 801 through 805;
- (4) Government Code section 11513; and
- (5) State Water Resources Control Board’s Water Quality Enforcement Policy (https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

B. Parties and Separation of Functions

To ensure that the Dischargers receive a fair hearing, Regional Water Board staff and counsel have undertaken a separation of functions. Board members will be advised by an "Advisory Team" comprised of staff and counsel that have not participated in development of the Complaint. The Regional Water Board staff and attorneys that have issued the Complaint (the Prosecution Team) have been separated from the Advisory Team regarding the development of the Complaint. Members of the Prosecution Team have not communicated with the Regional Water Board nor the Advisory Team regarding any substantive matter at issue in this proceeding. The Prosecution Team is subject to all applicable rules and regulations as any other party to this proceeding, including the prohibition on ex parte communications with the Regional Water Board and members of the Advisory Team.

The members of the Advisory Team, Prosecution Team and Discharger are listed below with contact information for each.

Advisory Team

Matthias St. John
Executive Officer, North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A, Santa Rosa, CA 95043
Matt.St.John@waterboards.ca.gov

Nathan J. Jacobsen
Attorney IV, State Water Resources Control Board
1001 I Street Sacramento, CA 95814
(916) 996-8800
Nathan.Jacobsen@waterboards.ca.gov

Christopher Watt
Senior Engineering Geologist, North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A Santa Rosa, CA 95043
Chris.Watt@waterboards.ca.gov

Prosecution Team

All contacts from the Complaint have been listed. Please provide to the Advisory Team a list of primary contacts that should be copied on communications.

Catherine Hawe
Attorney, State Water Resources Control Board, Office of Enforcement
P.O. Box 100, Sacramento, CA 95812
(916) 322-3538
Catherine.Hawe@waterboards.ca.gov

Laura Drabandt,
Attorney III, State Water Resources Control Board, Office of Enforcement,
Laura.Drabandt@waterboards.ca.gov

David Boyers, State Water Resources Control Board, Office of Enforcement
David.Boyers@waterboards.ca.gov

Claudia Villacorta, North Coast Regional Water Quality Control Board,
Claudia.Villacorta@waterboards.ca.gov

Heaven Moore, North Coast Regional Water Quality Control Board,
Heaven.Moore@waterboards.ca.gov

Charles Reed, North Coast Regional Water Quality Control Board,
Charles.Reed@waterboards.ca.gov

Diana Henriouille, North Coast Regional Water Quality Control Board,
Diana.Henriouille@waterboards.ca.gov

Farzad Kasmaei, North Coast Regional Water Quality Control Board,
Farzad.Kasmaei@waterboards.ca.gov

Heidi Bauer, North Coast Regional Water Quality Control Board,
Heidi.Bauer@waterboards.ca.gov

Jeremiah Puget, North Coast Regional Water Quality Control Board,
Jeremiah.Puget@waterboards.ca.gov

Joshua Luders
Joshua.Luders@waterboards.ca.gov

Discharger

The Discharger must identify a primary point of contact or contacts for this matter. Please provide this information to the Advisory Team.

Mr. Dean Soiland
Mark West Quarry
1060 North Dutton Avenue Santa Rosa, CA 95401
dsoiland@bodeanco.com

Bo Dean Co., Inc.
Agent for Service of Process
Attn: Belinda Soiland
1060 N. Dutton Avenue Santa Rosa, CA 95401

Sean K. Hungerford, Esq.
HARRISON TEMBLADOR HUNGERFORD & JOHNSON
Counsel for Bo Dean Co., Inc.
2801 T Street Sacramento, CA 95816
shungerford@hthjlaw.com

Mr. Anthony Boyle, Mark West Quarry
4611 Porter Creek Road Santa Rosa, CA 95404
aboyle@bodeancompany.com

C. Ex Parte Contacts Prohibited

To maintain the Regional 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 Regional Water Board members or the Advisory Team members, regarding the pending matter, and which are not communicated in a manner open to all other persons. Communications regarding non-controversial procedural matters are not considered ex parte contacts, and are therefore not restricted under this Hearing Procedure.

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

D. Interested Persons

The Regional 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 Interested Person written comments. To allow for such responses, all Interested Person written comments shall be submitted as early as possible, and in no case later than **November 1, 2021**. Interested Persons will also be provided the opportunity to orally present general policy statements to the Regional Water Board at the hearing. Such statements will be limited to 5 minutes, though the Board Chair 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.

1. Request for Designated Party status

By default, the only parties to this adjudicative enforcement proceeding are: (1) the Prosecution Team; and (2) the Dischargers named in the Complaint. In some circumstances, however, it may be appropriate for certain Interested Persons to participate directly in the proceeding as a “Designated Party.” Such determinations shall be made discretionarily on a case-by-case basis by the Executive Officer, in consultation with the Board Chair.

To request “Designated Party” status, Interested Persons must submit a written request to the Advisory Team no later than **October 4, 2021**. The request shall include a brief explanation of how the person will be affected by the potential action by the Regional Water Board, the person’s need to present evidence and/or cross examine witnesses, and why a previously Designated Party (Prosecution Team or Discharger) will not adequately represent the person’s interest. The parties will be notified whether the request has been granted or denied. In the event that “Designated Party” status is granted, this Hearing Procedure may be revised as appropriate.

E. Pre-Hearing Submittals

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

1. Submittals shall be submitted electronically

All communications and pre-hearing submittals related to this proceeding shall be submitted electronically. Communications to the Advisory Team shall be submitted via email, per the email addresses listed in section B. All emails and submissions to the Advisory Team shall be directed to the attorney for the Advisory Team, who shall serve as the primary point of contact for the Advisory Team; the parties may elect to include other members of the Advisory Team on submissions. Communications to the Prosecution Team shall, at a minimum, be sent to the attorneys for the Prosecution Team.

2. Prosecution and Discharger Pre-Hearing Submittals

The following numbered items shall be submitted prior to the hearing by the dates specified. These prehearing submittals shall be submitted to the Regional Water Board’s FTP site. The Advisory Team will provide separate instructions on uploading documents to the FTP site. Parties shall provide notice via email to all parties and the Advisory Team when documents are uploaded to the FTP site.

(1) The Prosecution Team shall submit all documentary evidence supporting the Complaint. The Discharger shall submit all documentary evidence that supports its position with respect to the Complaint. Each document submitted shall be clearly titled to identify as a Prosecution Team or Discharger submittal and separately designated as a sequentially-numbered exhibit (i.e., Exhibit 1, Exhibit 2, Exhibit 3, etc.). The parties must provide an index of submitted exhibits.

(2) The Prosecution Team and Discharger may submit a memorandum articulating the party's legal arguments and technical analyses in support of its position on the Complaint.

(3) The Prosecution Team and Discharger shall submit a Witness Information Sheet containing the name of each witness the party intends to call to testify at the hearing; the subject matter of their testimony and the estimated time required for each witness.

The Prosecution Team shall submit items (1)-(3) above no later than **October 25, 2021**, to the Board's FTP site with notice of submittal provided to the Discharger and Advisory Team.

The Discharger shall submit these items no later than **November 8, 2021**, to the Board's FTP site with notice of submittal provided to the Prosecution Team and Advisory Team.

(4) Rebuttal Evidence and responses to any written comments received from Interested Parties. Both Parties may submit Rebuttal evidence. "Rebuttal" means evidence, analysis, or comments offered to disprove or contradict other Designated Parties' submissions. Both parties may also submit written responses to comments received from Interested Parties. Rebuttal evidence and responses to comments from Interested Parties must be received by **November 15, 2021**. Parties may rebut oral testimony offered at the hearing.

(5) The Prosecution Team **must** submit a proposed Order for the Board's consideration to the Advisory Team by **November 22, 2021**. The Discharger **may** submit a Proposed Order by **November 22, 2021**.

(6) Slide presentations (e.g., PowerPoint) may be used at the hearing provided their contents do not exceed the scope of previously submitted material. Regional Water Board administrative staff will be running the presentation at the party's direction. Copies of the slide presentation must be provided to the Advisory Team by **5 p.m. the day prior to the hearing**.

F. Conduct of Hearing

1. The following Time Limits apply to the hearing.

Prosecution Team: 90 Minutes

Discharger: 90 Minutes

Interested Parties [*if any*]: 5 minutes

The above time limits are proposed by the Advisory Team based on a review of the Complaint and in consideration of title 23, section 648.5, subd. (a), which specifies that adjudicative proceedings be conducted with a view toward securing relevant information expeditiously without unnecessary delay and expense to the parties and the Board. The parties may propose alternative limits for the Advisory Team's consideration.

The parties may allocate their allotted time as they see fit between presenting evidence and testimony, cross-examining adverse witnesses, making opening and closing statements. A timer will be used to track how much time has elapsed. This timer will be paused during Board questions and party responses to Board questions. Additional time may be provided at the discretion of the Board Chair (at the hearing), upon a showing that additional time is necessary. The Board Chair may revise this Procedure after notice and opportunity for parties to be heard.

2. Witness Testimony

All witnesses who have submitted written testimony shall be available to appear during the hearing to affirm that the written testimony is true and correct, and shall be subject for cross-examination. 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 evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action. Evidence already in the Regional 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.)

G. Important Deadlines

The following list summarizes the important deadlines in this matter. The parties may request extensions or modifications to the deadlines, however any granting or denial of a request shall be at the discretion of the Advisory Team.

October 4, 2021: Submit any comments or objections to the Tentative Hearing Procedure. Interested Parties submit requests to be Designated Parties. Deadline for Discharger to request suspension of hearing date by electing an option in the Waiver Form.

October 25, 2021: Prosecution Team submits supporting evidence, index, legal/technical memorandum, witness list.

November 1, 2021: Interested Parties/Persons submit written comments

November 8, 2021: Discharger submits supporting evidence, index, legal/technical memorandum, witness list.

November 15, 2021: Parties submit written rebuttal evidence, responses to Interested Parties' comments.

November 22, 2021: Prosecution Team submits proposed Order; Discharger may submit proposed Order.

Day before hearing: Parties submit presentation slides.

H. Prehearing Conferences and Summary Report

The Advisory Team may schedule a pre-hearing conference to resolve objections or any other outstanding prehearing issues, if needed. Pre-hearing conferences will be held telephonically or through videoconferencing. Prior to the hearing, the Advisory Team will prepare an Executive Officer Summary Report summarizing the matters involved in the proceeding, and the positions taken by each of the other parties. Once finalized, the Summary Report will be provided to the parties and included in the agenda materials for the proceeding.