

NOTICE OF PUBLIC HEARING
TO CONSIDER

ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT R2-2009-0017
ISSUED TO
OG PROPERTY OWNER, LLC, WILDER PROJECT
FOR
DISCHARGES IN VIOLATION OF THE GENERAL CONSTRUCTION STORM WATER
PERMIT AND WASTE DISCHARGE REQUIREMENTS
IN ORINDA, CONTRA COSTA COUNTY

**NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD
BEFORE THE WATER BOARD ON AUGUST 12, 2009**

Background

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (Water Board) has issued an Administrative Civil Liability Complaint (Complaint) pursuant to California Water Code (CWC) Section 13385 against OG Property Owner, LLC (Discharger).

The Complaint alleges that the Discharger discharged 37,373 gallons of sediment-laden storm water and 55,000 gallons of polluted non-storm water, violating the Construction Storm Water General Permit, its Waste Discharge Requirements/Clean Water Act Section 401 Water Quality Certification, and the Basin Plan. The Discharger also failed to prepare and implement an adequate Storm Water Pollution Prevention Plan prior to and during the rainy season.

The Complaint proposes that administrative civil liability in the amount of \$982,350 be imposed as authorized by CWC Section 13385.

Purpose of Hearing

A hearing will be held on the Complaint before the Water Board during its meeting on **August 12, 2009**. The purpose of the hearing will be to receive relevant evidence and testimony regarding the proposed Complaint. At the hearing, the Water Board will consider whether to adopt the proposed assessment, modify it, or reject it. The Discharger can waive its right to contest the allegations in a hearing by paying the civil liability in full or undertaking an acceptable Supplemental Environmental Project, in accordance with the procedures and limitations set forth in the waiver attached to the Complaint. If the Discharger waives its right to a hearing, no hearing will be held, provided no significant comments are received during the public comment period.

The public hearing on this matter will commence at 9 a.m. or as soon thereafter as practical, or as announced in the Water Board's meeting agenda. The meeting will be held in the Auditorium at 1515 Clay Street, 1st Floor, Oakland, California. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Water Board's web page at <http://www.waterboards.ca.gov/sanfranciscobay>.

Hearing Procedures

A copy of the procedures governing an adjudicatory hearing before the Water Board may be found at Title 23 of the California Code of Regulations, §648 et seq., and is available at <http://www.swrcb.ca.gov> or upon request. Except as provided in Title 23 of the California Code of Regulations (CCR), §648(b), Chapter 5 of the Administrative Procedures Act (commencing with §11500 of the Government Code) does not apply to adjudicatory hearings before the Water Board. THIS NOTICE MAY BE AMENDED BY THE ADVISORY STAFF AS NECESSARY. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY. Any objections to the hearing process set forth herein shall be sent to Sandia Potter of the Board's Advisory Team, with a copy to Keith Lichten of the Board's Prosecution Team (contact information is listed below) by **June 18, 2009**.

Hearing Participation

Participants in these proceedings are designated as either "parties" or "interested persons". Designated parties to the hearings 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. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Water Board, staff, or others, at the discretion of the Water Board.

The following participants are hereby designated as parties:

- Water Board Prosecution Team
- OG Property Owner, LLC

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Water Board (Prosecution Team) have been separated from those who will provide advice to the Water Board (Advisory Team). Members of the Advisory Team and the Prosecution Team are listed below. Laura Teague of the Prosecution Team advises the Water Board on unrelated matters. Advisory Staff Bruce Wolfe manages the Water Board staff but has not exercised any authority or discretion over the Prosecution Team on these matters.

Regional Water Board Advisory Team:

Bruce Wolfe, Executive Officer, bwolfe@waterboards.ca.gov

Yuri Won, Staff Attorney, ywon@waterboards.ca.gov

Sandia Potter, Technical Staff, smpotter@waterboards.ca.gov

Regional Water Board Prosecution Team:

Thomas Mumley, Assistant Executive Officer, tmumley@waterboards.ca.gov

Dyan Whyte, Assistant Executive Officer, dwhyte@waterboards.ca.gov

Keith Lichten, Senior Engineer, klichten@waterboards.ca.gov

Laurie Taul, ltaul@waterboards.ca.gov

Kathryn Hart, khart@waterboards.ca.gov

Laura Teague, Attorney, lteague@waterboards.ca.gov

Dorothy Dickey, Attorney, ddickey@waterboards.ca.gov

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of ACL Complaints between a member of a designated party or interested party on the one hand, and a Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated and interested parties or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among the designated and interested parties themselves are not ex parte contacts.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party shall request party status by submitting a request in writing (with copies to the designated parties) no later than 5 p.m. on June 19, 2009, to the staff contact listed below who will forward it to the Advisory Team for a decision. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. The parties will be notified within seven days if the request is denied.

Hearing Time limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have 20 minutes to testify, present evidence, and cross-examine witnesses, and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Additional time may be provided at the discretion of the hearing officer upon a showing that additional time is necessary.

Written Comment and Evidence Deadline

The deadline to submit any and all written evidence and comments to be offered at the hearing is **5 p.m. on June 18, 2009**. PowerPoint and other computer assisted visual presentations may be presented at the hearing as long as the contents do not exceed the scope of other submitted written material. They may be submitted prior to the hearing.

Evidentiary Documents and File

The Complaint, evidentiary documents supporting the Complaint, and comments received are on file and may be inspected or copied at the Water Board's office at 1515 Clay Street, Suite 1400, Oakland, CA 94612, during weekdays between 8 a.m. and 5 p.m. Please call (510) 622-2300 to make arrangements for file review. The Complaint and associated documents are also available on the Board's website at www.waterboards.ca.gov/sanfranciscobay.

Staff Contact and Questions

Questions, requests, and all required submittals shall be directed to Keith Lichten, who will route the matter to the appropriate parties. He may be reached at (510) 622-2380 or klichten@waterboards.ca.gov. His mailing address is 1515 Clay Street, Suite 1400, Oakland, CA 94612. For future developments and updates, including any hearing date changes, please refer to the website listed above.

Date: May 19, 2009