



**Linda S. Adams**  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Francisco Bay Region

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**Arnold Schwarzenegger**  
Governor

## PUBLIC NOTICE AND HEARING PROCEDURE FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

NO. R2-2009-0048  
ISSUED TO  
HYUNG KEUN SUN AND YEO NAM SUN  
DOING BUSINESS AS ART CLEANERS  
DRY CLEANING FACILITY  
SAN JOSE  
SANTA CLARA COUNTY

SCHEDULED FOR JANUARY 13, 2010

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

### ***Background***

The Assistant Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (“Water Code”) section 13323 against Mr. Hyung Keun Sun and Mrs. Yeo Nam Sun (“Dischargers”) alleging that they have violated Water Code section 13267 by failing to submit technical reports for a cumulative total period of 564 days. The ACL Complaint proposes that administrative civil liability in the amount of \$25,646 be imposed as authorized by Water Code section 13268.

### ***Purpose of Hearing***

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Regional Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Water Board’s web site ([www.swrcb.ca.gov/sanfranciscobay/](http://www.swrcb.ca.gov/sanfranciscobay/)).

### ***Hearing Procedure***

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been pre-approved by the Regional Water Board’s Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional Water Board may be found at Title 23 of the California Code of Regulations (CCR), section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in section 648 and herein, subdivision (b), Chapter 5 of the

Administrative Procedures Act (commencing with section 11500 of the Government Code) does not apply to this hearing.

The procedures and deadlines herein may be amended by the Advisory Team in its discretion. **Any objections to this Hearing Procedure must be received by the Advisory Team by October 26, 2009, or they will be waived.**

### ***Hearing Participants***

Participants in this proceeding are designated as either “parties” or “interested persons.” Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons generally may not submit evidence, cross-examine witnesses, or be subject to cross-examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). 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 Regional Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Regional Water Board Prosecution Team
- (2) Mr. Hyung Keun Sun and Mrs. Yeo Nam Sun, referred to as the Dischargers  
522 Providence Drive  
Castle Rock, CO 80108

### ***Requesting Designated Party Status***

Persons who wish to participate in the hearing as a designated party (who have not been designated as parties above) must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on October 26, 2009, to Sandia Potter, Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street Ste. 1400, Oakland, CA 94612. 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 Regional 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. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on October 30, 2009. The parties will be notified by 5 p.m. on November 4, 2009, in writing whether the request has been granted or denied.

### ***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 Regional Water Board (Prosecution Team) have been separated from those who will provide advice to the Regional Water Board (Advisory Team). Members of the Advisory Team and the Prosecution Team are:

**Advisory Team:**

Bruce Wolfe, Executive Officer, [bwolfe@waterboards.ca.gov](mailto:bwolfe@waterboards.ca.gov), 510-622-2314  
Yuri Won, Attorney, [ywon@waterboards.ca.gov](mailto:ywon@waterboards.ca.gov), 510-622-2491  
Sandia Potter, Technical Staff, [smpotter@waterboards.ca.gov](mailto:smpotter@waterboards.ca.gov), 510-622-2426

Address: 1515 Clay Street, Suite 1400, Oakland, CA 94612  
Primary Contact: Sandia Potter

**Prosecution Team:**

Thomas Mumley, Assistant Executive Officer, [tmumley@waterboards.ca.gov](mailto:tmumley@waterboards.ca.gov), 510-622-2395  
Dyan Whyte, Assistant Executive Officer, [dwhyte@waterboards.ca.gov](mailto:dwhyte@waterboards.ca.gov), 510-622-2441  
Terry Seward, Groundwater Protection Division Chief, [tseward@waterboards.ca.gov](mailto:tseward@waterboards.ca.gov), 510-622-2416  
Keith Lichten, Section Leader, [klichten@waterboards.ca.gov](mailto:klichten@waterboards.ca.gov), 510-622-2380  
Laurent Meillier, Technical Staff, [lmeillier@waterboards.ca.gov](mailto:lmeillier@waterboards.ca.gov), 510-622-3277  
Dorothy Dickey, Attorney, [ddickey@waterboards.ca.gov](mailto:ddickey@waterboards.ca.gov), 510-622-2490  
Laura Teague, Staff Counsel, [lteague@waterboards.ca.gov](mailto:lteague@waterboards.ca.gov), 916-341-5180

Address: 1515 Clay Street, Suite 1400, Oakland, CA 94612  
Primary Contact: Laurent Meillier

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. Members of the Prosecution Team may have acted as advisors to the Regional Water Board in other, unrelated matters, but they are not advising the Regional Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Water Board or the Advisory Team regarding this proceeding.

***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 Regional Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Regional Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

***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 a combined 30 minutes to present

evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have three 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. Participants who would like additional time must submit their request to Sandia Potter of the Advisory Team so that it is received no later than December 29, 2009. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Water Board Chair (at the hearing) upon a showing that additional time is necessary.

### ***Submission of Evidence and Policy Statements***

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the designated party would like the Regional Water Board to consider. Evidence and exhibits already in the public files of the Regional Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, section 648.3.
2. All legal and technical arguments or analysis.
3. The name of designated party members, title and/or role, and contact information (email addresses, addresses, and phone numbers).
4. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the qualifications of each expert witness.
5. (Dischargers only) If the Dischargers intend to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Water Board), the Dischargers should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

Designated parties shall submit one hard copy of their information and one electronic copy of the information to Sandia Potter so that they are received by 5 p.m. on November 16, 2009. The Prosecution Team shall include all applicable information listed above with the complaint.

The Prosecution Team may submit information that rebuts the information previously submitted by other designated parties by submitting one hard copy of their rebuttal information and one electronic copy of the information to Sandia Potter so that they are received by 5 p.m. on December 14, 2009.

Designated parties may submit information that rebuts the rebuttal information submitted by the Prosecution Team by submitting one hard copy of the rebuttal information and one electronic copy of the information to Sandia Potter so that they are received by 5 p.m. on December 24, 2009.

Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

In addition to the foregoing, each designated party shall submit (1) one copy of the above information to each of the other designated parties so that it is received by 5 p.m. on the deadlines specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team to Sandia Potter so that they are received by 5 p.m. on November 16, 2009. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

In accordance with Title 23, CCR, section 648.4, the Regional Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Regional Water Board and will not be included in the administrative record for this proceeding. PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

### ***Request for Pre-hearing Conference***

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

### ***Evidentiary Objections***

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to the Advisory Team and all other designated parties so that it is received by 5 p.m. on December 29, 2009. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

### ***Evidentiary Documents and File***

The ACL Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Water Board's office. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Water Board Chair. Many of these documents are also posted on the Regional Water Board's web site. Although the web page is updated regularly, to assure access to the latest information, you may contact Laurent Meillier.

### ***Questions***

Questions concerning this proceeding may be addressed to Sandia Potter.

### **IMPORTANT DEADLINES**

(Note: the Regional Water Board is required to provide a hearing within 90 days of issuance of the ACL Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the Discharger waives that requirement.)

October 15, 2009	Prosecution Team issues ACL Complaint to Discharger.
October 26, 2009	Deadline for objections, if any, to this Hearing Procedure.
October 26, 2009	Deadline for requests for designated party status.
October 30, 2009	Deadline for oppositions to requests for designated party status.
November 4, 2009	Advisory Team issues decision on requests for designated party status, if any.
November 16, 2009	Discharger's deadline for waiving right to hearing within 90 days.
November 16, 2009	Designated Parties' deadline for all information required under "Submission of Evidence and Policy Statements."
November 16, 2009	Interested persons' deadline for submission of written non-evidentiary policy statements.
December 14, 2009	Prosecution Team's deadline for information that rebuts information previously submitted by other designated parties.
December 24, 2009	Designated parties' (other than the Prosecution Team) deadline for information that rebuts information previously submitted by other designated parties.
December 29, 2009	Deadline for any designated party to submit an objection to written evidence or exhibits submitted by another designated party.
January 13, 2010	Hearing of the Regional Water Board on the Administrative Civil Liability Complaint.