



California Regional Water Quality Control Board

San Francisco Bay Region

Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

HEARING PROCEDURE FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

NO. R2-2010-0068

ISSUED TO

EAST BAY MUNICIPAL UTILITY DISTRICT

Point Isabel and San Antonio Creek Wet Weather Facilities, Webster Street Diversion Structure
Cities of Richmond, Oakland, and Alameda
Alameda and Contra Costa Counties

HEARING SCHEDULED FOR OCTOBER 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 of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) has issued an Administrative Civil Liability Complaint (Complaint) pursuant to California Water Code section 13323 against East Bay Municipal Utility District (Discharger) alleging that it has violated Water Code sections 13350(a) and 13385(a) by discharging untreated sewage and treated sewage with elevated residual chlorine and total coliform concentrations to the San Francisco Bay. The Complaint proposes that a civil liability in the amount of \$209,851 be imposed as authorized by Water Code section 13385(c).

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint. At the hearing, the Regional Water Board will consider whether to issue an administrative civil liability (ACL) order assessing the liability proposed in the Complaint, or a higher or lower amount, reject the proposed liability, or refer the matter to the Attorney General for judicial enforcement. An agenda for the Regional Water Board meeting where the hearing will be held will be issued at least ten days before the meeting and posted on the Regional Water Board's web site (<http://www.waterboards.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 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 the hearing.

The procedures and deadlines herein may be amended by the Advisory Team at its discretion.

Any objections to this Hearing Procedure must be received by Sandia Potter (smpotter@waterboards.ca.gov) by July 29, 2010, or they will be waived (additional contact information presented below).

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, its staff or others, at the discretion of the Regional Water Board.

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

- (1) The Regional Water Board Prosecution Team
- (2) East Bay Municipal Utility District, referred to as the Discharger
Attn.: Mr. Ben Horenstein
P.O. Box 24055
Oakland, CA 94623-1055
Telephone No. (510) 287-1846

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 July 29, 2010, to Sandia Potter (smpotter@waterboards.ca.gov). 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 August 3, 2010. The parties will be notified by 5 p.m. on August 9, 2010, 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, 510-622-2314
Dorothy Dickey, Senior Staff Counsel, ddickey@waterboards.ca.gov, 510-622-2490
Sandia Potter, Technical Staff, smpotter@waterboards.ca.gov, 510-622-2426

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

Prosecution Team:

Thomas Mumley, Assistant Executive Officer, tmumley@waterboards.ca.gov, 510-622-2395
Terry Seward, Division Chief, tseward@waterboards.ca.gov, 510-622-2416
Dyan Whyte, Assistant Executive Officer, dwhyte@waterboards.ca.gov, 510-622-2441
Keith Lichten, Enforcement Section Leader, klichten@waterboards.ca.gov, 510-622-2380
David Elias, Technical Staff, delias@waterboards.ca.gov, 510-622-2509
Robert Schlipf, Technical Staff, rschlipf@waterboards.ca.gov, 510-622-2478
Ann Carroll, Staff Counsel, acarroll@waterboards.ca.gov, 916-322-3227
Yuri Won, Senior Staff Counsel, ywon@waterboards.ca.gov, 510-622-2491

Address: Regional Water Board, 1515 Clay Street, Suite 1400, Oakland, California 94612
Primary Contact: David Elias

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 have 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 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 the Advisory Team so that it is received no later than September 23, 2010, by 5 p.m. 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. (Discharger only) If the Discharger intends 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 Regional Water Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit one hard copy and one electronic copy of the above information not already included in or with the Complaint to Sandia Potter (smpotter@waterboards.ca.gov) and other designated parties no later than September 3, 2010, by 5 p.m.

The remaining designated parties shall submit one hard copy and one electronic copy of the above information to Sandia Potter (smpotter@waterboards.ca.gov) and other designated parties no later than September 13, 2010, by 5 p.m.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit one hard copy and one electronic copy to Sandia Potter (smpotter@waterboards.ca.gov) and the other designated parties no later

than September 23, 2010, by 5 p.m. 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.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Sandia Potter (smpotter@waterboards.ca.gov) of the Advisory Team to and each designated party no later than August 18, 2010, by 5 p.m. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

For all submissions, the Advisory Team may require additional hard copies for those submittals that are either lengthy or difficult and expensive to reproduce.

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. 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 Sandia Potter (smpotter@waterboards.ca.gov) and all other designated parties no later than September 23, 2010, by 5 p.m. 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 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 David Elias, delias@waterboards.ca.gov.

Questions

Questions concerning this proceeding may be addressed to Sandia Potter (smpotter@waterboards.ca.gov).

IMPORTANT DEADLINES

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

These deadlines apply to all cases upon issuance of the Complaint whether or not the 90-day hearing requirement is waived.

July 19, 2010	Prosecution Team issues the Complaint to Discharger
July 29, 2010	Deadline for objections, if any, to this Hearing Procedure
July 29, 2010	Deadline for requests for designated party status
August 3, 2010	Deadline for oppositions to requests for designated party status
August 9, 2010	Advisory Team issues decision on requests for designated party status, if any
August 18, 2010	Discharger's deadline for waiving right to hearing
August 18, 2010	Interested persons' deadline for submission of written non-evidentiary policy statements

These deadlines apply to cases scheduled to be heard by the Regional Water Board (actual dates are subject to change if the 90-day hearing requirement is waived).

September 3, 2010	Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements"
September 13, 2010	Remaining designated parties' deadline for all information required under "Submission of Evidence and Policy Statements"
September 23, 2010	All designated parties' deadline for rebuttal information, evidentiary objections, and requests for additional time, if any
October 13, 2010	Regional Water Board Hearing