



# California Regional Water Quality Control Board

## San Francisco Bay Region



Linda S. Adams  
Acting Secretary for  
Environmental Protection

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Edmund G. Brown, Jr.  
Governor

### HEARING PROCEDURE FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

NO. R2-2011-0043  
ISSUED TO  
UNION OIL COMPANY OF CALIFORNIA  
ATLANTIC RICHFIELD COMPANY  
401 HIGH STREET, OAKLAND  
411 HIGH STREET OAKLAND  
ALAMEDA COUNTY

HEARING SCHEDULED FOR SEPTEMBER 14, 2011

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 Union Oil Company of California and Atlantic Richfield Company. (collectively Dischargers) alleging that they have violated Site Cleanup Requirements (SCR) Order No. 90-133, as amended by SCR Order No. R2-2006-0084 by failing to timely submit a draft Remedial Action Plan (DRAP) pursuant to Provision C.3.j. The SCR Order No. 90-133, as amended by SCR Order No. R2-2006-0084, is a cleanup and abatement order issued pursuant to California Water Code Section 13304 that required the Dischargers to submit a DRAP, acceptable to the Executive Officer, by October 17, 2007, a deadline that was later extended to May 15, 2008. The Dischargers submitted an acceptable DRAP more than two years after the May 15, 2008 deadline. The Complaint proposes that a civil liability in the amount of \$154,307 be imposed as authorized by Water Code section 13350(e)(1).

#### ***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 the Sandia Potter by July 11, 2011, 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, 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) Union Oil Company of California and Atlantic Richfield Company., collectively referred to as the Dischargers

Union Oil Company of California  
c/o Chevron Environmental Management Company  
Superfund & Property Management Business Unit  
Attn.: Mr. Michael Mailloux  
6001 Bollinger Canyon Road, K-2052  
San Ramon, CA 94583  
[MMailloux@chevron.com](mailto:MMailloux@chevron.com)

Atlantic Richfield Company  
c/o BP  
Attn.: Mr. Jon B. Armstrong  
Contracts Manager, Remediation Management  
WL1, 28.160D  
Westlake Park Boulevard  
Houston, TX 77079  
[Jon.Armstrong@bp.com](mailto:Jon.Armstrong@bp.com)

### ***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 11, 2011 to Sandia Potter. 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 July 18, 2011. The parties will be notified by 5 p.m. on July 21, 2011 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, Senior Staff Counsel, [YWon@waterboards.ca.gov](mailto:YWon@waterboards.ca.gov), 510-2491

Sandia Potter, Technical Staff, [SPpotter@waterboards.ca.gov](mailto:SPpotter@waterboards.ca.gov), 510-622-2426

Address: California Regional Water Board, San Francisco Bay Region, 1515 Clay Street,  
Suite 1400, Oakland, CA 94612

Primary Contact: Sandia Potter

**Prosecution Team:**

Dyan C Whyte, Assistant Executive Officer, [DWhyte@waterboards.ca.gov](mailto:DWhyte@waterboards.ca.gov), 510-622-2441

Ann Carroll, Staff Counsel, [ACarroll@waterboards.ca.gov](mailto:ACarroll@waterboards.ca.gov), 916-322-3227

Terry Seward, Division Chief, [TSeward@waterboards.ca.gov](mailto:TSeward@waterboards.ca.gov), 510-622-2416

Keith Lichten, Enforcement 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

Address: California Regional Water Board, San Francisco Bay Region, 1515 Clay Street,  
Suite 1400, California 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 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 August 25, 2011, 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. (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 Regional 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."

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 the Sandia Potter and other designated parties no later than August 5, 2011, by 5 p.m.

The remaining designated parties shall submit one hard copy and one electronic copy of the above information to the Sandia Potter and other designated parties no later than August 15, 2011, 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 the Sandia Potter and the other designated parties no later than August 25, 2011, 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 the Advisory Team to Sandia Potter and each designated party no later than August 1, 2011 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 the Sandia Potter and all other designated parties no later than August 25, 2011, 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 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 Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the Dischargers waive that requirement.

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

July 1, 2011	Prosecution Team issues the Complaint to Dischargers
July 11, 2011	Deadline for objections, if any, to this Hearing Procedure
July 11, 2011	Deadline for requests for designated party status
July 18, 2011	Deadline for oppositions to requests for designated party status
July 21, 2011	Advisory Team issues decision on requests for designated party status, if any
August 1, 2011	Dischargers' deadline for waiving right to hearing
August 1, 2011	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).**

August 5, 2011	Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements"
August 15, 2011	Remaining designated parties' deadline for all information required under "Submission of Evidence and Policy Statements"
August 25, 2011	All designated parties' deadline for rebuttal information, evidentiary objections, and requests for additional time, if any
September 14, 2011	Regional Water Board Hearing