
San Francisco Bay Regional Water Quality Control Board

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R2-2016-1008
AND
TENTATIVE CLEANUP AND ABATEMENT ORDER

ISSUED TO
JOHN D. SWEENEY AND POINT BUCKLER CLUB, LLC
171 SANDPIPER DRIVE, PITTSBURG, CA 94565
CONTRA COSTA COUNTY

HEARING SCHEDULED FOR AUGUST 10, 2016

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 John D. Sweeney and Point Buckler Club, LLC (Dischargers) alleging that they have violated Water Code section(s) 13385(a)(4)(5) by illegally discharging fill into waters of the State and United States at Point Buckler Island, Solano County. The Complaint proposes that a civil liability in the amount of \$4,600,000 be imposed as authorized by Water Code section(s) 13385(c)(1)(2).

In addition, the Complaint is accompanied by a Tentative Cleanup and Abatement Order (CAO) pursuant to Water Code sections 13267 and 13304, seeking mitigation and remediation related to unauthorized fill into waters of the State and United States at Point Buckler Island, Solano County (Assessor's Parcel Number 0090-020-010). For the convenience of the Regional Water Board and the parties to this action, both the Complaint and the CAO will be discussed at a single hearing.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint and CAO. 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. In addition, the Regional Water Board will consider the proposed CAO and any comments provided by the Dischargers or interested persons related to the CAO. An agenda for the Regional Water Board meeting and notice regarding 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 Marnie Ajello by MAY 27, 2016, 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) John D. Sweeney and Point Buckler Club, LLC, referred to as the Dischargers
John D. Sweeney, Manager, Point Buckler Club, LLC
171 Sandpiper Drive, Pittsburg, CA 94565
john@spinnerisland.com (415) 686-0907

Lawrence Bazel, Legal Counsel, Briscoe Ivester & Bazel LLP
155 Sansome Street, 7th Floor, San Francisco, CA 94104
lbazel@briscoelaw.net (415) 402-2711

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 **MAY 27, 2016**, to

Marnie Ajello. 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 or group), the information required of designated parties as provided below, and a statement explaining why the parties designated above do not adequately represent the person or group's interest. Any opposition to the request must be received by the Advisory Team, the person or group requesting party status, and all parties by 5 p.m. on **JUNE 1, 2016**. The parties will be notified by 5 p.m. on **JUNE 6, 2016**, 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, Bruce.Wolfe@waterboards.ca.gov, (510) 622-2314
Stephen Hill, Division Chief, Stephen.Hill@waterboards.ca.gov, (510) 622-2361
Liz Morrison, Technical Staff, Elizabeth.Morrison@waterboards.ca.gov, (510) 622-2330
Elizabeth Wells, Technical Staff, Elizabeth.Wells@waterboards.ca.gov, (510) 622-2440
Marnie Ajello, Staff Counsel, Marnie.Ajello@waterboards.ca.gov, (916) 327-4439
California Regional Water Board, San Francisco Bay Region, 1515 Clay Street,
Suite 1400, Oakland, CA 94612

Primary Contact: Marnie Ajello

Prosecution Team:

Agnes Farres, Technical Staff, Agnes.Farres@waterboards.ca.gov, (510) 622-2401
Benjamin Martin, Technical Staff, Benjamin.Martin@waterboards.ca.gov, (510) 622-2116
Bill Hurley, Section Leader, Bill.Hurley@waterboards.ca.gov, (510) 622-2364
Brian Thompson, Section Leader, BThompson@waterboards.ca.gov, (510) 622-2422
Dyan C. Whyte, Assistant Executive Officer, DWhyte@waterboards.ca.gov, (510) 622-2441
Keith Lichten, Division Chief, Keith.Lichten@waterboards.ca.gov, (510) 622-2380
Tamarin Austin, Staff Counsel IV, Tamarin.Austin@waterboards.ca.gov, (510) 622-2490
California Regional Water Board, San Francisco Bay Region, 1515 Clay Street,
Suite 1400, Oakland, CA 94612
Laura Drabandt, Staff Counsel III, Laura.Drabandt@waterboards.ca.gov, (916) 341-5180
Julie Macedo, Staff Counsel IV, Julie.Macedo@waterboards.ca.gov, (916) 323-6847
State Water Resources Control Board, 1001 I Street, P.O. Box 100,
Sacramento, CA 95812

Primary Contact: Benjamin Martin

Regional Board Experts:

Peter Baye, PhD, Botanist/Coastal Ecologist, baye@earthlink.net, (425) 310-5109
Stuart Sigel, PhD, Professional Wetlands Scientist, stuart@swampthing.org, (415) 299-8746

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 generally 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 **JULY 21, 2016**, 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 will move to exclude any evidence on inability to pay that is not submitted with other evidence in accordance with the timeframes herein.

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 Marnie Ajello and other designated parties no later than **JULY 1, 2016**, by 5 p.m.

The remaining designated parties shall submit one hard copy and one electronic copy of the above information to the Marnie Ajello and other designated parties no later than **JULY 11, 2016**, 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 Marnie Ajello and the other designated parties no later than **JULY 21, 2016**, 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 Marnie Ajello and each designated party no later than **JUNE 16, 2016**, 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 Marnie Ajello and all other designated parties no later than **JULY 21, 2016**, 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 Benjamin Martin.

Questions

Questions concerning this proceeding may be addressed to Marnie Ajello.

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.

MAY 17, 2016	Prosecution Team issues the Complaint/Tentative CAO to Dischargers
MAY 27, 2016	Deadline for objections, if any, to this Hearing Procedure
MAY 27, 2016	Deadline for requests for designated party status
JUNE 1, 2016	Deadline for oppositions to requests for designated party status
JUNE 6, 2016	Advisory Team issues decision on requests for designated party status, if any
JUNE 16, 2016	Dischargers' deadline for waiving right to hearing

JUNE 16, 2016 Dischargers' and interested persons deadline for submission of written comments/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).

JULY 1, 2016 Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements"

JULY 11, 2016 Remaining designated parties' deadline for all information required under "Submission of Evidence and Policy Statements"

JULY 21, 2016 All designated parties' deadline for rebuttal information, evidentiary objections, and requests for additional time, if any

AUGUST 10, 2016 Regional Water Board Hearing