
San Francisco Bay Regional Water Quality Control Board

SECOND REVISED HEARING PROCEDURE
FOR TENTATIVE CLEANUP AND ABATEMENT ORDER
R2-2016-XXXX
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 a Tentative Cleanup and Abatement Order (CAO) pursuant to California Water Code sections 13267 and 13304 to John D. Sweeney and Point Buckler Club, LLC (Dischargers) 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).

The Assistant Executive Officer has also issued an Administrative Civil Liability Complaint (Complaint) pursuant to Water code section 13323 against the Dischargers, alleging that they have violated Water Code sections 13385, subdivisions (a)(4)-(5) by illegally discharging fill into waters of the State and United States at Point Buckler Island, Solano County. The date of the hearing on the Complaint has not yet been scheduled.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the tentative CAO. At the hearing, the Regional Water Board will consider any comments on the CAO and decide whether to adopt, modify, or reject the tentative order. 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 Revised Hearing Procedure. This Revised Hearing Procedure has been reviewed by the presiding officer and issued by the Regional Water Board Advisory Team. 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,

JOHN MULLER, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

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 Amended Hearing Procedure is deemed waived. Except as provided in Section 648, subdivision (b) and herein, 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. **The deadline to submit objections to the Hearing Procedure for this matter expired on May 27, 2016; this Revised Hearing Procedure reflects changes in scheduling and in Advisory Team participation made in response to the Dischargers' objections and correspondence.**

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@pinnerisland.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

The deadline for persons wishing to participate in the hearing as designated parties (who have not been designated as parties above) expired on May 27, 2016.

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:

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
David Coupe, Attorney IV; David.Coupe@waterboards.ca.gov; (510) 622-2306
Marnie Ajello, Attorney; Marnie.Ajello@waterboards.ca.gov; (916) 327-4439

Primary Contact: Marnie Ajello

Prosecution Team:

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
Bill Hurley, Section Leader; Bill.Hurley@waterboards.ca.gov; (510) 622-2364
Brian Thompson, Section Leader; Brian.Thompson@waterboards.ca.gov; (510) 622-2422
Agnes Farres, Technical Staff; Agnes.Farres@waterboards.ca.gov; (510) 622-2401
Benjamin Martin, Technical Staff; Benjamin.Martin@waterboards.ca.gov; (510) 622-2116
Tamarin Austin, Attorney IV; Tamarin.Austin@waterboards.ca.gov; (916) 341-5171
Laura Drabandt, Attorney III, Laura.Drabandt@waterboards.ca.gov; (916) 341-5180
Julie Macedo, Attorney IV; Julie.Macedo@waterboards.ca.gov; (916) 323-6847

Primary Contact: Benjamin Martin

Regional Board Experts:

Peter Baye, Ph.D., Botanist/Coastal Ecologist, baye@earthlink.net, (425) 310-5109
Stuart Sigel, Ph.D., 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 shall apply: each designated party shall have a combined ~~60~~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 California Code of Regulations, title 23, 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.

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 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 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 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 California Code of Regulations, title 23, 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 Revised 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 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 Dischargers have waived their right to a hearing on the Complaint within 90 days. **The following deadlines apply to the hearing on the tentative CAO to be heard by the Regional Water Board on August 10, 2016.**

June 8, 2016	Advisory Team issues the Revised Hearing Procedure
June 16, 2016	Dischargers' deadline for waiving right to hearing on ACL Complaint ¹
June 16, 2016	Dischargers' and interested persons deadline for submission of written comments/ non-evidentiary policy statements
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 on Cleanup and Abatement Order

¹ The Dischargers waived their right to a hearing within 90 days on May 22, 2016. The date for the hearing on the Complaint has not yet been scheduled.