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## San Francisco Bay Regional Water Quality Control Board

HEARING PROCEDURE  
FOR A TENTATIVE CEASE AND DESIST ORDER  
ISSUED TO  
CALIFORNIA DEPARTMENT OF TRANSPORTATION  
HEARING SCHEDULED FOR FEBRUARY 13, 2019

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*

Prosecution staff of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) has issued a Tentative Cease and Desist Order (Tentative CDO) to the California Department of Transportation (Caltrans) to bring Caltrans into compliance with Basin Plan Prohibition A.4 and State Water Board Order No. 2012-0011-DWQ, as amended by Order No. 2014-0077-DWQ, which relate to control of trash in stormwater.

### *Purpose of Hearing*

The purpose of the hearing is to consider relevant evidence and testimony, including comments from interested persons, regarding the Tentative CDO. At the hearing, the Regional Water Board will consider whether to adopt, modify, or reject the tentative order. An agenda for the Regional Water Board meeting 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. 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, 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. **Any objections to this Hearing Procedure must be received by Marnie Ajello by Friday, January 25, 2019 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, if warranted, may cross-examine witnesses and be 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. 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) California Department of Transportation

Department of Transportation  
111 Grand Ave, No. 11-100  
Oakland, CA 94612  
Tel.: (510) 433-9100

### ***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:**

Lisa Horowitz McCann, Assistant Executive Officer, [Lisa.McCann@waterboards.ca.gov](mailto:Lisa.McCann@waterboards.ca.gov);  
(510) 622-2441  
Selina Louie, Water Resources Control Engineer, [Selina.Louie@waterboards.ca.gov](mailto:Selina.Louie@waterboards.ca.gov); (510) 622-2383  
Janet O’Hara, Senior Environmental Scientist, [Janet.O’Hara@waterboards.ca.gov](mailto:Janet.O’Hara@waterboards.ca.gov); (510) 622-5681  
Yuri Won, Attorney, [Yuri.Won@waterboards.ca.gov](mailto:Yuri.Won@waterboards.ca.gov); (510) 622-2491  
Marnie Ajello, Attorney, [Marnie.Ajello@waterboards.ca.gov](mailto:Marnie.Ajello@waterboards.ca.gov), (916) 327-4439

Primary Contact: Marnie Ajello

#### **Prosecution Team:**

Thomas Mumley, Interim Executive Officer, [Thomas.Mumley@waterboards.ca.gov](mailto:Thomas.Mumley@waterboards.ca.gov);  
(510) 622-2395  
Keith Lichten, Division Chief, [Keith.Lichten@waterboards.ca.gov](mailto:Keith.Lichten@waterboards.ca.gov); (510) 622-2380  
Dale Bowyer, Section Leader, [Dale.Bowyer@waterboards.ca.gov](mailto:Dale.Bowyer@waterboards.ca.gov); (510) 622-2323  
Derek Beauduy, Environmental Specialist, [Derek.Beauduy@waterboards.ca.gov](mailto:Derek.Beauduy@waterboards.ca.gov); (510) 622-2348  
Julie Macedo, Attorney IV, [Julie.Macedo@waterboards.ca.gov](mailto:Julie.Macedo@waterboards.ca.gov); (916) 323-6847

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 Tentative CDO 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.

### ***Responses to Comments***

Public comments on the Tentative CDO were due and received on January 14, 2019. The deadline for the designated parties to respond to these comments is hereby extended to **February 1, 2019**, from January 23, 2019.

### ***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 **fifteen (15)** minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have **three (3)** 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 **February 6, 2019 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***

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. Any legal and technical arguments or analysis beyond what is provided in the responses to comments.

The Prosecution Team and Caltrans shall submit their evidence electronically to Marnie Ajello, with a copy to the other designated party and members of the Advisory Team, no later than **February 1, 2019**.

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 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.

Any party that wishes to use PowerPoint or other computer visual aids should submit the material to Brandy Stone by **3 pm on February 12, 2019**, to ensure that they get loaded into the computer in the hearing room. Her email address is [Brandy.Stone@waterboards.ca.gov](mailto:Brandy.Stone@waterboards.ca.gov). Presentation materials must be consistent with and not extend beyond the scope of oral testimony. PowerPoint slides will not be made part of the record unless the Regional Water Board views them during its meeting.

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

The Tentative CDO 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.

### ***Questions***

Questions concerning this proceeding may be addressed to Marnie Ajello.

## **IMPORTANT DEADLINES**

**The following deadlines apply to the hearing on the Tentative CDO.**

JANUARY 25, 2019	Deadline for submission of objections to this Hearing Procedure
FEBRUARY 1, 2019	Deadline for submission of evidence by Caltrans and the Prosecution Team
FEBRUARY 1, 2019	Deadline for submission of Prosecution Team's and Caltrans's Responses to Comments on the Tentative CDO
FEBRUARY 6, 2019	Deadline for requests, if any, for additional hearing time limits
FEBRUARY 12, 2019	Deadline to submit PowerPoints or computer visual aids, if any
FEBRUARY 13, 2019	Regional Water Board Hearing