

North Coast Regional Water Quality Control Board

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R1-2009-0095

ISSUED TO

The California Department of Transportation
Confusion Hill Bypass Project

Highway 101 (Post Mile 98.9/ R 100.8)

SCHEDULED FOR JUNE 22-23, 2011

Overview

On July 21, 2008, the Assistant Executive Officer of the North Coast Regional Water Quality Control Board (North Coast Regional Board), issued an Administrative Civil Liability Complaint ACLC R1-2009-0095 (Complaint) pursuant to Water Code section 13323 to the California Department of Transportation (Caltrans), who contracted with MCM Construction, Inc. ("MCM") (hereafter collectively "Dischargers"). The Complaint alleges that the Dischargers violated the Clean Water Act section 401 by failing to apply for and obtain a water quality certification for the Confusion Hill Bypass Project, and for violations of General Discharge Prohibitions, Receiving Water Limitations, and General Requirements contained in Caltrans' Storm Water Permit. The Complaint proposes that the North Coast Regional Board impose an administrative civil liability (ACL) in the amount of One Million Five Hundred Eleven Thousand Dollars as authorized by Water Code sections 13385 and 13350. A hearing was originally scheduled to be held before the North Coast Regional Board during its March 24, 2011, meeting. That hearing was cancelled in order to allow time to process information and argument submitted in response to Pre-Hearing instructions. This hearing is now scheduled to be held before the North Coast Regional Board during its June 22-23, 2011, meeting.

Purpose of Hearing

At the hearing, the North Coast Regional Board will consider relevant evidence and testimony and decide whether to issue an ACL order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on will commence at 9:00 a.m. or as soon thereafter as practical, or as announced in the North Coast Regional Board meeting agenda. The meeting will be held at

Regional Water Board Hearing Room
5550 Skylane Blvd., Suite A,
Santa Rosa, California

An agenda for the meeting will be issued at least ten days before the meeting and posted on the North Coast Regional Board's web page at:

<http://www.waterboards.ca.gov/northcoast>.

Advisory Team

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 North Coast Regional Board (Prosecution Team) have been separated from those who will provide advice to the North Coast Regional Board (Advisory Team). 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. Other members of the Prosecution Team may act or have acted as advisors to the North Coast Regional Board in other, unrelated matters, but they are not advising the North Coast Regional Board in this proceeding. The Prosecution Team is subject to all applicable rules and regulations as any other party to this proceeding, including the prohibition on ex parte communications.

All submittals and communications to the Advisory Team shall be sent to:

Lisa Bernard
Sanitary Engineering Associate
Regional Water Quality Control Board
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Samantha Olson, Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
(916) 327-8235
SOlson@waterboards.ca.gov

Hearing Participation

Any substantive communication to the Advisory Team must also be sent to the parties listed below. The deadline for requesting designated party status has passed; however, additional persons may be designated as parties at the discretion of the Hearing Officer, for good cause shown, and subject to appropriate conditions as determined by the Hearing Officer. Unless specifically provided by a ruling of the Hearing Officer, only parties will be allowed to present evidence. **Parties are advised to read and adhere to the attached important deadlines and hearing procedures carefully. Failure to comply with the deadlines and requirements contained herein may result in the exclusion of documents and/or testimony.** A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may access hearing documents at the website listed in the hearing notice.

Parties

Parties

Prosecution Team:

Cristian Carrigan
Julie Macedo
Senior Staff Counsel
Office of Enforcement
State Water Resources Control Board
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Caltrans:

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Ladd Construction:

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MCM:

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IMPORTANT DEADLINES

The hearing was originally scheduled for March 24, 2011. That hearing was cancelled in order to allow time to process information and argument submitted in response to Pre-Hearing instructions. Certain deadlines have passed and been met by parties pursuant to the previous notice and will not be re-opened. Parties have already submitted Case in Chief, Rebuttal Evidence, Written Rebuttal to Legal Argument and Evidentiary Objections. As specified below, Parties are allowed additional time to respond to any new citations provided in the Prosecution Team's March 18, 2011 submittal. Previously submitted objections need not be re-submitted and may be simply referenced. The Hearing Officer is taking these under submission, and will issue a ruling at a later time as necessary. The Advisory Team has discretion to modify the deadlines below and may schedule pre-hearing conferences to resolve objections or any other outstanding pre-hearing issues, if needed. Pre-hearing conferences may be held telephonically. All required submissions must be received by the North Coast Regional Board electronically by 5:00 p.m. on the due date listed. Eleven paper copies of each submittal are also required, as specified below. Parties shall send electronic copies of all submittals to each other.

IMPORTANT DEADLINES

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| 4.14.2011 | Parties Submit Any Rebuttal Evidence and Written Rebuttal to Prosecution Team's March 18, 2011 submittal, and all Evidentiary Objections |
| 4.21.2011 | Parties Submit Any Responses to Objections |
| 4.27.2011 | Parties Submit Any Response to Objections to Rebuttal Evidence |
| X.X.XXXX | Tentative Pre-Hearing Conference (tbd) |
| 6.22.2011 | Adjudicatory Hearing Commences |

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by April 21, 2011. Interested persons do not need to submit written comments in order to speak at the hearing.

General Hearing Procedures

The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site:

http://www.waterboards.ca.gov/laws_regulations.

Unless otherwise determined by the Hearing Officer, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the Hearing Officer, parties may also be afforded the opportunity to present closing statements or submit briefs. The North Coast Regional Board encourages (but does not require) parties with common interests to work together to make the hearing process more efficient. In addition, parties are encouraged to stipulate to facts not in dispute, if appropriate. The Hearing Officer reserves the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Hearing Time Limits

At the request of the Parties the Advisory Team has granted the Prosecution Team a total of 2 hours and a combined total of 4 hours to the Dischargers to present evidence (including evidence presented by witnesses called by the party), cross-examine witnesses (if warranted), and provide a closing statement. Additional time may be provided at the discretion of the Hearing Officer (at the hearing, which may extend to June 24, 2011) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Discharger could not adequately provide the testimony, comments or legal argument in the time provided. The Hearing Officer will consider and may approve any reasonable alternative hearing agenda agreed upon by the Parties if appropriate.

Submission of Evidence

In accordance with California Code of Regulations, title 23, section 648.4, the North Coast Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the North Coast Regional 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 North Coast Regional Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Designated parties must provide the Advisory Team with a printed copy of such materials 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.

Case in Chief: Parties shall submit the following information in writing in advance of the hearing:

1. All legal and technical arguments or analysis (limited to 30 pages, double spaced).
2. All documentary evidence (except rebuttal documents) proposed to be offered at the hearing.

3. The name of each fact witness, if any, whom the designated party intends to call at the hearing, a brief summary of the subject of each witness's proposed testimony, and the estimated time required by each witness to present direct testimony. Alternatively, the testimony of any witness may be presented by declaration, so long as that witness will be available for cross-examination at the hearing. The qualifications of each expert witness, if any, and a brief summary of their expected testimony. Alternatively, the testimony of any expert witness may be presented by declaration, so long as that witness will be available for cross-examination at the hearing.

Rebuttal: "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other designated parties' submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Ex Party Contacts

There shall be no *ex parte* communications with North Coast Regional Board members or Advisory Team staff and supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to the submission of evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.** Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and their addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the Advisory Team, not North Coast Regional Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from the State Water Board website at: http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

Rules of Evidence

Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action

Evidentiary Documents and File

The Complaint and related evidentiary documents on file may be inspected or copied at the North Coast Regional Board 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 North Coast Regional Board's Chair. Once available, many of these documents will also be posted on-line at

http://www.waterboards.ca.gov/northcoast/board_decisions/tentative_orders/.

Although the web page will be updated regularly, to assure access to the latest information, you may contact the Prosecution Team (contact information above).

Questions

Questions concerning this proceeding may be addressed to the Advisory Team (contact information above).