

73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
(760) 346-7491

Public Notice 7-13-14
Permit CA0104523
February 28, 2013

REVISED NOTICE OF PUBLIC HEARING AND HEARING PROCEDURE
FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R7-2013-0028
ISSUED TO CITY OF BRAWLEY, OWNER/OPERATOR,
MUNICIPAL WASTEWATER TREATMENT PLANT
Brawley – Imperial County

**NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD
BEFORE THE REGIONAL BOARD ON **SEPTEMBER 19, 2013****

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 Colorado River Basin Regional Water Quality Control Board (Regional Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) section 13323 to the City of Brawley, Owner/Operator of the Brawley Wastewater Treatment Plant (WWTP) (hereinafter Discharger) alleging that they have violated Waste Discharge Requirements (WDRs) Order R7-2010-0022 (NPDES Permit CA0104400). The Complaint proposes that administrative civil liability in the amount of one-million, seven hundred and thirty four thousand, seven hundred and seventy eight dollars (\$1,734,778) be imposed as authorized by CWC sections 13350 and 13385, subdivisions (c) and (h), and all applicable law. A hearing is currently scheduled to be held before the Regional Board during its **September 19**, 2013 meeting.

Unless the Discharger waives the right to a hearing and pays the proposed liability, the hearing will be held before the Regional Water Board during its meeting of **September 19**, 2013. The deadline of **April 2**, 2013 for waiving the hearing and all other procedural deadlines are listed in the Table of Important Deadlines (Table) at the end of this Notice.

Also, please note that all requests, objections, and any other material submissions for which a deadline has been specified **must be received no later than 5:00 p.m. on the date specified. Unless the recipient(s) indicate otherwise, all written requests and submissions may be provided electronically.**

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Regional Board will consider whether to adopt the proposed assessment, modify it, or reject it. If it adopts the proposed assessment, the Regional Board will issue an Administrative Civil Liability Order. The public hearing on **September 19**, 2013, will commence at 9:00 a.m. or as soon thereafter as practical, or as announced in our Board meeting agenda. The meeting will be held in the City of Palm Desert, California, at the Board Room of the Regional Water Board, located at 73-720 Fred Waring Drive, Suite 100. An

agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Regional Board's web page at <http://www.waterboards.ca.gov/coloradoriver>. The agenda will include the final hearing date and location, and estimated start time for the hearing.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This hearing procedure has been pre-approved by the Regional Board's Advisory Staff in model format, but the Advisory Staff may modify the procedure on its own or at the request of any designated party. A copy of the procedures governing an adjudicatory hearing before the Regional Board may be found at Title 23 of the California Code of Regulations (CCRs), 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 Procedure Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

THE PROCEDURE AND DEADLINES DESCRIBED IN THIS NOTICE MAY BE AMENDED BY THE ADVISORY STAFF AS NECESSARY. **ANY OBJECTIONS TO THIS HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL BOARD'S ADVISORY STAFF BY 5:00 P.M. ON THE DATE SPECIFIED ON THE TABLE, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

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 may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff, or others at the discretion of the Regional Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Regional Board Prosecution Staff
- (2) City of Brawley, Owner/Operator of Brawley WWTP

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party shall request party status by submitting a request in writing to Advisory Staff counsel, Lori Okun, Assistant Chief Counsel, Office of Chief Counsel, State Water Resources Control Board, **and to Robert Perdue, Executive Officer**, with copies to the designated parties, **no later than 5 p.m. on the date specified in the Table**. 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 could 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 submitted to Ms. Okun **and Mr. Perdue no later than 5:00 p.m. on the date specified in the**

Table. The parties will be notified in writing by **the Advisory Staff by 5:00 p.m. on the date specified in the Table** whether the request has been granted or denied.

Contacts

Advisory Staff:

Robert Perdue, Executive Officer
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Discharger:

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Preliminary Witness List

The Prosecution **Staff's** preliminary witness list of those witnesses expecting to testify at the public hearing includes Mr. Jose Angel, Assistant Executive Officer, and Mr. Doug Wylie, Senior Water Resource Control Engineer. The Prosecution **Staff** will update the preliminary witness list, if necessary, by **5:00 p.m. on the date specified in the Table for "Submission of Evidence and Policy Statements."**

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 **Staff**) have been separated from those who will provide advice to the Regional Board (Advisory **Staff**). Members of the Advisory **Staff** are: Robert Perdue, Executive Officer; Lori T. Okun, Assistant Chief Counsel; Jon Rokke, Water Resource Control Engineer; and Jeong-Hee Lim, Water Resource Control Engineer. Members of the Prosecution Staff are: Jose Angel, Assistant Executive Officer; Anna Kathryn Benedict, Attorney **III**; Ellen Howard, Attorney; **Tom Vandenberg, Attorney**; Mary Serra, Supervising Water Resource Control Engineer; and Doug Wylie, Senior Water Resource Control Engineer. Although members of the Prosecution **Staff** may have acted as advisors to the Regional Water Board in other, unrelated matters, they are not advising the Regional Water Board in this proceeding. Accordingly, the members of the Prosecution **Staff** have not engaged in any *ex parte* communications, as defined below, with members of the Regional Water Board or the Advisory **Staff**.

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 Staff or members of the Regional Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a Regional Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties 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 30 minutes to testify, present evidence, and cross-examine witnesses, and each interested person shall have 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.

Additional time may be provided at the discretion of the Advisory Staff (prior to the hearing) or the Regional 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:

Prosecution **Staff**: Send to Advisory **Staff** attorney, the Discharger, and any other designated parties by 5:00 p.m. **on the date specified in the Table.**

Discharger: Send to Advisory **Staff** attorney, the Prosecution **Staff**, and any other designated parties by **5:00 p.m. on the date specified in the Table.**

1. All evidence, testimony (except rebuttal testimony) and exhibits proposed to be offered at the hearing. Evidence and exhibits already in the public files of the Regional Water Board may be submitted by reference so 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 each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

In lieu of electronically transmitting copies of the above information, the Prosecution **Staff** may create an "ftp" website or similar electronic data website containing this information so long as it is accessible to the Advisory **Staff**, the Discharger, and any other designated party. If such a website is used, the Prosecution **Staff** shall confirm as soon as possible with the Advisory **Staff**, the Discharger, and any other designated party that the website is accessible. If the website is not accessible to any party, the Prosecution **Staff** shall provide the information contained on the website to that party in electronic form, unless otherwise directed by that party.

Any designated party, who would like to submit information that rebuts the information previously submitted by other designated parties, may provide that rebuttal information to Lori T. Okun **and Robert Perdue**, the Discharger, and all other designated parties **no later than 5:00 p.m. on the date specified in the Table** in electronic form, unless otherwise directed by the recipient(s). 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 may submit one (1) copy of non-evidentiary policy statements by the close of the hearing.

In accordance with Title 23, CCR, Section 684.4, 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 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 Board and will not be included in the administrative record for this proceeding. Accordingly, oral testimony offered at the hearing that is beyond the scope of the previously submitted written testimony may be excluded. Power Point and other computer assisted visual presentations must be submitted to the Advisory **Staff** by **5:00 p.m. on the date specified in the Table.** Electronic submissions are acceptable, unless otherwise directed by

any intended recipient(s). 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. A pre-hearing conference may address any of the matters described in Government Code Section 11511.5(b), including, but not limited to, the following matters:

- (1) Exploration of settlement possibilities;
- (2) Preparation of stipulations;
- (3) Clarification of issues;
- (4) Rulings on identity and limitation of the number of witnesses;
- (5) Objections to proffers of evidence;
- (6) Order of presentation of evidence and cross-examination;
- (7) Rulings regarding issuance of subpoenas and protective orders;
- (8) Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing; and,
- (9) Exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing.

Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted as early as practicable to the Advisory **Staff** with a copy to all other designated parties, **but no later than by 5:00 p.m. on the date specified in the Table.** The requests may be electronically submitted, unless otherwise directed by any recipient(s). No party who participates in a pre-hearing conference is precluded from appearing before the Regional Water Board at any subsequent hearing relating to the matter.

Evidentiary Objections

Any designated party objecting to evidence, testimony, or exhibits submitted by another designated party must submit a written objection (electronic submission is acceptable, unless otherwise directed by any recipient) to the Advisory **Staff** with a copy to all other designated parties by **5:00 p.m. on the date specified in the Table.** The Advisory **Staff** will notify the parties in writing as soon as possible about further action to be taken on such objections and when that action will be taken. At the discretion of the Advisory **Staff**, a pre-hearing telephonic conference may be scheduled to discuss any further actions to be taken on the objections.

Evidentiary Documents and File

The ACL Complaint, related evidentiary documents, and comments received are on file and may be inspected or copied at the office of the Colorado River Basin Regional Water Quality Control Board, 73-720 Fred Waring Drive, Suite 100, Palm Desert, CA. **The ACL Complaint is hereby incorporated by reference into the administrative record for this matter. "Related evidentiary documents" and comments received shall be considered part of the official administrative record for this hearing to the extent a designated party or interested person (as applicable) submits the document(s) or comments or incorporates them by reference, in accordance with "Submission of Evidence and Policy Statements," above. All timely 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. In addition, many of these documents may also be posted on-line at www.waterboards.ca.gov/coloradoriver. Although the web page is updated regularly, please contact Doug Wylie at dwylic@waterboards.ca.gov or (760) 776-8960 to assure access to the latest information.

Questions

Questions concerning this **hearing procedure** may be addressed to Lori T. Okun by e-mail at Lori.Okun@waterboards.ca.gov or by phone at (916) 341-5165.

TABLE OF IMPORTANT DEADLINES

February 28, 2013	Prosecution Staff issues ACL Complaint to Discharger and Advisory Staff , electronically posts the Notice of Public Hearing and Hearing Procedure, and sends the Discharger a copy of the Notice.
April 2, 2013	Discharger's deadline for waiving right to a hearing.
April 14 , 2013	Deadline for objections, if any, to proposed hearing procedure.
May 10 , 2013	Deadline for requests for designated party status.
May 17 , 2013	Deadline for oppositions to requests for designated party status.
May 24 , 2013	Advisory Staff issues decision on any requests for designated party status.
August 8 , 2013	Prosecution Staff's deadline for submitting all information required under " Submission of Evidence and Policy Statements. "
August 22 , 2013	Remaining Designated Parties' deadline for submitting all information required under " Submission of Evidence and Policy Statements. "
August 29 , 2013	Designated Parties' deadline for submitting any evidentiary objections.
September 10 , 2013	Designated Parties' deadline for submitting any rebuttal information, Power Point, and other computer-assisted visual presentations for use at the hearing.
September 12 , 2013	Pre-Hearing Conference per Water Code § 13228.15 (if necessary).
September 19 , 2013	Hearing Date.