
North Coast Regional Water Quality Control Board

Regional Water Quality Control Board North Coast Region Staff Summary Report February 5-7, 2025

ITEM: 4

SUBJECT: Public Hearing on Administrative Civil Liability Complaint No. R1-2023-0047A issued to Bo Dean Co., Inc., (Respondent) for the Mark West Quarry, Sonoma County, 4611 Porter Creek Road

BOARD ACTION: The North Coast Regional Water Quality Control Board (Regional Water Board or Board) will consider evidence and argument from Respondent and the Prosecution Team and consider whether to issue an Administrative Civil Liability Order.

Pursuant to Water Code section 13323, the Board has scheduled a hearing to consider the Complaint at its upcoming public meeting scheduled for February 5, 6, and 7, 2025. At the public hearing, the Regional Water Board will consider whether to issue an order requiring payment of the full amount recommended in the complaint, to issue an order requiring payment of a reduced amount or a higher amount, decide not to impose penalties, or it may refer the matter to the Attorney General's Office. The Regional Water Board may also elect to continue the hearing to a later date or take the matter under submission.

BACKGROUND: On September 14, 2023, the Advisory Team of the North Coast Regional Water Quality Control Board (Regional Water Board or Board) was notified that Regional Water Board Prosecution Team staff had issued an Amended Administrative Civil Liability Complaint (ALCLC or Complaint) to Respondent. On October 2, 2023, the Advisory Team was notified that the Respondent had received the Complaint and waived its right to a hearing within 90 days of receipt of the Complaint.

The Prosecution Team's Complaint seeks penalties of \$8,589,406 for alleged violations of the *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities*, Order NPDES CAS000001 (Industrial General Permit) and Investigative Order No. R1-2019-0029.

DISCUSSION: According to the Complaint issued by the Prosecution Team, the Respondent operates Mark West Quarry, an aggregate rock quarry, located on three parcels of land at 4611 Porter Creek Road in Sonoma County (Facility). The Facility discharges stormwater to Porter Creek, a perennial tributary to Mark West Creek, a

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tributary to the Russian River, and a water of the United States, and is subject to the terms of the Industrial General Permit.

According to the Complaint, Regional Water Board staff inspected the Facility on 21 occasions between December 17, 2018, and January 23, 2023, and observed evidence of violations of the Industrial General Permit and Clean Water Act section 301 at the Facility throughout this time period. According to the Complaint, Regional Water Board staff issued 18 inspection memos to the Respondent, describing conditions observed during these inspections at the Facility and identified necessary corrective actions. On May 1, 2019, Regional Water Board staff issued a Water Code section 13267 Investigative Order R1-2019-0029, requiring Respondent to perform certain tasks, including collecting samples, uploading sampling reports and photographic documentation, and providing notifications, and issued a Notice of Violation, citing violations of the Industrial General Permit.

According to the Complaint, Respondent allegedly discharged approximately 10,519,608 gallons of sediment-laden stormwater not otherwise specific authorized by the Permit for 73 days (Violation 1), failed to implement and maintain good housekeeping minimum Best Management Practices (BMPs) for 127 days (Violation 2), failed to implement and maintain handling and waste management BMPs for 93 days (Violation 3), failed to implement and maintain erosion and sediment control minimum BMPs for 121 days (Violation 4), failed to implement and maintain advanced BMPs for 83 days (Violation 5), failed to submit all sampling and analytical results for all individual or Qualified Combined Samples via the Stormwater Multiple Application and Report Tracking System (Violation 6), and failed to conduct certain monitoring and sampling under Order No. R1-2019-0029 (Violation 7).

On September 10, 2021, the Assistant Executive Officer issued Complaint R1-2021-0047 alleging Violation 1 with 45 days of discharge violations from December 2018 through May 2019, and Violations 2-5, which are non-discharge violations from December 2018 through August 2020, for a total proposed administrative civil liability of \$4,500,000. On September 14, 2023, the Assistant Executive Officer issued the First Amended Complaint, adding 61 new days of violation to four of the five original violations and adding Violations 6 and 7, for a total of 67 additional days of violation. The amended proposed administrative civil liability is \$8,589,406.

The Advisory Team on behalf of the Board Chair issued a Final Notice of Public Hearing and Hearing Procedure on September 5, 2024. The Prosecution Team submitted evidentiary and witness information on August 9, 2024, and supplemental materials on September 20, 2024. The Respondent submitted evidentiary and witness information on November 15, 2024 (corrected versions submitted on November 17). Four comment letters were received from Interested Persons by the November 29, 2024, Hearing Procedure deadline.

On December 23, 2024, the Prosecution Team submitted rebuttal evidence, rebuttal brief, and evidentiary objections and the Respondent submitted evidentiary objections.

On January 3, 2025, the Respondent submitted objections to the Prosecution Team's rebuttal evidence and brief. Finally, on January 17, 2025, the Parties submitted Proposed Findings of Fact and Conclusions of Law and responses to Interested Persons comments, and Respondent submitted a surrebuttal.

In summary, Respondent asserts that many of the alleged facts in the Complaint discussed above are unsupported legally and factually, the Prosecution Team's evidentiary submissions do not support the alleged violations, and the evidence does not support the Prosecution Team's application of the penalty methodology outlined in Attachment A. Respondent's legal and factual arguments are summarized in its Response Brief and Surrebuttal, and Respondent has submitted evidence to contest the proposed penalty. The Prosecution Team relies on the Complaint and Attachment A, along with its evidentiary submittals, including rebuttal, to support its case. Both Parties will provide further legal and evidentiary argument at the hearing.

The Board has scheduled a hearing to consider the Complaint on February 5, 6, and 7, 2025. On the first day of the hearing, February 5, the Board will conduct a site visit of the Facility. The site visit will be conducted in accordance with an approved site visit plan.

RECOMMENDATION: At this time, the Executive Officer does not have a recommendation. This is a contested hearing, the Respondent contests the Prosecution Team's Complaint, Attachment A, and the proposed liability. Respondent's legal and evidentiary bases contesting the proposed liability are outlined in detail in its pre-hearing submissions to the Board that are discussed above and listed as supporting documents below. The Prosecution Team's legal and evidentiary bases for the Complaint and Attachment A are included in the documents listed below. The Prosecution Team, as the party issuing the Complaint, has the burden of persuasion that the evidence supports the penalty by a preponderance of the evidence. The Board will determine whether the Prosecution Team has met this level of proof following the hearing. At the conclusion of the hearing and any deliberations, the Executive Officer may provide a recommendation.

SUPPORTING DOCUMENTS:

1. Administrative Civil Liability Complaint No. R1- 2021-0047-A, including Attachment A
2. Notice of Public Hearing and Hearing Procedure
3. Response Brief (Respondent)
4. Rebuttal Brief (Prosecution Team)
5. Interested Persons Comment Letters
6. Surrebuttal Brief (Respondent)
7. Proposed Findings of Fact and Conclusions of Law (Respondent and Prosecution)
8. Prosecution and Respondent Evidence
9. Pre-hearing Objections, Motions, and Chair Rulings

Copies of the supporting documents and evidence not posted on the agenda page are available upon request by emailing Nathan.Jacobsen@waterboards.ca.gov.