

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD



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JULY 17 BOARD MEETING; ITEM 8  
INFORMATION ITEM RIALTO PERCHLORATE CONTAMINATION  
(File No. A-1824)

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**STAFF REPORT OF THE STATE WATER BOARD'S OFFICE OF ENFORCEMENT**

This staff report is submitted by the Office of Enforcement of the State Water Resources Control Board (State Water Board) on Agenda Item 8 – Update on Rialto Perchlorate Contamination (File A-1824), which is on the agenda for the July 17, 2012 Board meeting.

**I. BACKGROUND**

In early April 2012, the Office of Enforcement was advised that the United States Environmental Protection Agency, Region IX, ("U.S. EPA") had recently entered into tentative settlement agreements with a number of parties who had been parties to earlier proceedings in SWRCB/OCC File No. A-1824, and/or had been named in orders issued by the Regional Water Quality Control Board, Santa Ana Region ("Santa Ana Regional Board") both of which relate to perchlorate and TCE contamination in the Rialto/Colton Groundwater Basin ("Basin"). The Office of Enforcement was further advised that a condition of these tentative settlements is that all claims under the Water Code by the State Water Board and Santa Ana Regional Board relating to this contamination which have been brought, are pending, or could be brought in the future against the settling parties be dismissed with prejudice.

Shortly thereafter, the Office of Enforcement attended multiple meetings and participated in numerous telephone conferences with the U.S. EPA (represented by the U.S. Department of Justice); the United States Department of Defense (also represented by the U.S. Department of Justice); the Santa Ana Regional Board (represented by Executive Officer Kurt Berchtold, Don Robinson of the California Attorney General's Office, and Phil Wyels of the Office of the Chief Counsel of the State Water Board); the County of San Bernardino ("County") (represented by its outside counsel David Lawton), the City of Rialto ("Rialto") (represented by Mayor Ed Scott and its outside counsel Peter Weiner and Deborah Schmall), the City of Colton ("Colton") (represented by its outside counsel Gene Tanaka), Emhart Industries, Inc. ("Emhart"), Kwikset Locks, Inc., and Black & Decker Inc. (collectively the "Emhart Parties") (represented by their outside counsel James Meeder); Pyro Spectaculars, Inc. and Astro Pyrotronics, Inc. (collectively "PSI") (represented by their outside counsel Brian Zagon); the Peters Parties; Stonehurst LLC ("Stonehurst"), and Trojan Fireworks Company ("Trojan") (collectively the "Stonehurst Site Parties") (represented by their outside counsel John Van Vlear). The Office of Enforcement

participated in these discussions to better understand the implications of dismissing the State Water Board's claims with prejudice.

At these meetings, the Office of Enforcement stressed that any recommendation it might make to the State Water Board in connection with the tentative settlements and/or a resolution of SWRCB/OCC File No. 1-1824 for the settling parties must be based on a clear explanation and understanding of: (1) the remedies (interim and final) that will be implemented and funded; (2) what additional work, if any, will remain to be done to restore the Basin, who will do that work, and how it will be funded; and (3) how the State Water Board can help achieve a final resolution which restores the Basin and assures its users of a clean source of drinking water.

While the Office of Enforcement was engaged in these discussions, on May 31, 2012, the State Water Board requested comments on SWRCB/OCC File No. A-1824 by noon on July 11, 2012, in advance of its meeting on July 17, at which time the Board will hear from all interested parties regarding: (1) the technical and legal developments since it issued Order WQ 2009-0004, and (2) what action, if any, the State Water Board should take.

The Office of Enforcement understands that a "Joint Report and Update of Developments Related to SWRCB/OCC File No. A-1824" ("Joint Report"), which addresses the issues set forth in the May 31 meeting notice, will be submitted to the State Water Board on July 11, 2012, by the Santa Ana Regional Board, the County, Rialto, Colton, the Emhart Parties, PSI, and the Stonehurst Site Parties ("Joint Reporting Parties"). The Office of Enforcement had an opportunity to review and discuss the Joint Report with the Joint Reporting Parties prior to its submission.

The Joint Report confirms that the United States, on behalf of the U.S. EPA, has reached tentative settlement agreements with all but seven of over 30 potentially responsible parties ("PRPs") to the consolidated federal lawsuits, filed in late 2009 and early 2010, which seek cost recovery and injunctive relief to address the perchlorate and TCE contamination in the Basin. The U.S. EPA anticipates that these settlement agreements, once finalized, will be memorialized as Consent Decrees, which will formally document and make binding their terms. The U.S. EPA further anticipates that these settlements will be completed prior to the next status conference in federal court on September 10, 2012, at which time the parties have been ordered to report on the status of their settlement efforts.

## II. RECOMMENDATION

Given the status of these tentative settlements, and their substantial potential benefit to expediting the restoration of the Basin, the Office of Enforcement intends to make the following recommendation to the State Water Board at its July 17 meeting:

1. Attached hereto is a draft Proposed Resolution for consideration by the State Water Board at a future meeting. If adopted by the State Water Board, the actions required by the settling parties would substantially benefit the citizens of San Bernardino County who draw drinking water from the Basin, and resolve for all settling parties, the State Water Board, and the Santa Ana Regional Board all pending proceedings before them. Because the terms and conditions memorialized in the Consent Decrees are material to the Resolution, the Office of

Enforcement recommends that the State Water Board begin accepting comments on the Proposed Resolution on September 10, 2012, the day the Consent Decrees are to be lodged with the federal district court.

2. If, as anticipated, on or before September 10, 2012, the U.S. EPA lodges its Consent Decrees with the federal district court and publishes them in the Federal Register for public comment, the Office of Enforcement recommends that the draft Proposed Resolution be placed on the State Water Board's October 16, 2012 meeting agenda for consideration and adoption. This timing would allow for more than thirty days of public comment on the Proposed Resolution after the Consent Decrees are lodged with the federal district court.

3. The Office of Enforcement further recommends that the State Water Board continue its consideration of any further action in connection with Questions 3 through 7 in its May 31 meeting notice until at least October 16. The U.S. EPA has advised that its negotiations with the seven parties who have not yet reached tentative settlements continue, and much more should be known about the status of that effort by October.

4. The Office of Enforcement will appear at the State Water Board's July 17 meeting, and answer any questions the Board may have regarding this matter.

**ATTACHMENT**

[PROPOSED RESOLUTION]

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

**RESOLUTION NO. \_\_\_\_\_**

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Approving Settlement of All Claims Against Emhart Industries, Inc., Kwikset Locks, Inc., Black & Decker Inc., Pyro Spectaculars, Inc., Astro Pyrotechnics, Inc., Thomas O. Peters, the 1996 Thomas O. Peters and Kathleen S. Peters Revocable Trust, Trojan Fireworks Company, and Stonehurst Site LLC

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**SWRCB/OCC No. A-1824;**

**CLEANUP AND ABATEMENT ORDER R8-2004-0042**

BY THE BOARD:

A. WHEREAS, on February 5, 2007, then-Chair of the State Water Resources Control Board ("State Water Board"), Tam Doduc, commenced, on her own motion, proceedings entitled SWRCB/OCC No. A-1824, to adjudicate the alleged liability of Emhart Industries, Inc., Kwikset Locks, Inc., and Black & Decker Inc., (the "Emhart Parties"), Pyro Spectaculars, Inc. ("PSI"), and Goodrich Corporation ("Goodrich"); under proposed Cleanup and Abatement Order 2005-0053, for contamination of the groundwater under a property known as the "160-Acre Site" in Rialto, California (the "2005 CAO"), which had been issued, and subsequently amended, by the Executive Officer of the Santa Ana Regional Water Quality Control Board ("Santa Ana Regional Board");

B. WHEREAS, on August 13, 2007, the Los Angeles County Superior Court stayed all proceedings in SWRCB/OCC No. A-1824, pending its decision on the merits of petitions for writ of mandate filed by the Emhart Parties, PSI, and Goodrich;

C. WHEREAS, on June 3, 2008, the State Water Board, on its own motion, adopted Order W/Q 2008-0004, with the intent to ratify, nunc pro tunc, all actions taken by Chair Doduc and the State Water Board's Executive Director in SWRCB/OCC No. A-1824, and to commence SWRCB/OCC A-1824 to review actions and alleged inactions of the Santa Ana Regional Board pertaining to groundwater contamination in the area of the City of Rialto;

D. WHEREAS, on February 19, 2009, the Los Angeles County Superior Court entered a judgment that voided all actions taken by Chair Doduc and the State Water Board's Executive Director in State Board Proceeding A-1824, and on March 7, 2009 issued a writ of mandate directing the State Water Board to rescind all actions;

E. WHEREAS, on May 19, 2009, the State Water Board issued Order WQ 2009-0004, which (a) rescinded "all actions to assume jurisdiction, to commence, and taken in SWRCB/OCC Filed No. A-1824 prior to June 3, 2008, including those actions taken by the Executive Director of the State Water Board and the Hearing Officer," (b) reaffirmed the State Water Board's assumption of jurisdiction, on its own motion, over SWRCB/OCC No. A-1824 as set forth in Order WQ 2008-0004; and (c) delegated its Executive Director, after consultation with the Board's Chairperson, the authority to select a hearing officer for the hearings and investigation authorized by the order and Order WQ 2008-0004;

F. WHEREAS, in 2008, at the request of the Governor of the State of California, joined in by the Cities of Rialto and Colton, the United States Environmental Protection Agency ("U.S. EPA") undertook to investigate the eligibility of the 160-Acre Site for listing as a Federal Superfund site under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*;

G. WHEREAS, on September 23, 2009, the U.S. EPA listed the 160-Acre Site on the National Priorities List as the "B.F. Goodrich Superfund Site" and assumed lead agency responsibility for the cleanup of the site, which includes both the 160-Acre Site and all areas where contamination from the 160-Acre Site has or will come to be located, 74 Fed. Reg. 48,415 (Sept. 23, 2009);

H. WHEREAS, on April 30, 2004, the Santa Ana Regional Board issued Cleanup and Abatement Order No. R8-2004-0042 ("CAO R8-2004-0042") to, *inter alia*, PSI, Thomas O. Peters ("Peters"), the 1996 Thomas O. Peters and Kathleen S. Peters Revocable Trust ("Peters Trust"), and Whittaker Corporation in connection with alleged contamination of the Rialto/Colton Groundwater Basin from an approximately five-acre parcel south of the 160-Acre Site that is commonly known and referred to herein as the "Stonehurst Site."

I. WHEREAS, on February 4, 2010, the United States, on behalf of the U.S. EPA, filed a cost recovery and enforcement action in the United States District Court for the Central District of California under CERCLA and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*, against the Emhart Parties, PSI, Goodrich and others, concerning contamination emanating from the B.F. Goodrich Superfund Site, which was subsequently consolidated with multiple other federal CERCLA actions brought by other parties, including the City of Rialto and the City of Colton ("Consolidated Federal Actions");

J. WHEREAS, on September 30, 2010, the U.S. EPA issued its Interim Action Record of Decision ("2010 ROD"), EPA ID: CAN000905945, which selected an interim

remedy for the cleanup of the B.F. Goodrich Superfund Site, commenced work on its final remedy, and thereafter invited certain parties to submit proposals to perform the 2010 ROD remedy;

K. WHEREAS, on January 30, and February 17, 2012, PSI, Astro, Peters, the Peters Trust, Trojan, SLLC, and the Emhart Parties, respectively, reached tentative agreements with the United States to resolve all their alleged liabilities in the Consolidated Federal Actions and with regard to the B.F. Goodrich Superfund Site;

L. WHEREAS, the agreement between the United States, PSI, Astro, Peters, the Peters Trust, Trojan, and SLLC, and the agreement between the United States and the Emhart Parties have been memorialized in two separate federal court consent decrees, which were lodged with the federal court on \_\_\_\_\_, 2012;

M. WHEREAS, on \_\_\_\_\_, 2012, after the statutory public notice period has expired, the settling parties intend to file one or more motions for court approval of the proposed consent decrees described above;

N. WHEREAS, on January 30, 2012, PSI, Astro, Peters, the Peters Trust, Trojan, and the SLLC also reached tentative agreements with the Cities of Rialto and Colton, the County of San Bernardino, and the Santa Ana Regional Board to resolve all their disputes in the Consolidated Federal Actions, a pending state court action, and otherwise with regard to the former Rialto Ammunition, Back-Up Storage Point, which includes the B.F. Goodrich Superfund Site and the Stonehurst Site;

O. WHEREAS, PSI, Astro, Trojan, Peters, the Peters Trust, and SLLC have agreed to pay an acceptable sum of money as part of the settlement to the U.S. EPA for the cleanup, to the Cities of Rialto and Colton, to the County of San Bernardino and to fund, and as to select parties implement, certain remedial work at the Stonehurst Site; and Emhart Industries, Inc. ("Emhart") has agreed to perform the 2010 ROD Remedy as the "work party," with a combination of its own funds and funds provided by other settling parties, which agreements are being memorialized in the above-described federal consent decrees, which will be submitted for approval to the United States District Court for the Central District of California;

P. WHEREAS, as a result of these and other settlements in the Consolidated Federal Actions, Emhart has commenced with the U.S. EPA the necessary design work for the 2010 ROD Remedy so that it can begin implementation as soon as the Emhart-United States federal consent decree becomes final;

Q. WHEREAS, the United States' settlements with PSI, Astro, Peters, the Peters Trust, Trojan, SLLC, and the Emhart Parties have as a critical element the resolution, by dismissal with prejudice, of all claims that have been brought against them in SWRCB/OCC No. A-1824 and CAO R8-2004-0042, as well as all claims that could have been brought against them for contamination of the Rialto/Colton Groundwater Basin;

R. WHEREAS, as part of the consideration for the dismissal with prejudice of all claims that have been, or could have been, brought against them, PSI, Astro, Peters, the Peters Trust, Trojan, SLLC, and the Emhart Parties have agreed to dismiss with prejudice all claims and causes of action, if any, which have been or could have been brought against the Water Boards in connection with contamination of the Rialto/Colton Groundwater Basin;

S. WHEREAS, pursuant to its assumption of jurisdiction over the 160-Acre Site, as set forth in Order No. 2009-0004, the State Water Board has authority to approve the settlement between the United States and the Emhart Parties and to authorize an administrative settlement agreement dismissing all claims pending against the Emhart Parties in SWRCB/OCC No. A-1824 with prejudice;

T. WHEREAS, pursuant to its assumption of jurisdiction over the 160-Acre Site, the State Water Board has the sole authority to dismiss with prejudice all existing and potential future claims under the California Water Code against PSI, Astro, Peters, the Peters Trust, Trojan, and SLLC relating to the 160-Acre Site, and for that reason has determined that jurisdiction to approve the administrative settlement agreement in its totality is appropriate and, by expediting remedial actions at the B.F. Goodrich Superfund Site, is in furtherance of the public interest;

U. WHEREAS, based upon its approval of the settlements in the Consolidated Federal Actions and the administrative settlement agreements authorized by this Resolution, the State Water Board has determined that the Santa Ana Regional Board shall be the State agency responsible for overseeing remedial actions at the B.F. Goodrich Superfund Site and the greater Rialto/Colton Groundwater Basin, subject to the U.S. EPA's lead agency jurisdiction over the B.F. Goodrich Superfund Site, and further subject to the State Water Board's retention of authority to exercise jurisdiction to convene hearings and, if it deems it necessary, issue appropriate orders relating to non-settling parties;

V. WHEREAS, in the event one, or both, of the Federal Consent Decrees in the Consolidated Federal Actions are overturned on appeal, in whole or in part, the administrative settlement agreement(s) corresponding to such overturned Federal Consent Decree(s) may be declared null and void upon thirty (30) days' written notice given by any of the signatories to such administrative settlement agreement(s), in which event the parties to any voided agreement(s) shall promptly meet and confer with respect to future actions;

X. WHEREAS, because the Federal Consent Decrees and the administrative settlement agreements described herein will (i) enhance and protect the environment in the Rialto/Colton Groundwater Basin, (ii) inure to the benefit of the residents of the Cities of Rialto and Colton, and (iii) provide a sum of money to the Santa Ana Regional Board for reimbursement of its costs of investigation and oversight – the City of Rialto, the City of Colton, the County of San Bernardino, and the Santa Ana Regional Board



(through its Executive Officer) all support the proposed settlement and dismissal of SWRCB/OCC No. A-1824 and CAO R8-2004-0042, as set forth below.

Y. WHEREAS, notice of this Resolution has been provided to the public on \_\_\_\_\_, 2012, and written comments from the public were solicited between \_\_\_\_\_, 2012, and \_\_\_\_\_, 2012;

NOW, THEREFORE:

## RESOLUTION

1. IT IS HEREBY ORDERED that the State Water Board intends that all claims against PYRO SPECTACULARS, INC. ("PSI"), ASTRO PYROTECHNICS, INC. ("Astro"), THOMAS O. PETERS ("Peters"), the 1996 THOMAS O. PETERS AND KATHLEEN S. PETERS REVOCABLE TRUST ("Peters Trust"), TROJAN FIREWORKS COMPANY ("Trojan"), and STONEHURST SITE, LLC ("SLLC") which have been or could have been brought in SWRCB/OCC No. A-1824 or Santa Ana Regional Board Cleanup and Abatement Order No. R8-2004-0042 be resolved and dismissed with prejudice, in accordance with the intent of the above-referenced Federal Consent Decree, which memorializes these parties' settlement with the United States and other entities, including the City of Rialto, the City of Colton, and the County of San Bernardino, filed in the Consolidated Federal Actions, effective the date that the Consent Decree, after exhaustion of all appeals, becomes a final order and judgment of the United States District Court for the Central District of California;

2. IT IS HEREBY ORDERED that the State Water Board intends that all existing and potential future claims under the California Water Code, which have been or could be brought before the State Water Board or the Santa Ana Regional Board against PSI, Astro, Peters, the Peter Trust, Trojan, and SLLC as a result of the alleged contamination of the 160-Acre Site, the former Rialto Ammunition Backup Storage Point and/or contamination of the groundwater in or emanating from the Rialto/Colton Groundwater Basin, be resolved with finality, in accordance with the intent of the above-referenced Consent Decree, which memorializes these parties' settlement with the United States and other entities, including the City of Rialto, the City of Colton, and the County of San Bernardino, filed in the Consolidated Federal Actions, effective the date that the Consent Decree, after exhaustion of all appeals, becomes a final order and judgment of the United States District Court for the Central District of California;

3. IT IS HEREBY ORDERED that the State Water Board intends that all claims against EMHART INDUSTRIES, INC., KWIKSET LOCKS, INC., and BLACK & DECKER INC., and all related persons or entities (the "EMHART PARTIES") which have been or could have been brought, in SWRCB/OCC No. A-1824 be resolved and dismissed with prejudice, in accordance with the intent of the above-referenced Federal Consent Decree, which memorializes the EMHART PARTIES' settlement with the United States and other parties, including the City of Rialto, the City of Colton, and the County of San Bernardino, filed in the Consolidated Federal Actions, effective the date

that the Consent Decree, after exhaustion of all appeals, becomes a final order and judgment of the United States District Court for the Central District of California;

4. IT IS HEREBY ORDERED that the State Water Board intends that all existing and potential future claims under the California Water Code, which have been or could be brought before the State Water Board or the Santa Ana Regional Board against the EMHART PARTIES as a result of the alleged contamination of the 160-Acre Site, the former Rialto Ammunition Backup Storage Point and/or contamination of the groundwater in or emanating from the Rialto/Colton Groundwater Basin, be resolved with finality, in accordance with the intent of the above-referenced Consent Decree, which memorializes the EMHART PARTIES' settlement with the United States and other parties, including the City of Rialto, the City of Colton, and the County of San Bernardino, filed in the Consolidated Federal Actions, effective the date that the Consent Decree, after exhaustion of all appeals, becomes a final order and judgment of the United States District Court for the Central District of California.

5. IT IS FURTHER ORDERED that in order to carry out the State Water Board's intent, as expressed in this Resolution, the Chief Deputy Director of the State Water Board is authorized to negotiate and execute administrative settlement agreements consistent with the consent decrees in the Consolidated Federal Actions on behalf of the State Water Board, with any revisions deemed necessary and appropriate by the Chief Deputy Director, and that in the event one or more of the settling parties in the administrative settlement agreements is deemed to be out of compliance with the applicable Federal Consent Decree, the Chief Deputy Director, at his or her discretion, may declare the administrative settlement agreement with the non-compliant settling party or parties null and void.

### CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a final resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on \_\_\_\_\_, 2012.

AYE:

NAY:

ABSENT:

ABSTAIN:

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Jeanine Townsend  
Clerk to the Board