



# California Regional Water Quality Control Board

## Santa Ana Region



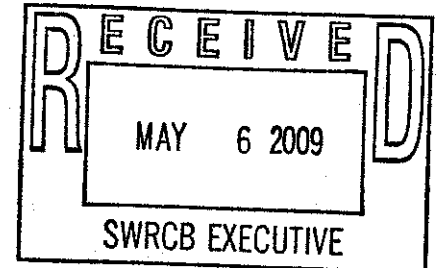
Linda S. Adams  
Secretary for  
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Arnold Schwarzenegger  
Governor

May 6, 2009

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
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### COMMENTS TO A-1824 – MAY 19, 2009 BOARD MEETING

Dear Ms. Townsend:

Thank you for the opportunity to comment on the proposed order on behalf of the Santa Ana Regional Water Quality Control Board's (Regional Board's) Advocacy Team (Advocacy Team). The Advocacy Team supports the State Water Board's adoption of the proposed order. Due to certain recent developments related to the Rialto-Area Perchlorate Contamination, however, the Advocacy Team believes that two minor clarifications to the Draft Order would be appropriate:

#### Recent Developments

First, the parties to this matter entered court-supervised mediation in March 2009. The court has scheduled further settlement conferences which are unlikely to continue past the end of this summer. We can update the hearing officer as the process continues. If the mediation produces a settlement, the Advocacy Team will ensure that the settlement is presented to the State Board for its approval.

Second, the Advocacy Team requests a pre-hearing conference as soon as possible to address issues such as the presentation of evidence, hearing procedures and briefing. There is important new evidence that has been developed over the last two years that bears on the liability of parties to the proceeding. Moreover, evidence has been also been developed relating to the liability of entities that are not currently designated as parties to this proceeding. The hearing officer should have the authority to consider whether it would be preferable to designate new parties to this proceeding in order to consider their potential liability, or to convene a second proceeding for that purpose before either the Regional Board or the State Board. While not necessary, the Advocacy Team suggests that the Draft Order be modified to clarify that the scope of the investigations and hearings under the delegation is sufficiently broad to encompass all issues related to the 160-acre site, not just those considered before June 3, 2008.

Third, the Advocacy Team has continued to oversee investigation and cleanup activities in the Rialto area, including the issuance of Water Code section 13267 orders to Harry Hescox on behalf of Pyrotronics, Inc. and Ken Thompson, Inc. The Advocacy Team intends to continue to work on perchlorate-related issues in the Rialto area while the State Board investigations and hearings are pending. There have been suggestions that the State Board's initiation of this proceeding has divested the Regional Board and its staff of authority to continue to oversee

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investigation and cleanup in the area. While the Advocacy Team does not believe that there is any merit to these suggestions, it would be useful if the Draft Order were amended to clarify this point.

**Suggested Clarifications:**

1) Add a new sentence to the first paragraph in the section entitled "Further Proceedings" on pages 3-4 of the Draft Order as follows:

"Effective June 3, 2008, the State Water Board initiated own motion review of actions and inactions of the Santa Ana Water Board pertaining to groundwater contamination in the area of the City of Rialto. The scope of the review is the 160-acre site in Rialto, California.<sup>3</sup> The State Water Board will hold hearings and conduct investigations in this matter. The hearings and investigations may include, at the hearing officer's discretion, any matter reasonably related to the groundwater contamination in the Rialto area within the State Board's jurisdiction. The authority for the State Water Board to conduct hearings and investigations is found in Water Code section 183."

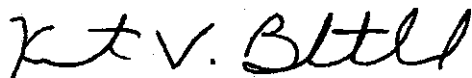
2) Add a new sentence at the end of the section entitled "Further Proceedings" on page 4 of the Draft Order as follows:

"Nothing in this order is intended to preclude the Regional Board or its staff from exercising their authorities under Division 7 of the Water Code related to the groundwater contamination in the Rialto area, provided that there is no direct conflict between a specific directive of the hearing officer and an action of the Regional Board or its staff."

Again, while the Advocacy Team does not believe that these additions are absolutely necessary, we believe that they will help to clarify the State Board's intent with regard to this order, and thereby avoid or minimize potential conflicts over these issues in the future.

Thank you very much for your consideration of our comments.

Respectfully submitted,



Kurt V. Berchtold  
Assistant Executive Officer  
Santa Ana Regional Water Quality Control Board Advocacy Team

cc: Perchlorate Mailing List