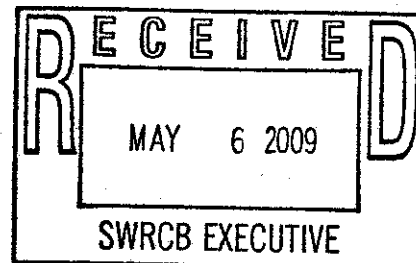


May 6, 2009

Client-Matter: 24369-060

VIA COURIER AND E-MAIL

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
(email) commentletters@waterboards.ca.gov



Re: Comments to A-1824 – May 19 Board Meeting

Dear Ms. Townsend:

Goodrich Corporation, Pyro Spectaculars, Inc. (“PSI”)¹ and Emhart Industries, Inc., Kwikset Corporation, Kwikset Locks, Inc. and Black & Decker Inc. (the “Emhart Parties”)² (collectively, the “Named Parties”) respectfully submit the following joint comments on the proposed “interlocutory” WQ Order 2009-__ in the above-referenced matter (the “Proposed Order”), as requested in the letter of April 6, 2009 by Michael A.M. Lauffer, Chief Counsel to the State Water Resources Control Board (“State Board” or “State Water Board”):

**I.
COMMENT 1**

**THE PROPOSED ORDER SHOULD BE LIMITED TO COMPLYING WITH
PREEMPTORY WRIT OF MANDATE**

The Named Parties do not object to paragraphs 1 and 2 set forth on page 5 of the Proposed Order, except that it must fully track the language of the Preemptory Writ (e.g., must add in “including those actions taken by the Executive Director of the State Board and the Hearing Officer”). The Preemptory Writ of Mandate issued by the Los Angeles County Superior Court on March 12, 2009 in *Goodrich Corporation v. California State Water Resources Control Board, et al.*, Los Angeles Superior Court, Consolidated Case No. BS 110389, directed the State Board to within 75 days rescind State Board Order WQ 2008-004 as set forth in paragraphs 1

¹ Represented by Hunsucker Goodstein & Nelson P.C.

² Represented by Allen Matkins.

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Page 2

and 2 on page 5 of the Proposed Order. (Attached hereto as Exhibits A and B are true and correct copies of the Judgment and Peremptory Writ of Mandate.)

II.
COMMENT 2

THE PROPOSED ORDER'S INTERIM QUALIFICATION IS CONTRARY TO WRIT OF MANDATE

The Named Parties object to the last unnumbered paragraph on page 5 of the Proposed Order which qualifies paragraphs 1 and 2 on the same page as "interim in nature":

IT IS FURTHER ORDERED that this order concerning own motion review is interim in nature and that no final action of the State Water Board will occur until after an evidentiary hearing. . . .

Both the Judgment and the Peremptory Writ of Mandate, however, require that the State Board rescind its Order WQ 2008-0004 finally and without qualification.

Thus, if the State Board adopts the Proposed Order as drafted and qualifies its rescission of Order WQ 2008-0004 as set forth in paragraphs 1 and 2 on page 5 as "interim in nature," the State Board will be in violation of the Superior Court's Judgment and Peremptory Writ of Mandate.

III.
COMMENT 3

THE STATE BOARD IS DISQUALIFIED FROM ACTING BEYOND THE REQUIREMENTS OF THE WRIT OF MANDATE DUE TO EX PARTE COMMUNICATIONS

The Named Parties object to the adoption of paragraph 3 on page 5 of the Proposed Order on the grounds that the State Board is disqualified from adjudicating the factual and legal allegations in the draft amended cleanup and abatement order, R8-2005-053, to the Named Parties, which was proposed on October 27, 2006 by the staff of the Regional Water Quality Control Board, Santa Ana Region (the "Regional Board") (the "Draft Amended 2005 CAO"). Enclosed herewith is the Named Parties' motion to disqualify the State Board, its members, and

Ms. Jeanine Townsend

May 6, 2009

Page 3

any of its former Advisory Team members from participation in any further proceedings in this matter. That motion sets forth in detail the law and the numerous illegal *ex parte* communications.

The State Board and its members are disqualified and thus without jurisdiction to adjudicate the Draft Amended 2005 CAO, because they and their former Advisory Team have engaged in illegal *ex parte* communications with the former Chief Prosecutor and other third parties in violation of the Named Parties' due process rights, rights under the California Administrative Procedure Act, and the State Board's own Guidelines regarding *ex parte* communications.

IV.
COMMENT 4

THE PROPOSED ORDER MUST BE LIMITED TO REVIEWING THE ACTIONS OR FAILURE TO ACT OF THE REGIONAL BOARD

The Named Parties object to the adoption of paragraph 3 on page 5 of the Proposed Order on the grounds that as drafted it violates the Judgment and Peremptory Writ of Mandate which expressly limited the State Board's authority in State Board Proceeding A-1824 to the State Board's:

assum[ption of] jurisdiction, on its own motion, pursuant to Water Code section 13320(a), to review the action of failure to act of the Santa Ana Regional Water Quality Control Board, pertaining to groundwater contamination in connection with the 160 Acre Site in Rialto, California.

(Exhibit A, at ¶ 1; emphasis added.) Contrary to this language in the Judgment, the Proposed Order, at paragraph 3 on page 5, purports to "[d]elegate[] to the Executive Director, after consultation with the Board Chairperson, the authority to select a hearing officer to conduct an unspecified investigation and hearing as "authorized by this order and Order WQ 2008-0004."

In connection with State Board Proceeding A-1824, in order to comply with the Judgment, paragraph 3 of the Proposed Order must be limited to at most the State Board's decision to proceed "to review the action of failure to act of the Santa Ana Regional Water Quality Control Board, pertaining to groundwater contamination in connection with the 160 Acre Site in Rialto, California." (Id.)

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Page 4

V.
COMMENT 5

**THE STATE BOARD MUST FIRST COMPLY WITH WATER CODE SECTION
13320(C) BEFORE TAKING ANY ACTION WITH REGARD TO THE DRAFT
AMENDED 2005 CAO**

The Named Parties object to the adoption of paragraph 3 on page 5 of the Proposed Order on the grounds that the State Board has not yet complied with the requirements of Water Code section 13320(c).³ Section 13320(c) mandates that, before the State Board can take any action in this matter in connection with the Draft Amended 2005 CAO, it must first determine whether the Santa Ana Regional Board's actions or failure to act was "inappropriate or improper."⁴

Upon finding that the action of the regional board, or the failure of the regional board to act, was inappropriate or improper, that state Board may . . . take the appropriate action itself. . . . In taking any such actions, the state board is vested with all the powers of the regional boards under this division.

(Water Code section 13320(c).)

Here, the State Board has not yet made any such requisite findings or determination. Nor does Water Code section 13320(c) authorize the State Board to act further if it finds that the Santa Ana Regional Board's actions or failure to act were appropriate and proper.⁵ Water Code

³ In prior years, such as under the previous Chairmanship of Arthur G. Baggett, Jr., the State Board formally noticed motions for review of Regional Board actions under Water Code Section 13320(a) on its duly noticed meeting agendas and adopted such motions pursuant to a vote of the board prior to taking up a review on its own motion. See, e.g., Orders WQO 2003-0008, WQO 2002-0009, and WQ 2001-04. Thereafter, the State Board conducted a separate review under Water Code Section 13320(c) of the Regional Board's action or failure to act, including holding workshops and holding a noticed meeting. It would then issue a separate decision in the form of an order.

⁴ In particular, the State Board must comply with the remaining portions of Water Code 13320, before it can decide whether or not the appropriate measure is to vest itself with the authority of the Regional Board to conduct a hearing on the adjudication of the Draft Amended 2005 CAO. This requires that the State Board: (1) to conduct a review of the Regional Board's actions or inactions; (2) to make a finding that an "action or failure to act" of the Regional Board was "inappropriate or improper;" and; (3) only if it determines the Regional Board actions or inactions were inappropriate or improper, may it reach the last step and decide, among other options, to "take appropriate action itself", where it could then be "vested with all the powers of the regional board"

⁵ The State Board previously held that the Regional Board had *not* taken final action with respect to the Draft Amended 2005 CAO and that the State Board was therefore precluded from acting until it did so. On January 30, 2007, the State Board denied the petitions by Goodrich and the Emhart Parties, Petition A-1797 and A-1797(a),

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Page 5

section 13320 authorizes the State Board to act on the Regional Board's actions or failure to act *only* if it first finds that those actions or inactions were inappropriate or improper within the meaning of the Water Code.⁶ The Proposed Order would violate the law if the State Board attempted to rely upon it for purposes of vesting itself with the Regional Board's authority to adjudicate the Draft Amended 2005 CAO as it lacks any findings of the sort. "An administrative agency must 'render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the board's action.'" *North Gualala Water Co. v. State Water Resources Control Bd.*, 139 Cal.App.4th 1577, 1603 (2006) (quoting *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514); *see also* Government Code Section 11425.50(a) ("The decision shall be in writing and shall include a statement of the factual and legal basis for the decision.").

respectively, which challenged Regional Board Resolution No. R8-2006-0079 as being an illegal delegation of authority to a former State Board Executive Director to serve as a hearing officer for conducting an evidentiary hearing on the Draft CAO. (Letter from Thomas Howard to Peter R. Duchesneau, *et al.*, January 30, 2007.) The State Board found that the petitions were not ripe because there was no final action on the Draft CAO by the Regional Board⁵:

After careful consideration, it is concluded that the petitions in this matter raise issues that are not appropriate for review by the State Water Resources Control Board (State Water Board) at this time. The petitions address a resolution that establishes authority to take future final actions, including issuance of a cleanup and abatement order pursuant to Water Code section 13304. *As such, the adoption of the resolution is an interlocutory action precedent to a potential future cleanup and abatement order . . .* At the time of final action, any challenges to the authority purportedly conveyed by Resolution No. R8-2006-0079 would be ripe. *In other words, the issues raised in your present petitions may be raised again and considered by the State Water Board if the Santa Ana Regional Water Quality Control Board (Santa Ana Board) or its delegee takes a final action.* (Letter from Thomas Howard to Peter R. Duchesneau, *et al.*, January 30, 2007.) (emphasis added.)

⁶ To the extent the State Board desires to focus its review on the Regional Board's actions or failure to act with regard to the Draft Amended 2005 CAO, it is limited to assessing the reasons why the Regional Board has not attempted to adjudicate it. There is no record that the Regional Board ever declined to adjudicate the Draft Amended 2005 CAO based upon the evidence or lack thereof. Rather, the record shows that the reason the Regional Board has not attempted to hold the evidentiary hearing on the Draft Amended 2005 CAO is based upon allegations that it is disqualified due to bias, improper *ex parte* communications, and its previous handling of the matter.⁶ *See, e.g.*, (February 1, 2007 letter from Gerard J. Thibeault to Thomas Howard); *see also* Amended Joint Petition A-1732 and A-1732A-D by Emhart Industries, Inc., Kwikset Corporation, and Black & Decker Inc. (concerning a prior version of Cleanup and Abatement Order R8-2005-053). Accordingly, the State Board must first review these or any other alleged reasons as to why the Regional Board has not conducted the evidentiary hearing on the Draft Amended 2005 CAO itself and then determine whether the Regional Board acted inappropriately or improperly. If the State Board does not find that the Regional Board acted improperly and inappropriately and is not barred from hearing the Draft CAO, the State Board cannot vest itself with the Regional Board's authority to hear the matter.

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Page 6

Absent the finding required by Water Code section 13320(c), the State Board is simply without jurisdiction to act on the Draft Amended 2005 CAO, or any CAO that might in the future be proposed. "An administrative agency has only that authority conferred upon it by statute and any action not authorized is void." *City of Lodi v. Randtron*, 118 Cal.App.4th 337, 358-359 (2004). See, also, *Calif. Toll Bridge Authority v. Kuchel*, 40 Cal. 2d 52 (1952).

VI.
COMMENT 6

THE STATE BOARD'S PROPOSED DELEGATION OF AUTHORITY IS ILLEGAL

The Named Parties object to that portion of paragraph 3 on page 5 of the Proposed Order which purports to delegate *the State Board's* authority under Water Code section 183 to appoint one of its members to conduct an investigation and hold an evidentiary hearing subject to final action by the State Board. Any authority under Water Code section 183 and Government Code section 11182 is limited to authority vested in the State Board.

First, the State Board has no authority to so delegate its statutory power to select one of its members as a hearing officer than it does to delegate its exclusive statutory power to make the final decision in all such proceedings conducted by one of its members as mandated by Water Code section 183. Reliance on Government Code section 11182 is misplaced. The reference in first paragraph of Water Code section 183 to Government Code section 11180 *et seq.* is necessarily limited by the more specific second paragraph in Section 183. The first paragraph authorizes the State Board to:

The board may hold any hearings and conduct any investigations in any part of the state *necessary to carry out the powers vested in it*, and *for such purposes* has the powers conferred upon heads of departments of the state by Article 2 (commencing with Section 11180), Chapter 2, Part 1, Division 3, Title 2 of the Government Code.

Water Code section 183. (Emphasis added.) The second paragraph in Water Code section 183 provides that:

Any hearing of investigation by the board may be conducted by any member upon authorization of the board, and he shall have the powers granted to the board by this section, but any final action of the board shall be taken by a majority of all members of the board, as a meeting duly called and held.

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Obviously, the grant of authority in the first paragraph in Water Code section 183 to the State Board to, for example, under Government Code section 11182, "delegate the powers conferred upon him by this article [in the Government Code] to any officer of the department he authorizes to conduct the investigation or hearing," does not negate either the more specific directives in the second paragraph of Water Code 183 which authorizes *the State Board* to select one of its members to conduct the hearing and thereafter to take "any final action . . . by a majority of all the members of the board, a meeting duly called and held." To conclude otherwise would allow the State Board to delegate all its decision making authority, final or otherwise, to any officer, which is contrary to numerous provisions in the Water Code.

Second, even if the State Board refuses to read Water Code section 183 in such away to harmonize it with all other Water Code provisions which grant the State Board exclusive authority, as noted in Comment 5, above, the State Board has no power to adjudicate the Draft Amended 2005 CAO, or any other CAO, unless and until the State Board has complied with the remaining requirements of Water Code Section 13320(c). The authority pursuant to Water Code section 183 and Government Code section 11182 is expressly limited to powers vested in the State Board. The State Board does not have such authority to adjudicate the draft 2005 CAO, as explained herein.

Finally, if the State Board determines that it has the power to delegate its responsibilities set forth in Water Code section 183 to its Executive Director, it should do so without the ambiguity set forth in the Proposed Order. Delegation of authority demands specificity. Thus, any delegation to the Executive Director to select as hearing officer a member of the State Board must be limited to the authority vested in the State Board to review the action or failure to act by the Santa Ana Regional Board.

VII.
COMMENT 7

THE PREAMBLE CONTAINS MISSTATEMENTS

The Named Parties object to the preamble which covers the first four pages of the Proposed Order because it contains numerous misstatements.

Contrary to the statement that "[t]he 2005 CAO and proposed amendments are the subject of challenges in petitions for State Board review," found on page 1 of the Proposed Order, the Draft Amended 2005 CAO is simply a draft order prepared by the Chief Prosecutor of the "Advocacy Team" who was appointed to the Advocacy Team first by the Santa Ana Regional

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Page 8

Board and subsequently by the Chair of the State Board, whose appointment was voided *ab initio* by the Judgment and Writ of Mandate. The Board Regional has never issued the Draft Amended 2005 CAO, nor did its Executive Officer under Water Code section 13223. Moreover, the Draft Amended 2005 CAO, is titled incorrectly as "In the Matter of the Petition" since it not before the State Board as the result of petitioners for review. On June 3, 2008, the State Board assumed jurisdiction under Water Code section 13320 on its "own motion."

Contrary to the statement in the Proposed Order, page 2, that Petitioners challenged the State Board's attempt to adjudicate the allegations in the Draft Amended 2005 CAO, on the ground that the State Board was "bias[ed] due to purported *ex parte* communications," as set forth in the companion motion to disqualify, the Named Parties seek to disqualify by State Board, its members, and the former members of its Advisory Team because it is undisputed that they engaged in numerous illegal *ex parte* communications with the Chief Prosecutor and other third parties. Further, as the disqualification motion makes clear, as a matter of law, proof of bias is not required in connection with illegal *ex parte* communications to compel disqualification.

Contrary to the statement in the Proposed Order, page 3, "the purpose of this [Proposed] Order is [not limited] to compl[ing] with [the] Court's peremptory writ of mandate." Rather, as noted above, one of the express purposes of the Proposed Order, as objected to by the Named Parties herein, is to ask the State Board to improperly delegate to its Executive Director the appointment of one of its members to be the hearing officer to preside over an evidentiary hearing of an unspecified scope without the State Board having first found that the actions or failure to act of the Santa Ana Regional Board was inappropriate or improper.

Contrary to the silence throughout the four page preamble in the Proposed Order, the question of the propriety of the Regional Board's action or failure to act is a central issue at this time. The Santa Ana Regional Board declined to act in any adjudicatory proceeding in connection with the Draft Amended 2005 CAO. It did so only after it was confronted with undisputed proof, detailed in a petition for review filed with the State Board, which has never been acted upon on its merits by the State Board, let alone brought to the attention of its members, that then Chief Prosecutor Thibeault and members of the office of the State Board's Office of Chief Counsel had engaged over a three year period in numerous illegal *ex parte* communications with members of the Regional Board regarding the substance of the allegations against a number of the Named Parties. Given that record, the Regional Board has no choice but to recuse itself as it did. Obviously, if the State Board were to take up the examination of the question of whether the Santa Ana Regional Board properly recused itself in 2006, it would be forced to confront its own recusal for the same reason.

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VIII.
COMMENT 8

**THE STATE BOARD SHOULD REFRAIN FROM FURTHER ACTION UNTIL THE
APPEALS ARE RESOLVED BY THE COURT OF APPEAL**

Under all the circumstances, the Named Parties request that at this time the State Board limit its action on the Proposed Order to the adoption of paragraph 1 and 2 on page 5 as required by the Judgment and Writ of Mandate. Paragraph 3 on page 5 of the Proposed Order should be stricken.

In doing so, the State Board would avoid at this time any further dispute over its disqualification and allow the pending appeal of the Los Angeles Superior Court's decision not to address the State Board's disqualification as a threshold jurisdictional issue to proceed to its resolution by the Court of Appeal. That resolution will inform both the State Board and the Named Parties as to whether the State Board's disqualification is a threshold jurisdictional question or can be resolved at the end of a long and time consuming adjudicatory hearing process conducted by the State Board.

It would also allow the Named Parties and the numerous other alleged responsible parties that are not now before the State Board to focus their efforts on the ongoing settlement negotiations with the Regional Board (represented by the state Attorney General's Office) and the affected water purveyors. These negotiations are being conducted before the Honorable Carl West of the Los Angeles County Superior Court, Complex Litigation Department, who is sitting as the mandatory settlement judge in an action filed by the City of Colton against most of the alleged responsible parties.⁷ All parties and non-parties to the Colton Action and parties which are alleged to be responsible in some way for the contamination of the Rialto/Colton Groundwater Basin, which include the U.S. Department of Defense, the County of San Bernardino, and the City of Rialto, are participating in these settlement negotiations.

⁷ *City of Colton v. American Promotional Events, et al.*, Case No. BC 376008, Los Angeles Superior Court.

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May 6, 2009
Page 10

Sincerely,



Peter Duchesneau

Enclosures

cc: Jeffrey Dintzer, Gibson Dum & Crutcher, LLP
Brian Zagon, Hunsucker Goodstein & Nelson P.C.
James Meeder, Allen Matkins

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EXHIBIT A

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PYRO SPECTACULARS, INC.

ORIGINAL FILED

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

FEB 19 2009
LOS ANGELES
SUPERIOR COURT

GOODRICH CORPORATION,

Petitioner,

v.

CALIFORNIA STATE WATER RESOURCES
CONTROL BOARD, TAM DODUC in her
official capacity as Chair of the State Water
Resources Control Board, GARY WOLFF,
ARTHUR G. BAGGETT, JR., CHARLES R.
HOPPIN, and FRANCES SPIVY-WEBER, in
Their Capacities as Board Members of the State
Water Resources Control Board, and JORGE A.
LEON, GERARD J. THIBEAULT, KURT V.
BERCHTOLD, ROBERT HOLUB, ANN
STURDIVANT, and KAMRON SAREMI, as
Members of the Advocacy Team of the
California Regional Water Quality Control
Board, Santa Ana Region,

Respondents.

CONSOLIDATED CASE NO. BS 110389
(Consolidated with Case Nos. BS 110390,
110391, and 115673)

~~PROPOSED~~ JUDGMENT

Trial Date: January 15, 2009
Dept.: 85
Judge: Hon. James C. Chalfant

1 GOODRICH CORPORATION; PYRO
2 SPECTACULAR, INC., EMHART
3 INDUSTRIES, INC; BLACK & DECKER INC.;
4 KWIKSET LOCKS, INC.; KWIKSET
5 CORPORATION,

6
7 Petitioner,

8 v.

9 CALIFORNIA STATE WATER RESOURCES
10 CONTROL BOARD, TAM DODUC in her
11 official capacity as Chair of the State Water
12 Resources Control Board, GARY WOLFF,
13 ARTHUR G. BAGGETT, JR., CHARLES R.
14 HOPPIN, and FRANCES SPIVY-WEBER, in
15 Their Capacities as Board Members of the State
16 Water Resources Control Board, and JORGE A.
17 LEON, GERARD J. THIBEAULT, KURT V.
18 BERCHTOLD, ROBERT HOLUB, ANN
19 STURDIVANT, and KAMRON SAREMI, as
20 Members of the Advocacy Team of the
21 California Regional Water Quality Control
22 Board, Santa Ana Region,

23 Respondents.

24
25 The trial on the merits of the Petition for Writ of Mandate, filed by Petitioners Emhart
26 Industries, Inc., Black & Decker Inc., Kwikset Locks, Inc. and Kwikset Corporation ("collectively
27 "Emhart"), Goodrich Corporation ("Goodrich"), and Pyro Spectaculars, Inc. ("PSI") (collectively
28 "Petitioners"), was held on January 15, 2009, before the Honorable James C. Chalfant in Department
85 of the above entitled court.

Jeffrey Dintzer, Denise Fellers, and Peter Duchesneau appeared on behalf of Goodrich, James
Meeder appeared on behalf of Emhart, Brian Zagon appeared on behalf of PSI, and Carol A. Squire,
David H. Robinson, and Elizabeth Miller Jennings appeared on behalf of Respondents California
State Water Resources Control Board ("State Board"), Tam Doduc, Gary Wolff, Arthur G. Baggett,
Jr., Charles R. Hoppin, and Frances Spivy-Weber ("Respondents").

The Court, having reviewed the parties' briefs on the merits, issued its Tentative Decision
prior to the commencement of trial on January 15, 2009, heard and considered the oral arguments of
the parties, submitted the matter for decision, and adopted its Tentative Decision as its Decision,

1 except as orally modified by the Court as set forth in the transcript of the trial held on January 15,
2 2009. Thus,

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 4 1. The petition for writ of mandate is denied insofar as it seeks to invalidate the decision on
5 June 3, 2008, of the State Board set forth in Order WQ 2008-0004 to assume jurisdiction, on
6 its own motion, pursuant to Water Code section 13320(a), to review the actions or failure to
7 act of the Santa Ana Regional Water Quality Control Board, pertaining to groundwater
8 contamination in connection with the 160 Acre Site in Rialto, California. On June 3, 2008,
9 the State Board followed the proper procedure to initiate own motion review of the actions or
10 failure to act of the Santa Ana Regional Water Quality Control Board pertaining to ground
11 water contamination in connection with the 160 Acre Site in Rialto, California, pursuant to
12 Water Code section 13320;
- 13 2. The petition for writ of mandate is granted insofar as it seeks to invalidate:
- 14 a. all actions to assume jurisdiction, to commence, and taken in State Board Proceeding
15 A-1824 prior to June 3, 2008, including those actions taken by the Executive Director
16 of the State Board and the Hearing Officer, Tam Doduc, in State Board Proceeding A-
17 1824, other than those actions related to scheduling and noticing Order WQ 2008-
18 0004; all such actions are void *ab initio*;
- 19 b. those portions of the decision on June 3, 2008, of the State Board set forth in Order
20 WQ 2008-0004 that attempt to ratify *nunc pro tunc* (i) the actions of its Executive
21 Director to commence State Board Proceeding A-1824, (ii) the actions of its
22 Executive Director to appoint the Hearing Officer in State Board Proceeding A-1824,
23 and (iii) the actions of the Hearing Officer taken prior to June 3, 2008, in State Board
24 Proceeding A-1824; the State Board is without authority to ratify *nunc pro tunc* these
25 actions.
- 26 3. A peremptory writ of mandate directed to Respondents shall be issued forthwith by the Clerk
27 of this Court ordering Respondents to, within 75 days of the service of this peremptory writ
28 of mandate:

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- a. rescind all actions to assume jurisdiction, to commence, and taken in State Board Proceeding A-1824 prior to June 3, 2008, including those actions taken by the Executive Director of the State Board and the Hearing Officer, Tam Doduc, in State Board Proceeding A-1824, other than those actions related to scheduling and noticing Order WQ 2008-0004;
- b. rescind those portions of the decision on June 3, 2008, of the State Board set forth in Order WQ 2008-0004 that attempt to ratify *nunc pro tunc* (i) the actions of its Executive Director to commence State Board Proceeding A-1824, (ii) the actions of its Executive Director to appoint the Hearing Officer in State Board Proceeding A-1824, and (iii) the actions of the Hearing Officer taken prior to June 3, 2008, in State Board Proceeding A-1824; and
- c. file and serve a return verifying Respondents' compliance with the peremptory writ of mandate.

4. The Court shall retain jurisdiction over Respondents by way of the return described in paragraph 3.c., above, until the Court has determined that Respondents have complied with the peremptory writ of mandate to be issued by the Clerk.

5. Each side shall bear its own attorneys' fees and costs.

Date: February 19, 2009

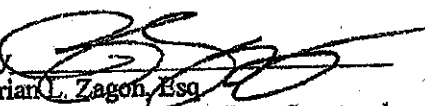
 / s / **JAMES C. CHALFANT**
James C. Chalfant
Judge, Los Angeles County Superior Court

APPROVED AS TO FORM ONLY ON FEBRUARY 18, 2009:

By James L. Meeder
James L. Meeder, Esq.
Counsel for Petitioners Emhart Industries, Inc.,
Black & Decker Inc., Kwikset Locks, Inc. and
Kwikset Corporation

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By _____
Jeffrey D. Dintzer, Esq.
Counsel for Petitioner Goodrich Corporation

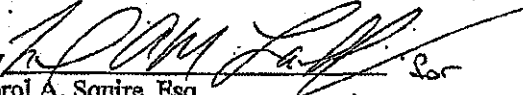
By 
Brian L. Zagon, Esq.
Counsel for Petitioner Pyro Spectaculars, Inc.

By _____
Carol A. Squire, Esq.
Counsel for Respondents California State Water
Resources Control Board ("State Board"), Tam
Doduc, Gary Wolff, Arthur G. Baggett, Jr.,
Charles R. Hoppin, and Frances Spivy-Weber

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EXHIBIT B

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PYRO SPECTACULARS, INC.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

GOODRICH CORPORATION,

Petitioner,

v.

CALIFORNIA STATE WATER RESOURCES
CONTROL BOARD, TAM DODUC in her
official capacity as Chair of the State Water
Resources Control Board, GARY WOLFF,
ARTHUR G. BAGGETT, JR., CHARLES R.
HOFFIN, and FRANCES SPFVY-WEBER, in
Their Capacities as Board Members of the State
Water Resources Control Board, and JORGE A.
LEON, GERARD J. THIBEAULT, KURT V.
BERCHTOLD, ROBERT HOLUB, ANN
STURDIVANT, and KAMRON SAREMI, as
Members of the Advocacy Team of the
California Regional Water Quality Control
Board, Santa Ana Region,

Respondents.

CONSOLIDATED CASE NO. BS 110389
(Consolidated with Case Nos. BS 110390,
110391, and 115673)

~~PROPOSED~~ PEREMPTORY WRIT OF
MANDATE

Trial Date: January 15, 2009
Dept.: 85
Judge: Hon. James C. Chalfant

1 GOODRICH CORPORATION; PYRO
2 SPECTACULAR, INC., EMHART
3 INDUSTRIES, INC.; BLACK & DECKER INC.;
4 KWIKSET LOCKS, INC.; KWIKSET
5 CORPORATION,

6 Petitioner,

7 v.

8 CALIFORNIA STATE WATER RESOURCES
9 CONTROL BOARD, TAM DODUC in her
10 official capacity as Chair of the State Water
11 Resources Control Board, GARY WOLFF,
12 ARTHUR G. BAGGETT, JR., CHARLES R.
13 HOPPIN, and FRANCES SPIVY-WEBER, in
14 Their Capacities as Board Members of the State
15 Water Resources Control Board, and JORGE A.
16 LEON, GERARD J. THIBEAULT, KURT V.
17 BERCHTOLD, ROBERT HOLUB, ANN
18 STURDIVANT, and KAMRON SAREMI, as
19 Members of the Advocacy Team of the
20 California Regional Water Quality Control
21 Board, Santa Ana Region,

22 Respondents.

23 TO: Respondents California State Water Resources Control Board ("State Board"), Tam
24 Doduc, Gary Wolff, Arthur G. Baggett, Jr., Charles R. Hoppin, and Frances Spivy-Weber
25 ("Respondents"). Judgment having been entered in this proceeding which orders that a peremptory
26 writ of mandate be issued by the Clerk,

27 YOU ARE HEREBY COMMANDED TO, WITHIN 75 DAYS OF THE SERVICE OF THIS
28 PEREMPTORY WRIT OF MANDATE:

1. rescind all actions to assume jurisdiction, to commence, and taken in State Board Proceeding A-1824 prior to June 3, 2008, including those actions taken by the Executive Director of the State Board and the Hearing Officer, Tam Doduc, in State Board Proceeding A-1824, other than those actions related to scheduling and noticing Order WQ 2008-0004;
2. Rescind those portions of the decision on June 3, 2008, of the State Board set forth in Order WQ 2008-0004 that attempt to ratify *nunc pro tunc* (i) the actions of its Executive Director to commence State Board Proceeding A-1824, (ii) the actions of its Executive Director to

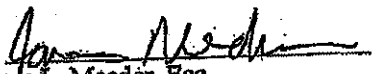
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appoint the Hearing Officer in State Board Proceeding A-1824, and (ii) the actions of the
Hearing Officer taken prior to June 3, 2008, in State Board Proceeding A-1824; and
3. File and serve a return verifying Respondents' compliance with this peremptory writ of

mandate.
Date: ~~February~~ ^{March 12,} 2009


Clerk of the Los Angeles County Superior Court

APPROVED AS TO FORM ONLY ON FEBRUARY 18, 2009:

By 
James L. Meeder, Esq.
Counsel for Petitioners Emhart Industries, Inc.,
Black & Decker Inc., Kwikset Locks, Inc. and
Kwikset Corporation

By _____
Jeffrey D. Dintzer, Esq.
Counsel for Petitioner Goodrich Corporation

By _____
Brian L. Zagon, Esq.
Counsel for Petitioner Pyro Spectaculars, Inc.

By _____
Carol A. Squire, Esq.
Counsel for Respondents California State Water
Resources Control Board ("State Board"), Tam
Doduc, Gary Wolff, Arthur G. Baggett, Jr.,
Charles R. Hoppin, and Frances Spivy-Weber

fc

1 appoint the Hearing Officer in State Board Proceeding A-1824, and (iii) the actions of the
2 Hearing Officer taken prior to June 3, 2008, in State Board Proceeding A-1824; and
3 3. File and serve a return verifying Respondents' compliance with this peremptory writ of
4 mandate.

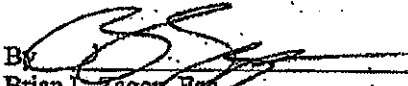
5 Date: ~~February~~ ^{March 12} __, 2009

7
8 
Clerk of the Los Angeles County Superior Court

9 APPROVED AS TO FORM ONLY ON FEBRUARY 18, 2009:

10
11 By _____
James L. Meeder, Esq.
12 Counsel for Petitioners Emhart Industries, Inc.,
Black & Decker Inc., Kwikset Locks, Inc. and
13 Kwikset Corporation

14
15 By _____
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16 Counsel for Petitioner Goodrich Corporation

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18 By _____
Brian L. Zagor, Esq.
19 Counsel for Petitioner Pyro Spectaculars, Inc.

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21 By _____
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22 Counsel for Respondents California State Water
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23 Doduc, Gary Wolff, Arthur G. Baggett, Jr.,
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appoint the Hearing Officer in State Board Proceeding A-1824, and (iii) the actions of the
Hearing Officer taken prior to June 3, 2008, in State Board Proceeding A-1824; and
3. File and serve a return verifying Respondents' compliance with this peremptory writ of

mandate.
Date: March 12, 2009
February 1, 2009

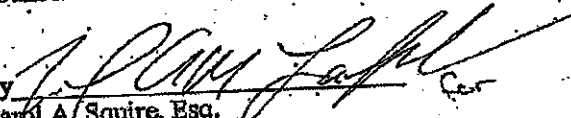

Clerk of the Los Angeles County Superior Court

APPROVED AS TO FORM ONLY ON FEBRUARY 18, 2009:

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appoint the Hearing Officer in State Board Proceeding A-1824, and (iii) the actions of the
Hearing Officer taken prior to June 3, 2008, in State Board Proceeding A-1824; and
3. File and serve a return verifying Respondents' compliance with this peremptory writ of

mandate.

K
Date: February 12, 2009

John A. Clarke

Kelly Encinas



[Signature]
Clerk of the Los Angeles County Superior Court

APPROVED AS TO FORM ONLY ON FEBRUARY 18, 2009:

By _____
James L. Meeder, Esq.
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Black & Decker Inc., Kwikset Locks, Inc. and
Kwikset Corporation

By *Jeffrey Dintzer* /DGF
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CERTIFICATE OF SERVICE

I, Barbara Siddell, certify as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, California 90071-3197, in said County and State. On March 18, 2009, I served the following document(s):

PEREMPTORY WRIT OF MANDATE

on the parties stated on the attached service list, by placing a true copy thereof in an envelope addressed as shown below by the following means of service:

- SERVICE BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY PERSONAL SERVICE:** I placed a true copy in a sealed envelope addressed to each person[s] named at the address[es] shown and giving same to a messenger for personal delivery before 5:00 p.m. on the above-mentioned date.
- BY UPS NEXT DAY AIR:** On the above-mentioned date, I placed a true copy of the above mentioned document(s), together with an unsigned copy of this declaration, in a sealed envelope or package designated by the United Parcel Service with delivery fees paid or provided for, addressed to the person(s) as indicated above and deposited same in a box or other facility regularly maintained by United Parcel Service or delivered same to an authorized courier or driver authorized by United Parcel Service to receive documents.
- I am employed by a member of the bar of this court, and the foregoing document(s) was(were) printed on recycled paper.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 18, 2009.

Barbara Siddell

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Attorneys for
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CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

15 IN THE MATTER OF OWN MOTION
16 REVIEW OF RIALTO-AREA
17 PERCHLORATE CONTAMINATION
18 (SWRCB/OCC FILE A-1824)

MOTION TO DISQUALIFY THE STATE
BOARD FROM FURTHER ACTION IN
SWRCB/OCC FILE NO. A-1824

22 **I. INTRODUCTION**

23 Goodrich Corporation, Pyro Spectaculars, Inc. ("PSI") and Emhart Industries, Inc.,
24 Kwikset Corporation, Kwikset Locks, Inc. and Black & Decker Inc. (the "Emhart Parties")
25 (collectively, the "Named Parties") hereby respectfully move that the California State Water
26 Resources Control Board (the "State Board") and its staff comprising its formerly appointed
27 advisory team ("Former Advisory Team"),¹ be disqualified and recused from taking any further

28 ¹ The former Advisory Team in SWRCB/OCC File A-1824 included: Elizabeth Jennings, Karen O'Haire, James
41390628.4

1 action in SWRCB/OCC File No. A-1824, other than to comply strictly with the Preemptory Writ
2 of Mandate issued by the Los Angeles Superior Court on March 12, 2009. *Goodrich Corporation*
3 *v. California State Water Resources Control Board, et al.*, Los Angeles Superior Court,
4 Consolidated Case No. BS 110389. This motion has been made necessary and is based upon the
5 fact that members of the State Board and the Former Advisory Team have engaged directly and
6 indirectly in illegal *ex parte* communications commencing during the pendency of Cleanup and
7 Abatement Order R8-2005-053 by the Regional Water Quality Control Board, Santa Ana Region
8 (the "Regional Board") ("2005 CAO") before the State Board in violation of the California
9 Administrative Procedure Act ("APA"), Government Code Section 11425.10(a)(4) (mandating
10 agencies keep separate their adjudicatory and prosecutorial functions), Section 11430.10
11 (prohibiting *ex parte* communications during pending agency adjudicatory hearings), Section
12 11430.50 (requiring agencies to immediately disclose all *ex parte* communications), and Section
13 11430.60 (providing that *ex parte* communications are grounds for disqualification of the hearing
14 officer and agency), and the constitutional due process rights of the Named Parties.

15 The matter of SWRCB/OCC File No. A-1824 has raised important questions concerning
16 the continued integrity of State Board adjudicatory proceedings, its adherence to the requirements
17 of constitutional due process, its compliance with controlling statutes, and its compliance with its
18 own guidelines prohibiting illegal *ex parte* communications. Since the 2005 CAO was first
19 brought before the State Board on March 30, 2005, members of the State Board and its Former
20 Advisory Team have participated, directly and indirectly, in numerous illegal *ex parte*
21 communications in violation of the Named Parties constitutional due process rights, the APA, and
22 the State Board's own guidelines governing *ex parte* communications.

23 Thus, as a result, the Named Parties are compelled to bring this motion, which, as set forth
24 in detail below, requires the State Board, as a matter of law, to disqualify and recuse itself and the
25 members of the Former Advisory Team from taking any action with regard to SWRCB/OCC File
26 No. A-1824. Should the State Board deny this motion, it should nonetheless, at a minimum,
27 refrain from taking any further action in this matter until the Named Parties' appeals involving the

28 Herink, Wennilyn Fua, Jim Maughan, Jon Bishop, Tom Howard, Michael Lauffer, and Dorothy Rice.

41390628.4

1 disqualification of the State Board, among other issues, currently pending before the California
2 Court of Appeal are decided.

3 **II. THE LAW**

4 **A. Constitutional Due Process Requires Fair Administrative Tribunals**

5 Most recently, the California Supreme Court has held:

6 When . . . an administrative agency conducts adjudicative proceedings, the
7 constitutional guarantee of due process of law requires a fair tribunal . . . A fair
8 tribunal is on which the judge or other decision maker is free of bias for or against
9 a party . . . Violation of this due process guarantee can be demonstrated not only
10 by proof of actual bias, but also showing a situation “in which experience teaches
11 that the probability of actual bias on the part of the judge or decision maker is too
high to be constitutionally tolerable.” *Morongo Band of Mission Indians v. State
Water Resources Control Board*, 45 Cal. 4th 731, 737 (2009) (citations omitted)
 (“*Morongo*”).

12 As detailed below, *ex parte* communications between adjudicators and their advisors with the
13 prosecutor is strictly prohibited and does not require proof of actual bias given the probability of
14 actual bias is too high to be constitutionally tolerable.

15 **B. Ex Parte Communications Are Illegal And Strictly Prohibited By Statute**

16 *Ex parte* communications, whether direct or indirect, with the members of the State
17 Board, and their advisors, concerning any substantive issue in an adjudicatory proceeding with
18 members of the prosecution or advocacy team, or any other third party, are *illegal* and thus
19 *strictly prohibited*. *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control*
20 *Appeals Board (Quintanar et. al.)*, 40 Cal.4th 1, 16 (2006); California Administrative Procedure
21 Act (“APA”), Gov. Code § 11430.10(a). The APA, Government Code section 11400, *et seq.*,
22 “generally prohibits *ex parte* communications.” *Morongo, supra*, 45 Cal. 4th at 738.

23 As pointed out in *Morongo*, a “prosecutor cannot communicate off the record with the
24 agency decision maker or the decision makers’ advisors *about the substance of the case.*”
25 *Morongo, supra*, 45 Cal. 4th at 738 (quoting *Department of Alcoholic Beverage Control v.*
26 *Alcoholic Beverage Control Appeals Bd.*, 40 Cal.4th 1, 16-17). In *Quintanar*, 40 Cal.4th at 8, the
27 California Supreme Court also explained that the “APA [simply does not] permit *ex parte*
28 contacts between an agency’s prosecutor and its ultimate decision maker or his or her advisors

1 about the substance of the case, prior to the ultimate decision maker rendering a final decision."²
2 Thus, the Court found that all such communications are illegal: "under the APA, the mere
3 submission of *ex parte* substantive comments, without more, is *illegal*." *Id.* at 16 (emphasis
4 added).

5 Because such communications are *per se* illegal, the Court in *Quintanar* held that proof
6 that the *ex parte* communication was considered by and/or biased the decision-maker is
7 irrelevant:

8 The Department [of Alcoholic Beverage Control] argues the record contains no
9 proof the reports of hearing were actually considered by the ultimate decision
10 maker or his advisers, but neither does it deny this occurred. Whether the decision
11 maker considered the reports of hearing is in any event beside the point. . . . The
12 party faced with such a communication need not prove that it was considered;
13 conversely, the agency engaging in *ex parte* discussions cannot raise as a shield
14 that the advice was not considered.

15 *Quintanar*, 40 Cal.4th at 16.

16 In *Morongo*, the Court distinguished the case before it from those involving agency
17 decision makers and their advisors who have engaged in *ex parte* communications. 45 Cal. 4th at
18 741. In the latter circumstances, the Court did not find that evidence of bias need be proven. *Id.*
19 Indeed, the rule prohibiting *ex parte* communications in administrative adjudicatory proceedings
20 is so strict that courts require reversal of agency decisions even where there is substantial
21 evidence to support an agency's ruling. As the court in *Rondon v. Alcoholic Beverage Control*
22 *Appeals Board* (2007) 151 Cal. App. 4th 1274, 1290 explained:

23 [A]lthough both sides no doubt would have liked to submit a secret unrebutted
24 review of the hearing to the ultimate decision maker or decision maker's advisors,
25 only one side had that chance. The APA's administrative adjudication bill of
26 rights was designed to eliminate such one-sided occurrences. We will not
27 countenance them here. . . . ***The fact that there may be substantial and properly***
28 ***introduced evidence which supports the board's ruling is immaterial.*** . . . In this
case, based on the violation of statutory protections designed to ensure due process
and a fair hearing, we conclude that reversal of the Department's order is required.

29 ² Government Code Section 11430(a) provides: "While the proceeding is pending there shall be no communication,
30 direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative
31 of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all
32 parties to participate in the communication."

1 Finally, if the prosecution team claims that the *ex parte* communication did not occur, it is their
2 burden to so prove with competent (admissible) evidence:

3 [T]he Department has not offered any evidence that it did not engage in the
4 challenged practice here, and the record before us does not foreclose that
5 possibility. As we said in the *Howitt* case, "*the burden is always on the party
relying on [an ethical] wall to demonstrate its existence and effectiveness.*"

6 *Rondon*, 151 Cal. App. 4th at 1287 (emphasis added).

7 **C. Ex Parte Communications Violate Due Process of Law**

8 "The protections of procedural due process apply to administrative proceedings," which
9 "always require[] . . . [the] 'constitutional floor' of a 'fair trial in a fair tribunal,' in other words a
10 fair hearing before a neutral or unbiased decision-maker." *Nightlife Partners, Ltd., v. City of
11 Beverly Hills* (2003) 108 Cal. App. 4th 81, 90-91, quoting *Bracy v. Gramley* (1997) 520 U.S. 899,
12 904-905 and *Winthrow v. Larkin* (1975) 421 U.S. 35, 43. "Just as in a judicial proceeding, due
13 process in an administrative hearing also demands an *appearance* of fairness and the absence of
14 even a *probability* of outside influence on the adjudication." *Nightlife*, 108 Cal. App. 4th at 90
15 (emphasis original).

16 One of the essential elements due process and procedural fairness is the prohibition
17 against *ex parte* communications. As the Supreme Court in *Quintanar*, 40 Cal.4th at 9,
18 explained: "[f]undamental fairness in decisionmaking demands both that factual inputs and
19 arguments to the decisionmaker on law and policy be made openly and be subject to argument by
20 all parties." Thus,

21 [w]hile the state's administrative agencies have considerable leeway in how they
22 structure their adjudicatory functions, they may not disregard certain basic
23 precepts. One fairness principle directs that in adjudicative matters, one adversary
24 should not be permitted to bend the ear of the ultimate decision maker or the
25 decision maker's advisors in private. Another directs that the functions of
26 prosecution and adjudication be kept separate, carried out by distinct individuals.
California's Administrative Procedure Act (APA) (Gov. Code § 11340 *et seq.*), as
overhauled in 1995, adopts these precepts by regulating and strictly limiting
contacts between an agency's prosecutor and the officers the agency selects to
preside over hearings and ultimately decide adjudicative matters.

27 *Quintanar*, 40 Cal.4th at 4.

1 The State Board has the unambiguous statutory and constitutional duty to ensure that its
2 adjudicatory proceedings are fair, appear to be fair, and are free of any illegal *ex parte*
3 communications.

4 **D. If Ex Parte Communications Have Occurred, Disqualification And Recusal**
5 **Are Mandated By Due Process of Law**

6 In judicial proceedings, courts are divested of jurisdiction to rule on any substantive issue
7 pending the resolution of timely motions to disqualify the presiding judge. *Brown v. Swickard*
8 (1985) 163 Cal. App. 3d 820, 831 (“plaintiffs’ timely motion to disqualify [judge] from hearing
9 defendants’ ... motion for summary judgment not only deprived the judge of jurisdiction to rule
10 on that motion, but also of jurisdiction to rule on remaining defendants’ motion for summary
11 judgment”); *Christie v. City of El Centro* (2006) 135 Cal. App. 4th 767, 777 (“[D]isqualification
12 occurs when the facts creating disqualification arise, not when disqualification is established...
13 [I]t is the fact of disqualification that controls, not subsequent judicial action on that
14 disqualification”).

15 In judicial proceedings, the disqualification of judges and constitutional challenges to the
16 proceeding itself also must be promptly made or lost. *Roscco Holdings, Inc., supra*, 149 Cal.
17 App. 4th at 1362 quoting *Caminetti v. Pac. Mutual L. Ins. Co.* (1943) 22 Cal.2d 386, 392 (“It
18 would seem ... intolerable to permit a party to play fast and loose with the administration of
19 justice by deliberately standing by without making an objection of which he is aware and thereby
20 permitting the proceedings to go to a conclusion which he may acquiesce in, if favorable, and
21 which he may avoid, if not”); *North Beverly Park Homeowners Assn. v. Bisno* (2007) 147 Cal.
22 App. 4th 762, 769 (“no California decision has involved an attempt to use the statutory
23 disqualification procedure to vacate a final judgment on the ground of the trial judge’s
24 disqualification ... [and] the language of the current disqualification statutes makes clear that the
25 procedural scheme is directed at pending proceedings”); and *Roth v. Parker* (1997) 57 Cal. App.
26 4th 542, 548 (“a constitutional question must be raised at the earliest opportunity or it will be
27 considered to be waived”).

28 These fundamental procedural due process rules apply equally to administrative

1 adjudicatory proceedings. As the court in *Nightlife, supra*, explained, procedural due process of
2 law at a minimum requires a fair trial, in a fair tribunal, which at its core demands not only the
3 appearance of fairness but the absence of even the probability of outside influence on the
4 adjudication. It is, as a matter of law, unquestionably unfair and creates a clear appearance of
5 bias, if the State Board proceeds without first examining and deciding whether it and its Former
6 Advisory Team have engaged in illegal *ex parte* communications that compel their
7 disqualification from any further proceedings in this matter.

8 **E. The State Board's Own Guidelines Compel Its Disqualification Before The**
9 **Adjudicatory Proceeding**

10 Since 2001, the State Board has had strict guidelines governing its due process and
11 statutory obligations not to engage in illegal *ex parte* communications regarding issues in its
12 adjudicatory proceedings. This guidance was first set forth in a memorandum dated February 16,
13 2001, from Craig M. Wilson (then Chief Counsel) to Arthur G. Baggett Jr. (then Chair) entitled
14 "Ex Parte Communications" ("2001 Guidance"). Exh. 1 (2001 Guidance). The State Board's
15 2001 Guidance contained this unambiguous prohibition: "If an adjudicatory proceeding is
16 pending or impending before a board, *ex parte* communications are prohibited." It provided this
17 explanation for the prohibition:

18 Rules regarding *ex parte* communications have their roots in constitutional
19 principles of due process and fundamental fairness. *Ex parte* communications are
20 fundamentally offensive in adjudicatory proceedings because they involve an
21 opportunity by one party to influence the decision maker outside of the presence of
22 opposing parties, thus violating due process requirements.

22 *Id.* at 2.

23 On July 25, 2006, the 2001 Guidance was superseded and updated by memorandum to all
24 members of the State Board from Michael A.M. Lauffer (Chief Counsel) entitled "Transmittal of
25 Ex Parte Communications Questions and Answers Document" ("2006 Guidance"), which sets
26 forth the following unambiguous rules relevant to this proceeding:

- 27 • "If an adjudicatory proceeding is pending or impending before a water board, *ex parte*
28 communications with that water board's members regarding an issue in that
proceeding are *prohibited*."

- 1 • “The prohibition on communications with the State Water Board members concerning
2 a petition [challenging a regional water quality control board action or inaction]
3 *begins when the State Water Board receives the petition.*”
- 4 • The Administrative Procedure Act’s prohibition on *ex parte* communications is very
5 broad. It extends to ‘*direct and indirect*’ communications. Board members must be
6 mindful that persons who ordinarily would not be subject to the prohibition (e.g.
7 secretaries, staff assigned to advise the board) should not be used as a conduit for a
8 prohibited *ex parte* communication. . . .”
- 9 • “The *ex parte* communication prohibition also extends to ‘any issue in the
10 proceeding’. With limited exceptions. . . , if the communication involves *any issue in*
11 *the proceeding*, be it a factual issue, a legal issue, or a policy issue, it is subject to the
12 *ex parte* communications prohibition.”
- 13 • “[O]nce the State Water Board receives a petition challenging a Regional Water Board
14 action, the *ex parte* communications prohibition applies to the petition proceeding.”

15 Exh. 2 (2006 Guidance) at 1, 6, 7 (emphasis added).

16 Finally, consistent with Government Code Section 11430.60 (“[r]eceipt by the presiding
17 officer of a communication in violation of this article may be grounds for disqualification of the
18 presiding officer.”), the 2006 Guidelines provide that:

19 [A] prohibited *ex parte* communication may be grounds for disqualifying the board
20 member from *participating in the adjudicatory proceeding*.

21 *Id.* at 4 (emphasis added).

22 In other words, under the State Board’s 2006 Guidelines, the question of whether a
23 member of the State Board should be disqualified from participating in an adjudicatory
24 proceeding is to be resolved *before* that proceeding commences or, if prohibited communications
25 are discovered during the proceeding, *before* it continues. *Id.* This State Board rule is compelled
26 by and grounded in the same rules governing *ex parte* communications in court proceedings:
27 “The *ex parte* communications prohibition for adjudicative proceedings originates in court
28 decisions and has been codified in Chapter 4.5 of the Administrative Procedure Act.” Exh. 2 at 4.

29 **III. THE STATE BOARD AND ITS FORMER ADVISORY TEAM HAVE**
30 **REPEATEDLY ENGAGED IN ILLEGAL, PROHIBITED EX PARTE**
31 **COMMUNICATIONS DURING THE PENDENCY OF THE 2005 CAO BEFORE**
32 **THE STATE BOARD**

33 The evidence of *ex parte* communications by the State Board and its Former Advisory

1 Team involving matters related to the 2005 CAO is substantial and reveals widespread *ex parte*
2 communications.³ As demonstrated below, the record compels the disqualification and recusal of
3 the State Board and the members of its Former Advisory Team from taking any further action in
4 SWRCB/OCC File No. A-1824, except for those actions required to comply with the Superior
5 Court's Writ of Mandate.

6 **A. November 2, 2005: State Board Briefed By Chief Prosecutor**

7 On October 17, 2005, the Regional Board issued a Public Notice ("Notice") regarding the
8 2005 CAO. Exh. 4 (October 17, 2005 Notice). On that date, a petition for review challenging the
9 2005 CAO (issued on February 28, 2005) had been pending before the State Board since
10 March 30, 2005.⁴ The Notice advised that Gerard Thibeault (a member of the "Advocacy Team"
11 and the Regional Board's Executive Officer) had been appointed Chief Prosecutor for the 2005
12 CAO. It also provided the following unambiguous ground rules regarding *ex parte*
13 communications:

14 Members of the Staff Advocacy Team will be treated, for purposes of the present
15 matter, like other parties who come before the Regional Board throughout the
16 proceedings. They shall have *no contact* with the Regional Board members or
17 with members of the Advisory Team *on matters relating to the proceedings*,
except where those contacts are consistent with the limitations on *ex parte* contacts
that apply to other parties.

18 Exh. 4 (October 17, 2005 Notice) (emphasis added).

19 Sixteen days later, on November 2, 2005, Chief Prosecutor Thibeault appeared before the
20

21 ³ Pursuant to Government Code Section 11430.50, the State Board *must* promptly disclose any and all improper *ex*
22 *parte* communications. Gov. Code § 11430.50. Despite this unambiguous rule, the State Board concealed from
23 disclosure the *ex parte* communications described below. The Named Parties' initial request for disclosure of all *ex*
24 *parte* communications was denied on March 28, 2007, except to the extent it requested an investigation into *ex parte*
25 communications. Two days earlier, on March 26, 2008, the Named Parties issued a federal subpoena to the State
26 Board seeking copies of all *ex parte* communications. Only after the Named Parties initiated the process to seek a
27 federal court order to compel production of all such communications did the State Board respond to the federal
28 subpoena. On May 11, 2008, after repeated assurances that no such illegal communications existed, the State Board
disclosed, without explanation, numerous *ex parte* communications. Exh. 3 (May 11, 2007 Letter from Elizabeth
Jennings with attachments).

⁴ Exh. 5 (Emhart's March 30, 2005 Petition for Review). On April 4, 2005, the State Board acknowledged receipt of
these petitions and agreed to hold the petitions in abeyance for two years, after which they would be subject to
dismissal. Exh. 6 (April 4, 2005 Letter from Elizabeth Jennings to Robert Wyatt). The record establishes that the
Regional Board continued to amend the 2005 CAO; the last proposed amendment was on October 27, 2006, pursuant
to which Goodrich Corporation and Pyro Spectaculars were to be added ("Draft Amended 2005 CAO").

1 State Board in Sacramento. Exh. 7 (November 2, 2005 Thibeault Presentation).⁵ Using an over
2 head projector and Power Point, the Chief Prosecutor presented in detail his view of the evidence
3 supporting the allegations in the 2005 CAO. (*Id.*) During his presentation, the Chief Prosecutor
4 Thibeault attempted to persuade the State Board members in attendance that Goodrich and the
5 Emhart Parties were liable for the perchlorate contamination of groundwater in Rialto. Among
6 other things, Chief Prosecutor Thibeault referred to Goodrich and Black & Decker as the “two
7 main responsible parties.” Exh. 7. He also showed an image of two plumes of perchlorate, one
8 from the County of San Bernardino’s landfill operations and one from the “160 acres-Goodrich,
9 Kwikset, some fireworks companies” *Id.* (PSI is a fireworks display company).

10 The transcript of Chief Prosecutor Thibeault’s presentation discloses, among other things,
11 a dialogue with a Board member regarding one of the defenses Emhart had asserted, namely, that
12 it was not the corporate successor of the alleged discharger who occupied the 160-Acre Site
13 between 1952 and 1957. *Id.* (November 2, 2005 Thibeault Presentation Transcript) at 5-6. After
14 the Chief Prosecutor explained why, in his view, this defense was without merit, the following
15 exchange between Board Member Secundy and Chief Prosecutor Thibeault was recorded:

16 Jerry Secundy: It goes to caveat emptor. So let the buyer beware. I mean being
17 involved with that before with other companies – when you purchase a company
18 that has environmental liability you purchase the environmental liability. So the
19 law is very clear there. So....

20 Mr. Thibeault: They went through the very same thing for Leviathan Mine and
21 Arco and Anaconda and Arco paid a settlement for....

22 Jerry Secundy: Having been 30 years with Arco I remember it painfully (laugh)
23 Thank you very much. Excellent presentation.

24 *Id.* at 5-6. Board Member Doduc’s comments that day, which immediately preceded this
25 dialogue, were limited to: “Thank you very much. Any questions, comments? Jerry [Secundy], I
26 know you have had a lot of questions on the scientific part.” *Id.* Evidently, Member Doduc and

27 ⁵ Although the workshop was publicly noticed, the description for the briefing contained in the public notice
28 opaquely described the subject matter as follows: “1. Informational Presentation by Gerard Thibeault, Santa Ana
Water Board Executive Officer, on Regional Board Issues.” Exh.7 (November 2, 2005 Thibeault Presentation
Agenda). Importantly, this “notice” was never sent to representatives of any of the Named Parties; no telephone call
made to advise them of this presentation; nor was any notice ever provided to the Named Parties that the Chief
Prosecutor intended to present a one-sided argument to the State Board concerning the Named Parties’ liability.

1 Member Secundy had discussed his questions on the "scientific part" either before or during the
2 Chief Prosecutor's presentation.

3 Extraordinarily, on November 2, 2005, the Chief Prosecutor was immediately followed by
4 the State Board's new Chief Counsel, Michael Lauffer, who became a member of the Former
5 Advisory Team in SWRCB/OCC File No. A-1824, who presented a detailed review of the State
6 Board's then newly proposed 2006 Guidance. Exh. 7 (November 2, 2005 Agenda). The record
7 of this State Board meeting discloses that Mr. Lauffer was also present during the Chief
8 Prosecutors presentation. The State Board has not disclosed whether any other members of its
9 Former Advisory Team were present that day.

10 These *ex parte* communications were unquestionably illegal and, alone, compel the
11 disqualification of the State Board, and its Former Advisory Team.

12 **B. 2006 and 2007: State Board Management Coordinating Committee Meetings**

13 On May 11, 2007, the State Board made the following incomplete disclosures regarding
14 communications in 2006 and 2007 between the Chief Prosecutor with at least two members of the
15 State Board's Former Advisory Team, Jonathan Bishop and Tom Howard.⁶

16 Jonathan Bishop: Oral communication within approximately the last year: At an
17 MCC meeting, Gerard Thibeault mentioned that there was an enforcement order
18 issued at the ... Santa Ana Regional Board ... and that he hoped the State Water
19 Board would provide assistance. *No memory of what type of enforcement order*
20 *and what help needed. No memory of any response.* No personal
communication with Mr. Thibeault. Those present included Executive Officers
from various regional water boards and Celeste Cantu, then-Executive Director [of
the State Board].

21 Exh. 8 (May 11, 2007 Summary of Conversations) at 1.

22 Tom Howard: Oral communications at MCC meetings over last year. It was *likely*
23 that Gerry Thibeault mentioned the Rialto perchlorate matter at some of these
24 meetings, mostly in the context of it being time-consuming and taking away from
25 their cases. Also at MCC, there was some discussion about an agreement whereby
Goodrich would pay \$4 million, and that Emhart/Black & Decker/Kwikset Locks

26 ⁶ The State Board claims that, as of July 2007, Mr. Howard was no longer a member of the Advisory Team.
27 However, Mr. Howard's removal has no effect here – he clearly was an "advisor" in 2006 and early 2007 and as such
28 prohibited from partaking in *ex parte* communications with the prosecutors. Govt. Code § 11430.10(a). By
removing Mr. Howard from the Advisory Team, the State Board has not eliminated his *ex parte* contacts, nor does it
excused revealing with whom he shared the prohibited communications.

1 were not part of the agreement. At MCC, present were Regional Board Executive
2 Officers and *State Board management* – no Board members. *Mr. Howard does*
3 *not remember responding.*

4 Exh. 8 at 2.

5 These limited and incomplete disclosures establish that in 2006 and 2007, at regularly
6 scheduled Management Coordinating Committee (“MCC”) meetings, Chief Prosecutor Thibeault
7 engaged in prohibited *ex parte* communications regarding the allegations in the 2005 CAO with
8 at least two members of the State Board’s Former Advisory Team. The State Board, however,
9 has not explained what was, or was not, said about the 2005 CAO during these meetings, to
10 whom it was said, or the number of times the subject was discussed. Nor did it disclose (by
11 declaration or otherwise) whether “State Board management” included any members of the State
12 Board or any other members of the Former Advisory Team. *See* Exh. 8.

13 Because disclosure was not made immediately as required by law, the State Board claims
14 that Mr. Bishop and Mr. Howard now have no clear memory of Mr. Thibeault’s discussion, other
15 than that it involved the Regional Board’s issuance of an enforcement order concerning the
16 perchlorate contamination in Rialto. Exh. 8 (May 11, 2007 Summary of Conversations) at 1-2.
17 Had disclosure been made promptly, as required, the parties might know what was discussed.

18 Nonetheless, failed memories are no excuse. “Under the APA, the mere submission of *ex*
19 *parte* substantive comments, without more, is illegal.” *Quintana*, 40 Cal.4th at 16. If the agency
20 claims that a prohibited *ex parte* communication did not occur, it is that agency’s burden to so
21 prove with competent (admissible) evidence. *Rondon*, 151 Cal. App. 4th at 1286. Absent such
22 proof, it shall be inferred that unlawful communications took place. *Rondon*, 151 Cal. App. 4th at
23 1290.

24 C. Early 2006: Conversation Between Mr. Howard, Celeste Cantu and Third-
25 Party Barry Groveman

26 On May 11, 2007, the State Board further disclosed that Mr. Howard recalls attending, in
27 early 2006, a private meeting with a Mr. Barry Groveman (former counsel for the City of Rialto,
28 City of Colton, and Fontana Water Company, and currently counsel for West Valley Water

1 District) and then Executive Director Celeste Cantu. Exh. 8 (May 11, 2007 Summary of
2 Conversations) at 3. As counsel for the West Valley Water District (which has rights to water in
3 the Rialto-Colton Groundwater Basin and previously filed a lawsuit against Emhart that was
4 subsequently dismissed), Mr. Groveman, an interested third-party, advocated to Mr. Howard and
5 Ms. Cantu that the State Board “do something” regarding the contamination in the Rialto-Colton
6 Groundwater basin - indisputably an issue in the present proceeding. The State Board has
7 advised that the parties to this *ex parte* communication have no further memory of what was said.
8 *Id.*

9 Again, failed memories do not excuse the State Board’s burden to prove no illegal
10 communications occurred.

11 **D. August 10, 2006: E-mail from Mr. Thibeault Responding to Kathy Rogers**

12 On May 11, 2007, the State Board disclosed an August 10, 2006 email from Kathy Rogers
13 to Chief Prosecutor Thibeault that reveals that a member of the State Board at the time, Gary
14 Wolff, was told that “perchlorate in your Region is *a big one (an understatement)* and is the
15 reason the Rules Committee has requested the appearance of the Board members from RB 8. He
16 naturally wants to hear more about this topic.” Exh.9 (August 10, 2006 email chain) (emphasis
17 added). From the contents of the email it is clear that Mr. Wolff had discussions during which he
18 was told that the perchlorate contamination in the Rialto Groundwater Basin was a “big issue,” a
19 vigorously contested issue by the Named Parties in these proceedings. *Id.* The email string goes
20 on to discuss arranging a briefing for Mr. Wolff on the “perchlorate issue.” Exh. 9 (August 10,
21 2006 email chain). Despite Mr. Wolff’s departure from the State Board, this further demonstrates
22 the common *ex parte* communications between the prosecutor and State Board members.
23 Moreover, it is incumbent upon the State Board to demonstrate that it is not tainted by such
24 communications with the former board member.

25 **E. October 31, 2006: Presentation by CCAEJ to State Board**

26 On October 31, 2006, a group named the Environmental Justice Coalition for Water
27 (“EJCW”) made a presentation to the State Board on the topic of Environmental Justice. Exh. 10
28 (October 30-31, 2006 Agenda). Featured as a EJCW member panelist was Davin Diaz of the

1 Center on Community Action and Environmental Justice ("CCA EJ"). Exh. 11 (EJCW
2 PowerPoint Presentation). The EJCW presentation included a discussion of perchlorate in the
3 Rialto-Colton Basin, a purported history of perchlorate use, estimated cleanup costs, and
4 photographs of protesting citizens, closed wells and children. *Id.* The presentation specifically
5 referred to Goodrich, Emhart, and the Draft Amended 2005 CAO. *Id.*

6 CCA EJ has routinely advocated that the Goodrich, the Emhart Entities, and PSI, which
7 they refer to as "the Polluters," be held responsible. Below is a brief sampling of CCA EJ's
8 polemics, prejudging the Named Parties' liability:

9 Today is the day an important hearing was to begin. The hearing would adopt a
10 Clean Up and Abatement Order for the perchlorate contamination in the Rialto
11 area. *As the Communities directly affected by Goodrich/Black & Decker/Pyro*
12 *Spectacular perchlorate contamination, we are alarmed and shocked at the*
13 *games being played with our lives.* Once again the public process for issuing a
14 Clean Up Order and beginning to address this environmental disaster has been
15 delayed through legal tactics by these polluters.

16 Exh. 12 (CCA EJ "Open Letter to Our Public Officials," August 21, 2007) (emphasis added).

17 *It is criminal that these corporations – Goodrich, Black & Decker and Pyro*
18 *Spectacular – continue to be allowed to manipulate and delay the public process*
19 *in this way.* Their actions demonstrate quite clearly their lack of regard for the
20 health and well-being of the hard working families of Colton and Rialto. Justice
21 delayed is Justice denied.

22 *Id.* (emphasis added).

23 If someone crossed our borders with a gallon of chemicals and dumped it into our
24 drinking water source we would have the Department of Homeland Security and
25 every other agency there in minutes to secure the situation and the terrorist haled
26 off to Guantanamo – no attorneys, no questions, we'd take immediate action. *But*
27 *here we have domestic corporate terrorists who have dumped millions of gallons*
28 *of a deadly pollutant into our drinking water source and we sit back negotiating*
with them. How absurd can it get! . . . We demand you step forward and treat
these corporate eco-terrorists with the same zeal as we would treat any other
terrorists. This is an environmental disaster that continues to spread every day. . . .
Goodrich, Black & Decker, and Pyro Spectacular do not have a right to destroy
our common water resource. They must be held accountable!

Id. (emphasis added).

Unlike these public statements made by CCA EJ, no transcript or summary of the *ex parte*

1 communications made by CCAEJ's during its October 2006 meeting with the State Board has
2 been provided by the State Board as required by the APA. Again, "[u]nder the APA, the mere
3 submission of *ex parte* substantive comments, without more, is illegal." *Quintana*, 40 Cal. 4th
4 at 16. And, absent proof by the State Board to the contrary, where the substance of the
5 communication was unknown, it shall be inferred that unlawful communications took place.
6 *Rondon*, 151 Cal. App. 4th at 1290.

7 **F. December 4, 2006: Email from Ms. O'Haire to Mr. Cobb**

8 On December 4, 2006, Ms. Karen O'Haire, counsel for the State Board and member of the
9 Advisory Team, emailed Mr. Ted Cobb, counsel for the Regional Board, asking to discuss
10 Goodrich's and Emhart's petitions on the Regional Board's Resolution No. R8 2006 0079, which
11 delegated authority to Walter Pettit to hear and rule upon the Draft Amended 2005 CAO. Exh. 13
12 (December 4, 2006 email chain). This is direct evidence of the State Board knowingly
13 communicating *ex parte* with the Regional Board prosecutors to discuss the pending proceeding.
14 Moreover, the email itself amounts to an *ex parte* communication by the State Board with the
15 Regional Board informing the Regional Board as to the State Board's contemplated decision with
16 regard to the petitions.

17 **G. February 17, 2007: Email from the Former Board Chair to the Governor's**
18 **Office**

19 On February 17, 2007, Board Member Doduc responded to an email from the Governor's
20 office concerning this matter. Exh. 14 (February 17, 2007 email chain). The e-mail chain reveals
21 that a representative from the Governor's office informed member Doduc that residents in Rialto
22 were asking for a state of emergency to supply them clean drinking water and requests a status
23 report from the Santa Ana Regional Board on the "RP and cleanup and abatement orders. Do
24 they need help? What is causing the delays here?" Exh. 14 at 1.

25 Member Doduc's response to the Governor's office on February 17, 2007, included an
26 attached "Fact Sheet" on perchlorate (which declares Goodrich, the Emhart Parties, and Pyro
27 Spectaculars, Inc. liable) and re-circulated, as part of the e-mail chain, an *ex parte* attack piece on
28

1 Emhart and Goodrich from CCAEJ, which had been heretofore undisclosed.⁷ *Id.* at 1-2. The
2 CCAEJ attack piece, repeated as fact by the board member and forwarded to the Governor's
3 office, contains numerous unsubstantiated (and false) statements. It states, for example, that
4 "*despite their responsibility. . . . neither Goodrich Corp. nor Black & Decker have agreed to*
5 *clean up the mess they have created. . . . [W]hile the companies delay, many citizens of Rialto*
6 *drink water that is polluted by rocket fuel . . . the city teeters on the brink of running out of*
7 *water.*" *Id.*; emphasis added.⁸

8 H. March 1, 2007: Email from Mr. Egel to Ms. Jennings and Mr. Giannopoulos
9 attaching "Fact Sheet" prepared by State Board Staff

10 On March 1, 2007, an e-mail was transmitted by Mr. Rob Egel, an employee of the State
11 Board, and Ms. Jennings to Secretary Linda Adams of the California Environmental Protection
12 Agency which attaches a "Fact Sheet" Exh. 15 (March 1, 2007 email chain).⁹ The "Fact Sheet,"
13 prepared by *the State Board*, reveals that it had pre-determined the remedy before any
14 opportunity for the Named Parties to submit evidence or any the hearing has been held:

15 The Cleanup and Abatement Order and proposed amendments are the subject of
16 challenges in petitions filed by various entities named as responsible parties
17 (Among these are Kwikset, Black & Decker and Goodrich, and Pyro
18 Spectaculars). *The parties responsible for perchlorate contamination must pay*
for the cleanup in Rialto/Colton and the extra costs of providing acceptable
water.

19 *Id.* (emphasis added). Such a pre-determination not only improperly pre-judges an important
20 issue, but is also direct evidence of an additional illegal *ex parte* communication about
21 substantive issues in the proceeding.

22 I. March 1, 2007: Briefing of Linda Adams attended by Betsy Jennings, Tam
23 Doduc, and Kurt Berchtold

24 On March 1, 2007, Board Member Doduc and Mr. Berchtold (a member of the Regional

25 ⁷ It appears that the Board Member Doduc either received or obtained and thereafter saved the CCAEJ attack piece.
26 It has not been disclosed who else at the State Board received a copy of this *ex parte* communication.

27 ⁸ Despite repeated earlier requests, the State Board improperly withheld this communication from the Named Parties
28 until May 11, 2007. See Gov. Code § 11430.40; Exh.3 (May 11, 2007 Letter from Elizabeth Jennings with
27 attachments).

⁹ This this communication was improperly withheld until May 11, 2007. See Exh.3 (May 11, 2007 Letter from
28 Elizabeth Jennings with attachments).

1 Board's Advocacy Team) briefed Linda Adams (now Secretary of the California Environmental
2 Protection Agency), during which the perchlorate contamination in the Rialto-Colton
3 groundwater basin and these proceedings were discussed. Exh. 3 (p. 2); Exh. 15 (March 1, 2007
4 email chain). The State Board has admitted that this briefing took place and was attended by both
5 member Doduc and Kurt Berchtold, but argues that member Doduc left before Mr. Berchtold
6 joined. There is no evidence in the administrative record that is either competent or admissible
7 that discloses what was said by whom and whether any indirect communication took place
8 between the board member and one of the members of the Advocacy Team.

9 J. March 26, 2007: Email from Ms. Rice to Ms. Zwarts

10 On March 26, 2007, Ms. Dorothy Rice, Executive Director of the State Board and a
11 member of its Advisory Team, participated in an email exchange with Patty Zwarts, the
12 California Environmental Protection Agency Assistant Secretary for Legislation. This e-mail
13 exchange confirms at least one in-person meeting and suggests they may have met again shortly
14 thereafter for lunch regarding issues relevant to SWRCB/OCC File No. A-1824. Exh. 17
15 (March 26, 2007 email chain).¹⁰

16 Ms. Rice's e-mail stated that she wanted to get Ms. Zwarts' "perspective on water board
17 priorities", and Ms. Zwarts replied that she "just had a meeting with Gov. Wilson about the
18 Rialto-Colton cleanup and he wants Linda to take the site cleanup away from the [Regional
19 Board]. And give it to DTSC. Oh boy." Exh. 16 (March 26, 2007 email chain).

20 Notwithstanding the in-person meeting revealed in this e-mail exchange, no record of an oral *ex*
21 *parte* communication between Ms. Rice and Ms. Zwarts has been disclosed by the State Board,
22 and it is not known whether the conversation(s) between Ms. Rice and Ms. Zwarts included a
23 discussion of the perchlorate contamination in Rialto and/or the State/Regional Board
24 proceedings regarding same.

25 While no information concerning the meeting was provided, it is clear from the contents
26 of the email that members of the State Board and its advisors were being pressured via *ex parte*
27

28 ¹⁰ Again, without any explanation, the State Board withheld these communications until May 11, 2007 and never
provided Respondents with notice. Exh. 3 (May 11, 2007 Letter from Elizabeth Jennings with attachments).

1 communications to issue an order against the Named Parties.

2 **IV. COLLECTIVELY, THE UNLAWFUL EX PARTE COMMUNICATIONS**
3 **COMPEL DISQUALIFICATION AND RECUSAL**

4 The numerous illegal *ex parte* communications regarding substantive issues in
5 SWRCB/OCC File No. A-1824 among members of the State Board and the State Board's former
6 Advisory Team, the prosecutors (the Regional Board Advocacy Team), and other interested third
7 parties compel the disqualification and recusal of the State Board and its former Advisory Team
8 from taking any further action in SWRCB/OCC File No. A-1824.

9 While any one of the improper *ex parte* communications is sufficient to mandate
10 disqualification, cumulatively the evidence is overwhelming. To conclude otherwise, would be to
11 continue to violate the Named Parties' constitutional due process rights, the APA, and the State
12 Board's own guidelines governing *ex parte* communications.

13 The recusal of the entire State Board is mandated by law. Currently, the State Board is
14 comprised of the following members: Charles Hoppin (Chair), Tam Doduc (former Chair and
15 former Hearing Officer), Arthur Baggett, Jr., and Frances Spivey-Weber. Two of these members,
16 Tam Doduc and Arthur Baggett, Jr., have been members of the State Board during the entire
17 pendency of this matter. All but one of the State Board members (Frances Spivey-Weber) have
18 been members since 2006 and were presumably present during the October 2006 attack by
19 CCAEJ. Finally, as matter of law it is proper to infer that all of the illegal *ex parte*
20 communications to members of the State Board's and its Former Advisory Team have been
21 shared with the other members of that team and members of the State Board. Certainly, no such
22 evidence to the contrary has been provided by the State Board or appears in the administrative
23 record, which according the draft order is closed.

24 As noted above, "[u]nder the APA, the mere submission of *ex parte* substantive
25 comments, without more, is illegal." *Quintanar*, 40 Cal.4th at 16. If the agency claims that a
26 prohibited *ex parte* communication did not occur, it is that agency's burden to so prove with
27 competent (admissible) evidence. *Rondon*, 151 Cal. App. 4th at 1286. Absent such proof, it shall
28 be inferred that unlawful communications took place. *Rondon*, 151 Cal. App. 4th at 1290.

1 **V. CONCLUSION**

2 For the foregoing reasons, the Names Parties respectfully request that the State Board
3 grant their motion for disqualification and recuse themselves from taking any further action in
4 SWRCB/OCC File No. A-1824, except for those actions required to comply with the Superior
5 Court's Writ of Mandate. In the event that the State Board does not recuse themselves, the State
6 Board should refrain any further action in SWRCB/OCC File No. A-1824 beyond those actions
7 that are required to comply with the Superior Court's Writ of Mandate, until such time as the
8 Named Parties' appeals involving the disqualification of the State Board currently pending before
9 the California Court of Appeal are decided.

10 Dated: May 6, 2009

Respectfully submitted,

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EXHIBIT 1



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Arnold Schwarzenegger
Governor

TO: Arthur G. Baggett, Jr.
Acting Chairman

FROM: Craig M. Wilson
Chief Counsel
OFFICE OF CHIEF COUNSEL

DATE: February 16, 2001

SUBJECT: EX PARTE COMMUNICATIONS

Introduction

At your request, I have prepared this updated memo on the subject of ex parte communications. This memo is intended to supersede previous memos from this Office regarding ex parte, all of which were written prior to additions to the State's Administrative Procedure Act (APA) covering ex parte.

Overview

1. If a proceeding is not pending or impending before a board, board members may communicate with members of the public regarding general issues within the board's jurisdiction. Board members may also participate in information gathering efforts such as tours or site visits.
2. If an adjudicatory proceeding is pending or impending before a board, ex parte communications are prohibited.
3. If a rulemaking proceeding is pending or impending before a board, a board member may, if he or she chooses to do so, have ex parte communications. If such communications occur, they must be fully disclosed on the record and must occur prior to the close of the evidentiary record.

California Environmental Protection Agency



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What is an Ex Parte Communication

An ex parte communication is an "off-the-record," private communication between a board member and any person¹ concerning a matter that is pending or impending before the applicable board. Such communications occur in absence of other parties and without notice to other parties. Examples of ex parte communication include:

1. A hearing has been scheduled to consider the assessment of administrative civil liability against a discharger for an illegal discharge. A representative of an environmental group attempts to speak to a new board member regarding the discharger's alleged long-term violations of environmental laws. Such a communication would be ex parte.
2. A hearing has been scheduled to consider the issuance of a new discharge permit to Dairy X. The president of Dairy X invites a board member out to the site to show him the facility and explain its operation. Such a communication would be ex parte.

It is important to note what is not an ex parte communication. Ex parte rules do not apply where a matter is not pending or impending before a board.² For example, if a new board member would like to tour some of the major discharge facilities within the region, he or she may do so as long as there is not a proceeding regarding the facility pending before the board.

Why Have Rules on Ex Parte Communications

Rules regarding ex parte communications have their roots in constitutional principles of due process and fundamental fairness. Ex parte communications are fundamentally offensive in adjudicatory proceedings because they involve an opportunity by one party to influence the decision maker outside the presence of opposing parties, thus violating due process requirements. Ex parte communications can frustrate a lengthy and painstaking adjudicatory process because certain decisive facts and arguments would not be reflected in the record or in the decisions. Such communications are not subject to rebuttal or comment by other parties. Ex parte communications also may contribute to public cynicism that adjudicatory decisions are based more on politics and undue influence than on the facts, the laws, and the exercise of discretion to promote the public interest. Finally, ex parte contacts may frustrate judicial review since the record would be missing such communications.

¹ Communication with staff members are not covered in this memo, but may be restricted in limited situations based on separation of function principles (e.g., where staff act as advocates before the boards).

² Any doubts regarding whether a proceeding is about to commence should be resolved through consultation with legal counsel.

The Rules Regarding Ex Parte Depend on the Type of Proceeding

The State and Regional Water Board members wear many hats. The boards are part administrator, part planner, part adjudicator. The type of proceeding a board engages in is important in understanding how the rules regarding ex parte operate.

Adjudicatory Proceedings

Adjudicatory proceedings—sometimes called quasi-judicial—are proceedings in which an agency determines facts and applies established rules to those facts in order to formulate a decision regarding rights and duties of specific persons or entities. Adjudicatory proceedings include, but are not limited to, enforcement actions and permit issuance.³ For example, any person who proposes to discharge waste to waters of the state must apply for a discharge permit. The proceeding to consider whether to issue the permit would be adjudicatory. Adjudicatory proceedings are covered by statutory requirements contained in the State's Administrative Procedure Act (APA). Included in the APA is a requirement that there be no ex parte communications during an adjudicatory proceeding. Thus there is a clear statutory requirement prohibiting ex parte communications in adjudicatory proceedings.⁴

In some cases a board may not have initiated or may be in the middle of an adjudicatory proceeding and determine that the proceeding involves broad policy issues. In such cases, the board may choose to terminate or delay the proceeding in order to conduct widely noticed proceedings such as workshops to consider the broader policy issues. Any such proceeding would not be considered part of the original adjudicatory proceeding and would be considered rulemaking in nature.

Rulemaking Proceedings

Rulemaking proceedings are proceedings designed for the adoption, amendment, or repeal of any rule, regulations or standard of general application. Rulemaking proceedings include proceedings to adopt regulations, water quality control plans, policies or guidelines. The APA contains no prohibitions against ex parte communications during rulemaking proceedings, but does require that rulemaking be based on a public record. Because of the latter requirement, any ex parte contacts that occur during a rulemaking proceeding should be fully disclosed on the

³ The line between adjudicatory and rulemaking proceedings is not always bright. For example, prohibition zones may be established in a water quality control plan. If such a zone were small and applied to a specific group, the action to establish the zone is adjudicatory in nature.

⁴ While there is an exception regarding communication(s) on noncontroversial procedural matters, the better practice is to have staff handle such communications.

record.⁵ Thus, no board member should engage in an ex parte communication with any person who intends to influence the decision of the board member in a rulemaking proceeding unless (1) the board member notifies the person that a full disclosure of the ex parte communication will be entered in the board's record and (2) the board member discloses the ex parte communication in the board's record. The disclosure should include the identity of the persons involved in the communication, the approximate date of the communication, and the substance of the communication.

To insure fairness, interested persons should be afforded an opportunity to respond to any ex parte communication(s) after they are disclosed on the record. In addition, no ex parte communications are allowed after the close of the record in a rulemaking proceeding. Finally, if an ex parte communication would lead to a situation where the board member could not be fully objective and unbiased in the proceeding, the board member should recuse himself or herself from participation in the matter.

Conclusion

Ex parte contacts are prohibited where an adjudicatory proceeding is pending or impending. Adjudicatory proceedings include the following:

- ◆ National Pollutant Discharge Elimination System (NPDES) permits
- ◆ Waste Discharge Requirements (WDRs) Administrative Civil Liability (ACL)
- ◆ Cease and Desist Orders Cleanup and Abatement Orders
- ◆ Water Right Permits and Enforcement Actions

Ex parte contacts may take place if a board member wishes, as conditioned above, in rulemaking proceedings. Rulemaking proceedings include:

- ◆ Water quality control plans (e.g., Regional Board Basin Plan Amendments or Statewide Plans such as the Ocean Plan)

⁵ While ex parte communications are not precluded during rulemaking proceedings, a board member may always choose not to engage in such contacts to avoid even the appearance of an impropriety.

- ◆ State Policy for Water Quality Control (e.g., the State Board's Enforcement Policy)
- ◆ Guidelines
- ◆ Informal proceedings (e.g., workshops) on policy issues⁶

⁶ Informal proceedings are defined in the State Board's regulations. (Cal. Code Regs., tit. 23, § 649(b).) They include hearings to gather information relevant to matters within the Board's jurisdiction. For example, recent State Board workshops on what constitutes a subterranean stream and on simplifying the water rights permit process were informal proceedings.

EXHIBIT 2



Linda S. Adams
Secretary for
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Arnold Schwarzenegger
Governor

TO: [via e-mail and U.S. Mail]
Board Members
STATE WATER RESOURCES CONTROL BOARD AND
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS

/s/

FROM: Michael A.M. Lauffer
Chief Counsel
OFFICE OF CHIEF COUNSEL

DATE: 7-25-06

SUBJECT: TRANSMITTAL OF EX PARTE COMMUNICATIONS QUESTIONS AND
ANSWERS DOCUMENT

Attached please find a newly issued document on ex parte communications. This memorandum and the accompanying Ex Parte Questions and Answers supersede all previous Office of Chief Counsel memoranda on the same subject.¹

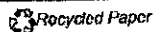
The State Water Resources Control Board and the nine California Regional Water Quality Control Boards perform a variety of functions. The boards convene to set broad policy consistent with the laws passed by Congress and the Legislature. In this regard, the boards perform a legislative function. The boards also routinely determine the rights and duties of individual dischargers or even a class of dischargers. In this regard, the boards perform a judicial function. The judicial function manifests itself when the boards adopt permits and conditional waivers or take enforcement actions.

Different rules apply depending on the type of action pending before a water board. Some of these rules concern the specific rights available to participants and the meeting processes the board will use to decide the action. One of the distinctions between the two types of proceedings is the prohibition against ex parte communications. An ex parte communication is a communication to a board member about a pending water board matter that occurs in the absence of other parties to the matter and without notice and opportunity for all parties to participate in the communication. The accompanying questions and answer document addresses common issues pertaining to ex parte communications.

I have structured the questions and answers document to serve as a reference document for board members and the attorneys within the Office of Chief Counsel. By breaking the subject

¹ The most recent memorandum was an April 17, 2001 memorandum from Craig M. Wilson (Chief Counsel) to Arthur G. Baggelt, Jr. (Chair) entitled "Ex Parte Communications." That memo superseded prior memoranda from the Office of Chief Counsel concerning ex parte communications.

California Environmental Protection Agency



matter into discrete questions, my intent is to provide a list that board members can quickly scan to identify relevant issues and the accompanying legal answer. Further, the questions and answers document includes a flow chart to facilitate analyzing routine ex parte issues and answering questions.

While the attached document addresses the common questions concerning ex parte communications, there are three broad themes pertaining to communications with board members.

1. If a proceeding is not pending or impending before a water board, board members may communicate with the public and governmental officials regarding general issues within the water board's jurisdiction. Water board members may also participate in information gathering efforts such as tours or site visits.
2. If an adjudicative proceeding is pending or impending before a water board, ex parte communications with that water board's members regarding an issue in that proceeding are prohibited.
3. If a rulemaking or other proceeding is pending or impending before a water board, a board member may, if he or she chooses to do so, have ex parte communications regarding issues in that proceeding.

The questions and answer document does not and cannot address all the issues pertaining to ex parte communications. Over time additional questions may be added based on feedback from board members. Similarly, areas where the law is unclear may be addressed through revisions to the State Water Resources Control Board's regulations.

Attachment

cc: [All via e-mail only]

Celeste Cantú, EXEC
Tom Howard, EXEC
Beth Jines, EXEC
All Executive Officers, Regional Water Boards
All Assistant Executive Officers, Regional Water Boards
Branch Offices
All Office of Chief Counsel attorneys

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EX PARTE QUESTIONS AND ANSWERS

I. EX PARTE SUMMARY

Summary of ex parte framework:

1. If a proceeding is not pending or impending before a water board, board members may communicate with the public and governmental officials regarding general issues within the water board's jurisdiction. Water board members may also participate in information gathering efforts such as tours or site visits.
2. If an adjudicative proceeding is pending or impending before a water board, ex parte communications with that water board's members regarding an issue in that proceeding are prohibited.
3. If a rulemaking or other proceeding is pending or impending before a water board, a board member may, if he or she chooses to do so, have ex parte communications regarding issues in that proceeding.

1. Q. What is an ex parte communication?

A. An ex parte communication is a communication to a board member about a pending water board matter that occurs in the absence of other parties to the matter and without notice and opportunity for all parties to participate in the communication. People often refer to these communications as "one-sided," "off-the-record," or private communications between a board member and any person¹ concerning a matter that is pending or impending before the applicable water board.

One-sided communications does not mean that the communication must occur in privacy or among two people in order to be an ex parte communication. Even a public communication before a large audience may still be an ex parte communication if other parties to the proceeding do not have notice of and an opportunity to participate in the communication.

Examples of ex parte communications include:

1. A water board has scheduled a hearing to consider the assessment of administrative civil liability against a discharger for an illegal discharge. Before the hearing, a representative of an environmental group attempts to speak to a new board member regarding the discharger's alleged long-term violations of environmental laws. Such a communication would be ex parte.

2. A water board has scheduled a hearing to consider the issuance of a new discharge permit to Dairy X. The president of Dairy X invites a board member out to the site to show him/her the facility and explain its operation. Such a communication would be ex parte.

2. Q. What is a communication?

Communications include face-to-face conversations, phone calls, written correspondence, e-mails, instant messaging, and the next level of technology that presents itself. The Office of Chief Counsel also considers site visits and tours to be

¹ There are special rules for certain staff who advise the board member. Please see Question 22.

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ex parte communications. By their very nature, site visits communicate evidentiary information to board members. Site visits can be a useful part of the decision-making process and special procedures should be used for site visits. (Please see Questions 35-37.)

3. Q. What purposes are served by limitations on ex parte communications?

Rules regarding ex parte communications have their roots in constitutional principles of due process and fundamental fairness. With public agencies, ex parte communications rules also serve an important function in providing transparency. Ex parte communications may contribute to public cynicism that decisions are based more on special access and influence than on the facts, the laws, and the exercise of discretion to promote the public interest.

Ex parte communications are fundamentally offensive in adjudicative proceedings because they involve an opportunity by one party to influence the decision maker outside the presence of opposing parties, thus violating due process requirements. Such communications are not subject to rebuttal or comment by other parties. Ex parte communications can frustrate a lengthy and painstaking adjudicative process because certain decisive facts and arguments would not be reflected in the record or in the decisions. Finally, ex parte contacts may frustrate judicial review since the record would be missing such communications.

4. Q. Do ex parte communications rules prevent water board members from understanding the issues and people's concerns?

Ex parte communications rules do not prevent the flow of information to water board members. Instead, ex parte rules shape how the board members receive that information and are intended to ensure that board members receive relevant information in a fair and transparent manner. A person can share issues and concerns by filing appropriate documents with the board and during a public meeting consistent with the water boards' administrative procedures.

Essentially, ex parte rules allow everyone to know and, if desired, rebut the information upon which the water boards make decisions before they make their decisions. The rules are also intended to ensure that all board members have a common record upon which to make their decisions and that a court will be able to ascertain the bases for such decisions.

5. Q. How can board members educate themselves without violating the prohibition on ex parte communications?

Rules on ex parte communications should not serve to prevent board members from understanding the matters to be considered and decided by the board. If a board member needs additional information about a matter, there are appropriate processes that can be used. There is no substitute for an active, engaged board member when it comes to understanding an issue. Asking questions on the record, or requesting staff and interested persons to specifically address certain issues on the record, helps provide the necessary foundation for board action. In addition, staff assigned to advise the board (see Question 22) may provide assistance and advice, and may help evaluate

EX PARTE QUESTIONS AND ANSWERS

evidence in the record, so long as the staff does not furnish, augment, diminish, or modify the evidence in the record.

6. **Q. How can water board members explain ex parte rules to the public?**

This is a decision for individual board members to make. Board members are free to refer callers to the Office of Chief Counsel. If the board member chooses to explain ex parte limitations with a person, there are certain themes to keep in mind when explaining ex parte rules.

First, ex parte rules do not prevent anyone from providing information to the water boards or requesting specific actions from the water boards. Ex parte rules simply require that the information come into the record through a writing subject to public review or in a duly noticed, public meeting. Second, ex parte rules are designed to ensure fairness for everyone. No person or interest uniquely benefits from ex parte rules. The rules apply to everyone, and prevent any one person or interest from having special access to water board members. Third, ex parte rules provide transparency, allowing everyone to understand and to appreciate how the water boards reach a decision. By encouraging persons to submit written comments or speak on the record, a person's comments will be heard by all the water board members and other stakeholders. If a person persists, however, a board member can explain that s/he might become subject to disqualification, in which case the person's efforts to communicate with the board member will have been to no avail.

7. **Q. What proceedings are subject to the prohibition on ex parte communications?**

Only adjudicative proceedings are subject to the prohibition on ex parte communications. The water boards function in many capacities, from setting broad policies on water quality control, to planning to implement those policies, to implementing those policies through specific regulatory actions that determine the rights and duties of a person or class of persons. Adjudicative proceedings fall in the latter category of implementing policies through actions that determine the specific rights and duties of persons. (Please see Questions 8-11.)

The continuum from policy-setting to policy-implementing does not have discrete breakpoints. This question and answer document is designed to answer some of the most common questions and provide a useful framework for understanding ex parte issues. It does not create any rules beyond those contained in the Administrative Procedure Act or court decisions. Board members will need to work closely with legal counsel at times to determine whether the prohibition on ex parte communications applies to a specific action or proceeding.

II. ADJUDICATIVE PROCEEDINGS

A. **Types of Adjudicative Actions**

8. **Q. What actions are adjudicative?**

Adjudicative actions are those actions where the water boards make a decision after determining specific facts and applying laws and regulations to those facts. Adjudicative proceedings are the evidentiary hearings used to determine the facts by which a water

EX PARTE QUESTIONS AND ANSWERS

board reaches a decision that determines the rights and duties of a particular person or persons. Adjudicative proceedings include, but are not limited to, enforcement actions and permit issuance. For example, any person who proposes to discharge waste to waters of the state must apply for a discharge permit. The proceeding to consider whether to issue the permit and the conditions to include in the permit would be adjudicative.

Below is a partial list of common water board actions that often follow adjudicative proceedings:

- National Pollutant Discharge Elimination System (NPDES) permits;
- Waste discharge requirements (WDRs);
- Water right permits and requests for reconsideration;
- Orders conditionally waiving waste discharge requirements;
- Administrative civil liability (ACL) orders;
- Cease and desist orders;
- Cleanup and abatement orders;
- Water quality certification orders (401 certification);
- Permit revocations.

A list of common actions that are not subject to the ex parte prohibition is provided in Part III.

9. **Q. Are ex parte communications prohibited for pending adjudicative actions?**

Yes. The ex parte communications prohibition for adjudicative proceedings originates in court decisions and has been codified in Chapter 4.5 of the Administrative Procedure Act. The Administrative Procedure Act prohibits "direct or indirect" communications to water board members about an issue in a pending adjudicative proceeding.

10. **Q. Does the ex parte communications prohibition apply to general permits?**

Yes. General waste discharge requirements determine the rights and duties of those persons subject to the general permit. General waste discharge requirements are directly enforceable against the dischargers who enroll under the permit. General waste discharge requirements are specifically exempt from the rulemaking provisions of the Administrative Procedure Act. The water boards adopt general waste discharge requirements following the same procedures as are used for any other permitting decision, as opposed to the legislative procedures used to adopt water quality control plans or for administrative rulemaking. General waste discharge requirements are also subject to the same judicial review standards as any other permit. In function and form, the issuance of general waste discharge requirements is an adjudicative action. The proceedings culminating in the issuance of general waste discharge requirements are, therefore, more appropriately considered adjudicative proceedings.

Under appropriate circumstances, a discrete, significant policy issue may be segregated from the adjudicative proceeding and decided using suitable procedures for policy-setting (e.g., regulations, amendments to a water quality control plan, or state policy for water quality control). The Court of Appeal recently sanctioned this approach in the *State Water Resources Control Board Cases*,² while noting the importance of

² *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674.

EX PARTE QUESTIONS AND ANSWERS

recognizing the different requirements that apply to matters decided in an adjudicative proceeding and those decided separately in legislative proceedings. Those issues considered in the policy-setting procedure would not be subject to the prohibitions on ex parte communications during the policy-setting proceeding. However, the ex parte communications prohibition still applies to the general permit's adjudicative proceeding (including those issues not involved in the policy-setting proceeding and those issues addressed in the policy-setting proceeding once the policy-setting proceeding has concluded).

11. **Q. Does the ex parte communications prohibition apply to waivers?**

Yes. For many of the same reasons set forth in Question 10, the issuance of a conditional waiver pursuant to Water Code section 13269 is more appropriately considered an adjudicative proceeding. As discussed in Question 10, discrete, significant policy issues may be segregated from the adjudicative proceeding and decided using appropriate procedures for policy-setting (e.g., regulations, amendments to a water quality control plan, or state policy for water quality control).

B. **Pending Adjudicative Proceeding**
12. **Q. When is a proceeding pending?**

A proceeding is pending from the time the water board issues an initial pleading in an evidentiary proceeding, or from the time an application for a decision is filed that will require an evidentiary hearing, whichever is earlier. In many circumstances, the "initial pleading" will be a notice of hearing with the staff's proposed action.

For example, an adjudicative proceeding is pending for an administrative civil liability order from the time an administrative civil liability complaint is issued. A proceeding for issuance of waste discharge requirements is pending before a regional water board when the board receives a report of waste discharge, because that is an application for decision that will occur in a hearing before the board. For general waste discharge requirements, the notice of an evidentiary hearing makes the matter pending. For water rights permits, the best legal interpretation is that the proceeding is pending when the State Water Board issues a notice of hearing, because prior to that time there is no assurance that there will be an evidentiary hearing since the division chief may issue certain water rights permits.

13. **Q. What is an impending matter?**

The Administrative Procedure Act only addresses "pending" proceedings, however, there may be circumstances where board members are aware that an adjudicative action is impending. The fairness and transparency of the process are no less compromised if an ex parte communication takes place a few days before the issuance of a notice of hearing or the filing of a report of waste discharge. The desire of a person to speak with a board member about a specific site should generally be viewed as a signal that something is impending. Where a proceeding is clearly impending, water board members should consider ex parte communications to be prohibited based on due process considerations. For example, if a water board member knows that a notice on an enforcement action is to be signed on a Tuesday, it would be inappropriate for the

EX PARTE QUESTIONS AND ANSWERS

board member to receive an ex parte communication concerning the enforcement matter on Monday night.

The issues concerning impending matters can be difficult and fact-specific. The most important issue with impending matters is to avoid a situation where it appears the communication was timed to avoid the Administrative Procedure Act's prohibition on ex parte communications for pending adjudicative actions. In the event there is a communication received on an impending matter, the board member may want to consider whether an appropriate disclosure should be made to avoid a subsequent allegation of impropriety. (Please see Question 26.) Water board members should consult with legal counsel if they have any questions on a specific communication in an impending matter.

14. **Q. How can a board member determine whether an action is pending?**

Some regional water boards maintain a list of applications under consideration and outstanding notices. Confer with your regional water board's Executive Officer (or for State Water Board members, the Executive Director) to determine how your water board maintains a list of pending adjudicative actions.

15. **Q. Are adjudicative matters pending before the regional water boards also pending before the State Water Board?**

No, but once the State Water Board receives a petition challenging a regional water board action, the ex parte communications prohibition applies to the petition proceeding. The State Water Board has the authority to review the regional water boards' adjudicative actions. Most regional water board adjudicative actions are not petitioned to the State Water Board. It would be inappropriate to consider a matter pending before the State Water Board while it is still pending before the regional water board and it might never be challenged to the State Water Board.

A State Water Board member may wish to confer with the Office of Chief Counsel before having a communication about a controversial regional water board adjudicative action where there is a substantial likelihood that a petition will be filed with the State Water Board. In certain circumstances, the more cautious legal advice may be to regard the adjudicative proceeding as *impending* before the State Water Board, even though it is still pending before the regional water board. Determining whether the matter is impending would be a fact-specific inquiry, and would only be the advice of legal counsel in light of those facts.

Once the State Water Board receives a petition, the basis for the State Water Board's review will generally be the evidentiary and administrative record before the regional water board. As a result, the same prohibition on ex parte communications that applies to regional water board members in the region taking the action applies to the State Water Board members deciding the petition on the merits. The prohibition on communications with the State Water Board members concerning a petition begins when the State Water Board receives the petition.

EX PARTE QUESTIONS AND ANSWERS

16. Q. Does a reopener provision in a permit mean an action is pending?

No, not until a specific reopener or permit modification action is noticed for board action. Many permits include provisions that allow the regional water board to modify the permit based on subsequent information or conditions. The ability for a regional water board to reopen and modify the permit in the future does not trigger the prohibition on ex parte communication. However, once a water board issues a notice to reopen the permit, the rules concerning pending adjudicative proceedings would apply to the consideration of permit amendments.

C. Scope of Ex Parte Communications Prohibition

17. Q. What subjects are covered by the ex parte communications prohibition?

The Administrative Procedure Act's prohibition on ex parte communications is very broad. It extends to "direct and indirect" communications. Board members must be mindful that persons who ordinarily would not be subject to the prohibition (e.g., secretaries, staff assigned to advise the board) should not be used as a conduit for a prohibited ex parte communication, and thereby a source of an indirect communication.

The ex parte communications prohibition also extends to "any issue in the proceeding." With limited exceptions discussed in Questions 19-20, if the communication involves any issue in the proceeding, be it a factual issue, a legal issue, or a policy issue, it is subject to the ex parte communications prohibition.

18. Q. Are all communications prohibited with a person interested in an adjudicative proceeding pending before a water board?

No. Communications are only prohibited to the extent they reach an issue in the proceeding. Even where a matter is pending before a water board, a communication with a party to the matter is not considered ex parte if the communication does not relate to the matter.

19. Q. Are there exceptions to the prohibition?

There are certain limited exceptions to the prohibition on ex parte communications. First, as discussed in Question 22, certain staff advising the board are not subject to the prohibition. Second, there are limited statutory exemptions, but generally they should only be used after consultation with legal counsel. The first statutory exemption is typically not available to the water boards, and involves communications to resolve an ex parte matter specifically authorized by statute. The second statutory exemption is for communications that concern a matter of procedure or practice that is not in controversy.

20. Q. What is a matter of practice or procedure that is not in controversy?

The Law Revision Commission comments supporting the Administrative Procedure Act give several examples of the types of "practice and procedure" matters that are not in controversy. Matters of practice and procedure include the format of papers to be submitted, the number of copies, manner of service, and calendaring meetings. The Administrative Procedure Act also identifies continuances, as a matter of practice or procedure. Delays associated with a continuance request, however, may often be

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controversial. As a result, a request for continuance ordinarily should be made through more formal procedures to ensure that all parties are aware of the request and have an opportunity to respond.

Generally, staff or counsel, as opposed to a board member, would handle the types of matters embraced by this exception to the Administrative Procedure Act's prohibition on ex parte communications.

D. Persons Subject to the Ex Parte Communications Prohibition

21. Q. Who is subject to the rules prohibiting ex parte communications?

Generally, the prohibition on ex parte communications extends to any person attempting to communicate with a board member about an issue in a pending adjudicative proceeding. The Administrative Procedure Act broadly defines person to include "an individual, partnership, corporation, governmental subdivision or unit of a governmental subdivision; or public or private organization or entity of any character." As a result, essentially anyone expressing an interest in a water board action and attempting to communicate with a board member is subject to the prohibition on ex parte communications in adjudicative proceedings.

The notable exceptions to the prohibition are for communications between board members and from certain staff of the water boards (see Question 22). Because board members collectively serve as the presiding officer for an adjudicative hearing, communications among the board members are not subject to the ex parte prohibition. Obviously the members remain subject to other substantive and procedural laws (such as the Bagley-Keene Open Meeting Act, which prohibits a quorum of a state board from discussing an issue either collectively or through serial discussions).

22. Q. May staff communicate with board members without violating ex parte rules?

Certain staff may communicate with the board members without violating ex parte rules. Staff may communicate with water board members about a pending adjudicative proceeding under three circumstances. Staff and legal counsel will generally be responsible for knowing their assignments on specific proceedings, and will only contact board members if appropriate pursuant to one of the following circumstances. If a board member wishes to communicate with staff and does not know which staff may be an appropriate contact, the board member should contact the Office of Chief Counsel to determine the appropriate staff contact. (Please see Question 42.)

(1) *Staff Assigned to Assist and Advise the Board:* In virtually all circumstances, there are some staff (including at least one attorney) assigned to assist and advise a water board. These staff members are not advocates for a particular action, and in fact, cannot have served as investigators, prosecutors, or advocates in the proceeding or its pre-adjudicative stage for the ex parte exception to apply. These staff members may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record. For certain proceedings, the water board may issue a memorandum detailing staff responsibilities and identifying the staff assigned to assist and advise the board.

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(2) *Staff Advising the Board on a Settlement Offer:* A staff member of the water boards, even if s/he has previously served as an investigator or advocate in the pending adjudicative proceeding, may communicate with a board member concerning a settlement proposal advocated by the staff member. While the Administrative Procedure Act permits such communications, the more cautious approach would be for the water board to receive the proposed settlement communication in writing to avoid any subsequent claims of irregularity and to allow the water board to receive a candid assessment from advisory staff who have not participated in the investigation or advocacy of a specific action.

(3) *Staff Advising the Board in Nonprosecutorial Proceedings:* A staff member of the water boards, even if s/he has previously served as an investigator or advocate in the pending adjudicative proceeding may communicate with a board member concerning issues in a non-prosecutorial proceeding. These discussions are not subject to the ex parte communications prohibition.

23. **Q. Are other government officials subject to the ex parte rules?**

Yes. Persons representing other government officials and agencies (local, state, or federal) are subject to the Administrative Procedure Act's prohibition on ex parte communications if they attempt to communicate with a water board member about a pending adjudicative proceeding. Keep in mind that the State Water Board and regional water boards are separate state agencies. As a result, the ex parte rules extend to communications between members of different water boards.

24. **Q. May a board member attend a publicly noticed staff-level workshop on an adjudicative matter?**

Yes. When water board staff notice a meeting, even as a staff-level workshop, interested persons are on notice that issues pertaining to the adjudicative matter will be discussed. The staff workshop record (including, for example, the audio tape from the workshop) would become part of the record and basis for the subsequent action by the water board. It is permissible for a board member or multiple board members to attend such a workshop, and the communications received during such a workshop are not ex parte communications. If a quorum of the water board may be present, a Bagley-Keene Open Meeting Act notice may also be necessary.

E. **Consequences of Prohibited Ex Parte Communications**

25. **Q. What are the consequences of violating the ex parte communications prohibition?**

Prohibited ex parte communications can have a number of consequences. First, board members must disclose a prohibited ex parte communication on the record and the board may be required to hear comments or additional evidence in response to the ex parte communication. Second, a prohibited ex parte communication may be grounds for disqualifying the board member from participating in the adjudicative proceeding. Third, a prohibited ex parte communication could be used as a basis for a subsequent legal challenge to the board's adjudicative action, especially if the communication is not properly disclosed and the board member participates in the proceeding. The Administrative Procedure Act also authorizes a water board to sanction a person

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violating the prohibition on ex parte communications, although this is likely to be used only for egregious or recurring violations.

26. Q. How may a board member cure an inadvertent ex parte communication?

The Administrative Procedure Act provides explicit procedures that a board member is required to follow if there has been an ex parte communications. These procedures do not subsume the rule or provide a mechanism for circumventing the Legislature's prohibition on ex parte communications in adjudicative proceedings.

In the event of receiving a prohibited ex parte communication, the water board member must disclose the communication on the record. Disclosure requires either (1) including a written ex parte communication in the record, along with any response from the board member, or (2) memorializing an oral communication by including a memorandum in the record stating the substance of the communication, identifying who was present at the time of the communication, and any response from the board member. The board member must notify all parties of the ex parte disclosures. Additional proceedings may be necessary if a party timely requests an opportunity to address the disclosure.

In the event a board member receives what may be a prohibited ex parte communication, it is important to work with legal counsel to determine whether the communication is indeed prohibited, and, if the communication is prohibited, that it is disclosed as required by the Administrative Procedure Act.

27. Q. What if a board member received a communication about an adjudicative proceeding before becoming a board member?

The Administrative Procedure Act requires a water board member to disclose any communications the member received, prior to becoming a board member, about adjudicative proceedings pending before the water board at the time the member received the communication. This provision recognizes that the communication was not per se prohibited (because the person was not yet a board member), but still provides a mechanism to disclose such communications in the interest of fairness. The disclosure follows the same procedure discussed in Question 26.

Importantly, this provision of the Administrative Procedure Act does not require all communications the new board member has ever received to be disclosed simply because the communication involves an issue in the adjudicative proceeding. Instead, the provision only reaches back to the time the adjudicative proceeding was pending before the water board. Further, the factual circumstances requiring disclosure rarely occur because there are three necessary elements to trigger this disclosure requirement: (1) a communication the member recalls receiving prior to serving on the board, (2) the communication involves an adjudicative matter pending before the board, and (3) the communication occurred at a time the adjudicative matter was already pending before the board.

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III. RULEMAKING AND OTHER PROCEEDINGS

28. Q. What actions are rulemaking?

Rulemaking proceedings are proceedings designed for the adoption, amendment, or repeal of any rule, regulation, or standard of general application. Rulemaking proceedings include proceedings to adopt regulations, water quality control plans, policies, or guidelines. The water boards adopt most total maximum daily loads (TMDLs) as basin plan amendments, so TMDLs typically are rulemaking proceedings.

Below is a partial list of common water board actions resulting from rulemaking proceedings:

- Water quality control plans (e.g., basin plan amendments, statewide plans such as the Ocean Plan);
- State Policy for Water Quality Control (e.g., the State Water Board's Water Quality Enforcement Policy);
- Regulations;
- Guidelines.

29. Q. Is there a prohibition on private communications in rulemaking actions?

No. The Administrative Procedure Act contains no prohibition against private communications during rulemaking proceedings. However, information obtained outside of the public record for the rulemaking action may not form the basis for a board's action and the board's action must be supported by the information contained in the record. Some of the same policy rationales for the ex parte communications prohibition exist for rulemaking. Nothing prevents individual water board members from choosing to avoid such communications during rulemaking proceedings.

30. Q. What is the Office of Chief Counsel's recommendation on handling communications in rulemaking proceedings?

There is no constitutional or statutory duty to disclose private communications in rulemaking proceedings, but the Office of Chief Counsel advises water board members to disclose on the record any private communications received during rulemaking proceedings. The reasons for this recommendation are multifold. First, the water boards must base rulemaking decisions on the public record, because the public record is a water board's justification for defending an action in court. If a board member supports a specific rulemaking decision because of technical information the member receives from an ex parte communication but fails to disclose the communication, that information will not be in the record to support the board's action.

Second, the same fairness and transparency issues that underlie the ex parte prohibition for adjudicative proceedings support disclosing private communications in rulemaking proceedings. The water boards only have limited jurisdiction within the ambit delegated by the Legislature. It is appropriate that the public know the information and basis for the water boards' decisions to ensure that those decisions are being made not only in conformance with the law, but also within the scope of the considerations identified by the Legislature and water board regulations.

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31. Q. If a member chooses to disclose a communication, what is the preferred procedure?

If a board member chooses to participate in private communications in rulemaking proceedings and chooses to disclose those communications, the Office of Chief Counsel recommends a procedure similar to that described in Question 26 for adjudicative proceedings. First, the board member would notify the person that a full disclosure of the private communication will be entered in the water board's record. Second, the board member would disclose the private communication in the water board's record. The disclosure would include the identity of the persons involved in the communication, the approximate date of the communication, and the substance of the communication.

32. Q. May a board member communicate with a person about how a general requirement may be translated into a subsequent permit requirement?

Yes, as long as the subsequent permit proceeding is not pending or impending. When a water board is considering a general provision of rulemaking action it is appropriate to hear testimony about how the general provision may be converted into specific, subsequent permit requirements. The fact that this information is received during a rulemaking proceeding does not trigger the ex parte communications prohibition for the subsequent adjudicative proceeding that implements the requirements of the rulemaking. The ex parte communications prohibition will attach when the subsequent adjudicative action is pending. (Please see Questions 12-13.)

33. Q. What are "other proceedings"?

Certain proceedings before the water boards are neither adjudicative nor rulemaking proceedings. For example, the water boards often have informational items presented by staff or stakeholders. Informational items do not necessarily lead to a specific board action, but inform members about general water quality or water rights matters. In addition, the State Water Board takes some actions that are neither rulemaking or adjudicative actions (e.g., certain contracting and grants actions).

Below is a list of common, other proceedings:

- Information items;
- Workshops not conducted as part of an adjudicative or rulemaking proceeding;
- Contracting;
- Grant awarding;
- Hiring decisions and awards for employee accomplishments;
- Adopting or making comments to other entities conducting their own proceedings, such as comments on a federal Environmental Impact Statement;
- Discretionary actions to initiate or consider initiating proceedings, not amounting to a decision on the merits, such as referral of a matter to the Attorney General for enforcement.

34. Q. Are "other proceedings" subject to ex parte rules?

These other proceedings do not trigger ex parte communications prohibitions under the Administrative Procedure Act and do not have the same factors supporting the Office of Chief Counsel's recommendation to disclose ex parte communications in rulemaking

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proceedings. Where these proceedings involve closed sessions, communications subject to the attorney-client privilege, or certain law enforcement related information, confidentiality protections may apply. Otherwise, nothing prevents individual water board members from choosing to avoid such communications or to disclose such communications.

IV. SITE VISITS

35. Q. Is a site visit a form of ex parte communication?

Yes. Unless a tour or site visit is publicly noticed, the Office of Chief Counsel considers a site visit or tour of a facility, while an adjudicative proceedings is pending for that facility, to be an ex parte communication. By their very nature, site visits communicate evidentiary information to water board members. In addition, site visits frequently result in communications from the site operator about the pending matter.

36. Q. Can a board member visit a regulated facility when an adjudicative action is pending?

Yes, but only if the board provides interested persons notice and an opportunity to participate. Site visits can be a useful part of the decision-making process and special procedures should be used for site visits. A site visit essentially moves part of the evidentiary proceeding from the board hearing to a visit of the site. It is not necessary that all board members participate in the site visit for it to be permissible. In fact, a single board member can participate in a staff-level site visit if the board properly notices the visit.

To notice a site visit, the interested party list for an adjudicative proceeding should be provided sufficient notice with information about the tour and how to participate. There may be special concerns about accessibility and liability that may raise other legal issues. It is important to work with legal counsel when arranging site visits during a pending adjudicative proceeding.

37. Q. Can a board member visit a regulated facility when no adjudicative action is pending for that facility?

Yes. When there is no adjudicative action pending or impending, a water board member may visit a site that is subject to the water board's regulations. Before scheduling such a visit, it is important to coordinate with water board staff to ensure there is no pending enforcement action involving the facility and to ensure that the owner has no objection to a visit.

V. GENERAL ISSUES

38. Q. Why can legislators talk to anyone and the board members cannot?

Ex parte communications rules reflect the water boards' hybrid powers. Unlike the Legislature, the water boards have attributes of both legislative power and judicial power. The ex parte communications prohibition arises when the water boards are exercising their judicial power. Rules and due process preclude judges from receiving

EX PARTE QUESTIONS AND ANSWERS

ex parte communications on matters pending before them or inferior courts. Similarly, even when exercising legislative power, the water boards do so within the narrow confines of power granted by the Legislature. Ex parte rules can help ensure that the water boards are exercising the powers conferred by the Legislature within the confines of the power conferred by the Legislature.

39. Q. Why can the public talk to city council members and not board members?

There is some overlap between ex parte communications prohibitions for city council members and water board members. To the extent the prohibition is broader for water board members it reflects the greater number of adjudicative matters decided by the water boards and the breadth of the Administrative Procedure Act. The Administrative Procedure Act is not directly applicable to city councils. As a result, ex parte communications with city council members do not necessarily reach "direct and indirect" communications on "any issue in the proceeding."

40. Q. How should a board member handle comments concerning pending adjudicative proceedings raised in connection with other proceedings in which the board member participates?

As part of a board member's participation in other matters, a board member may receive communications relating to specific adjudicative proceedings. For example, a legislator may ask a State Water Board member to participate in a meeting related to proposed proceedings relating to application processing. As part of that meeting the legislator or another participant may complain about how a particular application, that is the subject of a pending adjudicative proceeding, is being handled. The meeting does not involve an improper ex parte contact, because it concerns proposed legislation, not an adjudicative proceeding, but the specific complaint involves an inappropriate ex parte contact.

To avoid this problem, board members should make clear at the outset that they cannot discuss specific adjudicative proceedings pending before the water boards. If, despite this warning, a participant begins to raise issues concerning a specific pending proceeding, the board member should interrupt to remind the participants that the board member cannot discuss those issues. Any ex parte communications that occur as part of the meeting should be disclosed, following the procedures discussed in Question 26.

41. Q. Is a communication about a pending adjudicative matter, received during a public forum, an ex parte communication?

Yes. While the water boards are required to have a public forum, persons interested in a pending adjudicative proceeding do not have notice that their issue may be discussed during a specific public forum. Therefore, even though the board receives the communication during a public meeting, the communication may violate the ex parte prohibition if it concerns a pending adjudicative proceeding. Legal counsel will typically work with a water board's chair if this circumstance occurs. Fortunately, such communications can typically be cured by including a copy of the public forum transcript or tape into the administrative record for the adjudicative proceeding.

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42. Q. Whom can a board member speak with to clarify ex parte concerns?

Water board members should contact the Office of Chief Counsel with questions about ex parte issues. A regional water board member should contact the attorney assigned to represent the member's region or the assistant chief counsel for regional board services. State Water Board members should contact the chief counsel.

In all circumstances, a water board member should indicate that he or she has a question about ex parte communications in *Matter X*—identifying the specific matter. It is important to identify the specific matter, because at times certain attorneys within the Office of Chief Counsel (even the chief counsel) may be recused from a matter or may be assigned to prosecute the matter. By identifying the matter from the outset of the communication, the attorney can make sure you are getting the correct advice from the correct person.

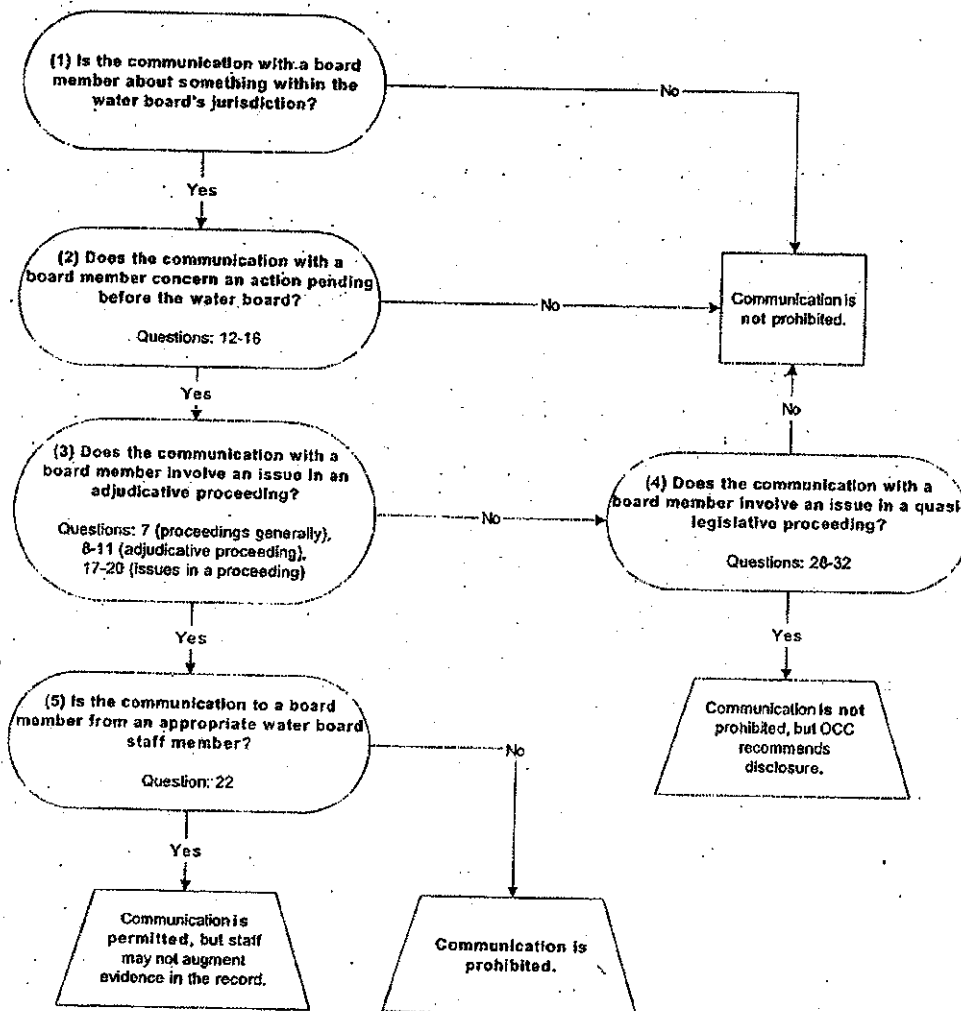
43. Q. Who is responsible for complying with the ex parte rules – the board members or the public?

There is a shared responsibility for complying with the ex parte communications prohibition of the Administrative Procedure Act. Water board members are expected to know the rules and remain vigilant in their application of the rule. If a person attempts to violate the prohibition on ex parte communications, the board member should be prepared to stop the communication, because of the risk the communication could result in disqualification of the board member.

Persons participating in adjudicative proceedings also have an obligation to understand and follow the rules, particularly attorneys and professional lobbyists. As discussed in Question 25, in egregious circumstances violating the prohibition on ex parte communications can subject a person to civil contempt proceedings.

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VI. SIMPLIFIED EX PARTE FLOW CHART



**Priority One Report
May 6, 2009**

CD

AB 139(Brownley) Los Angeles County Flood Control District: fees and charges.

Location: 02/26/2009-A L. GOV.

Summary: Existing law, the Los Angeles County Flood Control Act, establishes the Los Angeles County Flood Control District and authorizes the district to control and conserve the flood, storm, and other wastewater of the district. The act declares the district to be a body corporate and politic, and to have various powers, including the power to cause taxes to be levied and collected for the purpose of paying any obligation of the district. This bill would authorize the district to impose a fee or charge in compliance with Article XIII D of the California Constitution, to pay the costs and expenses of the district, and to carry out the objects or purposes of the act. The bill would require that any fees imposed be levied and collected, together with taxes for county purposes, and the revenues paid into the county treasury to the credit of the district. This bill contains other related provisions and other existing laws.

AB 234(Huffman) Energy: water use and energy efficiency projects: federal stimulus funds.

Location: 04/29/2009-A APPR.

Summary: Existing law establishes various programs to provide financial assistance to public and private entities to improve their energy efficiency. This bill would require the State Energy Resources Conservation and Development Commission, as a part of the implementation of funding received under the federal American Recovery and Reinvestment Act of 2009 pursuant the federal State Energy Program and the federal Energy Efficiency and Conservation Block Grant Program , to coordinate with the State Water Resources Control Board and local water suppliers on the planning and implementation of energy efficiency actions that can also result in water use savings. The bill would require that water and energy conservation programs and projects proceed only to the extent they do not impair the commission's ability to meet the federal deadlines for expenditure of federal stimulus funds provided by the act pursuant to the 2 specified federal programs .

AB 305(Nava) Hazardous materials: statute of limitations: penalties.

Location: 05/06/2009-A APPR.

Summary: Existing law of civil procedure relating to the time for commencing an action requires that actions for civil penalties or punitive damages under specified provisions relating to hazardous waste and hazardous substances be commenced within 5 years after the discovery by the agency bringing the action of the facts constituting the grounds for commencing the action. This bill would include within that requirement certain actions relating to hazardous materials release response plans and inventory. This bill contains other related provisions and other existing laws.

AB 480(Tran) Bond acts: auditing.

Location: 04/22/2009-A APPR.

Summary: The existing State General Obligation Bond Law contains procedures for use in authorizing the issuance and sale and providing for the repayment of state general obligation bonds and requires any state general obligation bond measure to be subject to the making, at least annually, of a specified report,

by the head of the lead state agency administering the bond proceeds, to the Legislature and the Department of Finance. This bill would require any state bond measure approved by the voters on or after January 1, 2010, to include auditing provisions with respect to the use of any bond moneys that would be spent for the purposes of the bond measure. The bill would authorize the Bureau of State Audits to conduct periodic or quarterly audits to ensure that bond proceeds are awarded in a timely manner and that recipients of bond moneys use the funds in compliance with applicable provisions of law. The bill would require that the costs associated with the audit be reimbursed by the bond proceeds.

AB 727(Nielsen) Resource conservation districts: California Prompt Payment Act.

Location: 04/29/2009-A APPR. SUSPENSE FILE

Summary: Existing law generally provides that a state agency that acquires property or services pursuant to a contract with a business, but fails to make payment to the person or business on the date required by the contract, shall be subject to a late payment penalty, as specified. Existing law provides that the penalty payable to a certified small business, a nonprofit organization, or a nonprofit public benefit corporation, as specified, is 1/4 of 1% of the amount due, per calendar day, from the required payment date, except as specified. This bill would include resource conservation districts within the list of entities entitled to the late payment penalty described above for the failure of a state agency to make payment for goods and services to a resource conservation district pursuant to a contract, as specified.

AB 752(Arambula) State Water Pollution Control Revolving Fund: severely disadvantaged communities.

Location: 05/04/2009-A CONSENT CALENDAR

Summary: Existing law establishes the State Water Pollution Control Revolving Fund Small Community Grant Fund in the State Treasury. Money in the fund may be expended for grants for projects that serve small communities, as defined, with priority given to projects that serve severely disadvantaged communities. Existing law defines "severely disadvantaged community" for purposes of the Safe Drinking Water, Water Quality And Supply, Flood Control, River And Coastal Protection Bond Act ff 2006 as a community with a median household income of less than 60% of the statewide average. This bill would apply the same definition of severely disadvantaged communities contained in the bond act to the provisions governing expenditure of moneys in the State Water Pollution Control Revolving Fund Small Community Grant Fund.

AB 1232(Huffman) Local agency formation commissions: powers and duties.

Location: 04/21/2009-A L. GOV.

Summary: Existing law requires the local agency formation commission in each county, to, among other things, review and approve or disapprove proposals for changes of organization, or reorganization, and authorizes the commission to initiate proposals for the formation, consolidation, or dissolution of a district, a merger, or the establishment of a subsidiary district, as specified. This bill would authorize the commission in specified counties to initiate and approve the consolidation of one or more small wastewater agencies within specified counties if certain conditions exist.

AB 1465(Hill) Urban water management planning.

Location: 04/29/2009-A APPR.

Summary: Existing law requires every urban water supplier to prepare and adopt an urban water management plan, in accordance with specified requirements, for submission to the Department of Water Resources and other entities. An urban water supplier is required to provide information relating to the supplier's water demand management measures. This bill would revise provisions relating to the information that the urban water supplier is required to include in the plan with regard to water demand

management measures. The bill would require the urban water supplier to describe in the plan the opportunities for development of recycled water supplies, including opportunities for nonpotable and indirect potable reuse, and the opportunities for stormwater recapture and reuse as a long-term water supply. This bill contains other related provisions and other existing laws.

AB 1520(Evans) Statewide Watershed Program.

Location: 05/05/2009-A APPR.

Summary: The California Watershed Protection and Restoration Act requires state agencies to adopt guidelines for use by local watershed partnerships to provide specified mechanisms and authorizes state agencies with jurisdiction over watershed planning and protection to provide technical assistance to watershed management partnerships, to the extent that funds are available. This bill would establish the Statewide Watershed Program as a voluntary and nonregulatory program to provide assistance and funds to local community-based efforts in the conservation, protection, and restoration of the state's watersheds and to promote coordinated management of watersheds under the authority of the Secretary of the Natural Resources Agency and the Department of Conservation (department). This bill contains other related provisions.

AB 1557(Committee on Jobs, Economic Development, and the E) Federal funding: economic stimulus bill.

Location: 04/21/2009-A APPR.

Summary: Existing law requires any state agency that applies for federal funds to meet a mandatory responsibility under federal or state law, and that application is not approved, to submit, among other things, an identification of the federal program for which the application was denied, and the name of the federal administering agency, and an indication of the reason or reasons the application was not approved, to the Department of Finance, the Office of Planning and Research, and the Joint Legislative Budget Committee, within 15 calendar days of its receipt of notification of lack of approval of the application. This bill would require any state agency that applies for federal funds pursuant to the federal economic stimulus acts of 2008 and 2009, and receives approval, to submit, among other things, an identification of the federal program for which the application was approved, and an identification of the federal administering agency and department, an identification of the amount of funds being made available and a timeline for receiving the funds, to the Department of Finance, the Office of Planning and Research, and the Joint Legislative Budget Committee, within 15 calendar day of its receipt of notification of approval. This bill contains other related provisions and other existing laws.

SB 51(Ducheny) Salton Sea Restoration Council.

Location: 05/04/2009-S APPR.

Summary: This bill would create a Salton Sea Restoration Council (Council) within the Resources Agency and authorize the Council to take actions to protect the Salton Sea, including implementation of certain activities identified in the legislatively mandated final Programmatic Environmental Impact Report for the Salton Sea Restoration Program.

SB 553(Wiggins) Payment of state claims: grants: nonprofit public benefit corporations.

Location: 04/28/2009-S APPR.

Summary: The California Prompt Payment Act generally governs the payment of invoices by state agencies. The act requires a state agency that acquires property pursuant to a contract with a business, or that awards a grant, as defined, to make payment to the person or business on the date required by the contract or grant, and within a specified period from the receipt of an undisputed invoice, or be subject to a late payment penalty. Existing law defines a grant for the purposes of these provisions as a

signed final agreement between any state agency and a local government agency or organization authorized to accept grant funding for victim services or prevention programs administered by any state agency. This bill would extend the above provisions regarding late payment penalties to contracts with, or grants to, a nonprofit public benefit corporation. The bill would apply the above requirement regarding the timely payment of grants to any signed final agreement between any state agency and a local government agency or organization authorized to accept grant funding administered by any state agency. This bill contains other related provisions and other existing laws.

SB 614(Simitian) Vessels.

Location: 04/23/2009-A DESK

Summary: Existing law prohibits an owner or operator of a large passenger vessel or oceangoing ship from releasing or permitting anyone to release specified substances from the vessel or ship into the marine waters of the state or a marine sanctuary. Existing law excludes from those requirements a large passenger vessel or oceangoing ship that operates in the marine waters of the state, as that term is defined, solely in innocent passage, and discharges made for the purpose of securing the safety of the vessel or ship or saving life at sea if specified precautions are taken. The act provides that for purposes of that exclusion, a vessel is engaged in innocent passage if its operation in state waters would constitute innocent passage under specified conventions. This bill instead would provide that for purposes of that exclusion, a vessel is engaged in innocent passage if its operation in the marine waters of the state would constitute innocent passage under those specified conventions. The bill would make a technical, nonsubstantive change to the definition of "marine waters of the state" by correcting an obsolete cross-reference.

SB 790(Pavley) Resources: water quality: stormwater management.

Location: 05/04/2009-S APPR.

Summary: The Watershed, Clean Beaches, and Water Quality Act authorizes the Water Resources Control Board, in consultation with the State Coastal Conservancy, to award grants to public agencies and nonprofit organizations for projects designed to restore and protect the water quality and environment of coastal waters, estuaries, bays, and near shore waters, including, among other things, a project to make improvements to, or upgrades or conversions of, existing sewer collection systems and septic systems for the restoration and protection of coastal water quality. This bill would also authorize grants for projects designed to implement or promote low-impact development that will contribute to the improvement of water quality or reduce stormwater runoff and for projects designed to implement specified stormwater management plans. This bill contains other related provisions and other existing laws.

SBX3 27(Negrete McLeod) Drinking water: federal stimulus funding.

Location: 03/27/2009-S CHAPTERED

Summary: Existing law establishes the Safe Drinking Water State Revolving Fund in the State Treasury to be administered by the State Department of Public Health. Under existing law, the fund is continuously appropriated for the purpose of providing grants or revolving fund loans for the design and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards. This bill would allow the department to expend federal moneys in the fund that are received from the American Recovery and Reinvestment Act of 2009 in accordance with the guidelines of that act. The bill would provide that the maximum amount of a grant is \$10,000,000 per project. This bill contains other related provisions and other existing laws.

SCA 18(Liu) Local government: property-related fees.

Location: 03/19/2009-S L. GOV.

Summary: The California Constitution, with the exception of fees or charges for sewer, water, and refuse collection services, conditions the imposition or increase of a property-related fee or charge upon approval by either a majority vote of the owners of the properties subject to the fee or charge or, at the option of the agency imposing the fee or charge, by a 2/3 vote of the voters residing in the area affected by the fee or charge. This measure would additionally exclude fees and charges for stormwater and urban runoff management from these approval requirements for the imposition or increase of a property-related fee or charge.

LC

AB 96(Ruskin) Gasoline: underground storage tanks.

Location: 04/30/2009-S RLS.

Summary: The Replacing, Removing, or Upgrading Underground Storage Tanks (RUST) Program provides grants and loans to assist eligible small businesses with the cost of meeting specified underground storage tank (UST) requirements. This bill would provide \$8 million from the RUST Program to assist UST owners and operators in meeting the Enhanced Vapor Recovery (EVR) Phase II regulations adopted by the Air Resources Board (ARB). The bill also would extend the sunset date of the RUST program from January 1, 2011, to January 1, 2016.

AB 180(Committee on Budget) Budget Act of 2009.

Location: 05/04/2009-S RLS.

Summary: This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2009.

AB 181(Committee on Budget) Budget Act of 2009.

Location: 05/04/2009-S RLS.

Summary: This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2009.

AB 274(Portantino) Solid waste: landfills: closure plans.

Location: 04/23/2009-A APPR. SUSPENSE FILE

Summary: This bill would require the purchaser of any portion of a closed solid waste landfill that is subject to a closure or a post-closure maintenance plan of a closed waste management unit to provide evidence of his or her ability to meet the financial assurance requirements of the California Integrated Waste Management Act of 1989.

AB 283(Chesbro) Solid waste: extended producer responsibility program.

Location: 04/27/2009-A APPR.

Summary: The California Integrated Waste Management Act of 1989, administered by the California Integrated Waste Management Board, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient cost-effective manner to conserve water, energy, and other natural resources. This bill would create the California Product Stewardship Act of 2009 and would require the board to administer the program. The bill would require the board to adopt regulations

by July 1, 2011, in order to implement the program to provide environmentally sound product stewardship protocols that encourage producers to research alternatives during the product design and packaging phases to foster cradle-to-cradle producer responsibility and reduce the end-of-life environmental impacts of the product. This bill contains other related provisions.

AB 478(Chesbro) Greenhouse gas emissions: solid waste.

Location: 04/23/2009-A APPR. SUSPENSE FILE

Summary: This bill would require the Air Resources Board (ARB) to consult with the California Integrated Waste Management Board (CIWMB) when developing the greenhouse gas emission (GHG) regulations to include rules for the reduction of GHG emissions from solid waste reduction and recycling.

AB 479(Chesbro) Solid waste: diversion.

Location: 04/23/2009-A APPR.

Summary: The California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan containing specified components, including a source reduction component, a recycling component, and a composting component. With certain exceptions, the source reduction and recycling element of that plan is required to divert 50% of all solid waste from landfill disposal or transformation by January 1, 2000, through source reduction, recycling, and composting activities. This bill would require a city or county to divert 60% of all solid waste through source reduction, recycling, and composting activities on and after January 1, 2015, thereby imposing a state-mandated local program by imposing new duties on local agencies regarding solid waste management. The bill would also require the board to establish policies, programs, and incentives to ensure diversion of solid waste in accordance with a specified schedule. This bill contains other related provisions and other existing laws.

AB 580(Huber) Onsite sewage treatment systems.

Location: 04/22/2009-A APPR.

Summary: The Porter-Cologne Water Quality Control Act requires the State Water Resources Control Board (State Water Board), in consultation with others, to adopt regulations for the permitting and operation of specified onsite sewage treatment systems. The act requires the regulations to include exemption criteria established by the Regional Water Quality Control Boards. This bill would specify that the exemption criteria may also be established by the State Water Board.

AB 1079(V. Manuel Perez) Environment: California-Mexico border.

Location: 04/29/2009-A APPR.

Summary: Existing law creates the California Border Environmental and Public Health Protection Fund. The money in that fund is available, upon appropriation, to the Secretary for Environmental Protection to assist local governments in implementation of projects to identify and resolve environmental and public health problems that directly threaten the health or environmental quality of California residents or sensitive natural resources of the California border region, to provide technical assistance, to provide funds for equipment and labor costs associated with emergency abatement of environmental and public health problems imposed on residents of California due to cross-border impacts of pollutants originating from Baja California, and to provide analytical and scientific equipment and services needed by border area public agencies to identify and monitor the sources of environmental and public health threats posed by the cross-border transmission of environmental pollutants and toxics. This bill would require the California Environmental Protection Agency, the State Water Resources Control Board, and the Colorado River Basin Regional Water Quality Control Board to take all necessary action to provide support to the

City of Calexico and County of Imperial to implement the New River Public Health Improvement Project, as defined. The agency and those boards would be required to work with appropriate governmental and nongovernmental organizations on the California-Mexico border to establish cooperative water monitoring, inspection, and technical assistance programs, to assist in efforts to oversee the design, construction, operation and maintenance of federally funded wastewater projects in Mexicali, Mexico, and to expedite the issuance of any necessary waste discharge requirements. Those boards would be required to expedite the development of water quality objectives and total maximum daily loads for the New River pursuant to the federal Clean Water Act. The bill would require the agency and the State Water Resources Control Board to facilitate compliance by the International Boundary and Water Commission, United States Section, with legal requirements in connection with the discharge of waste into the New River, to seek funding to carry out the above provisions and, by January 31, 2010, to submit to the Legislature, a description of the resources and the amount of funds necessary to implement the above provisions.

AB 1300(Fletcher) Fire protection: vegetation management: pilot program.

Location: 05/06/2009-A APPR.

Summary: Existing law creates the Department of Forestry and Fire Protection within the Natural Resources Agency, and the department is responsible for fire protection, fire prevention, maintenance, and enhancement of the state's forest, range, and brushland resources, contract fire protection, associated emergency services, and assistance in civil disasters and other nonfire emergencies. This bill would require the department to establish and implement a vegetation management pilot program until January 1, 2013. The bill would require the department to choose up to 10 applicant communities based upon specified criteria and provide to those communities incentives for fire prevention vegetation management projects by paying up to \$20 per ton, as specified, for bone dry vegetation removed from the pilot program communities during fire prevention projects. The bill would require the department to seek funding from specified sources, as available for fire prevention projects, and would limit the department's administrative costs for selecting projects and preparing a report that would be submitted to the Legislature to no more than 15% of the grant amount for each project selected.

AB 1507(Block) Hazardous materials: metal plating facilities.

Location: 04/29/2009-A APPR.

Summary: Existing law establishes, until January 1, 2012, a loan guarantee program, developed and administered by the Business, Transportation and Housing Agency, to assist chrome plating facilities to purchase high performance environmental control equipment or technologies. Existing law establishes in the State Treasury the Chrome Plating Pollution Prevention Fund to receive deposits of state, federal, and local governmental money, and other public or private money, for expenditure by the agency, upon appropriation by the Legislature, to make loan guarantees available to eligible metal plating facilities. This bill would revise and recast the program to instead establish the Chrome Plating and Metal Finishing Pollution Prevention Grant Program to be administered by the Department of Toxic Substances Control. The department would be authorized to expend, upon appropriation by the Legislature, money in the fund to make grants to chrome metal plating facilities to be used for pollution prevention improvements. The bill would also make conforming changes.

SB 25(Padilla) Solid waste.

Location: 05/06/2009-S APPR.

Summary: (1) The California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan containing specified components. The source reduction and recycling element of that plan is required to divert 50% of all solid waste from landfill disposal or transformation by January 1, 2000, through source reduction,

recycling, and composting activities. This bill would require a jurisdiction, for each subsequent revision of the element, to divert 60% of all solid waste on and after January 1, 2015, through source reduction, recycling, and composting activities, thereby imposing a state-mandated local program by imposing new duties on local agencies regarding solid waste. This bill contains other related provisions and other existing laws.

SB 122(Pavley) Groundwater.

Location: 04/28/2009-S APPR.

Summary: Existing law authorizes a local agency whose service area includes a groundwater basin that is not subject to groundwater management to adopt and implement a groundwater management plan pursuant to certain provisions of law. Existing law requires a groundwater management plan to include certain components to qualify as a plan for the purposes of those provisions, including a provision that establishes funding requirements for the construction of certain groundwater projects. This bill would establish a groundwater monitoring program pursuant to which specified entities, in accordance with prescribed procedures, may propose to be designated by the Department of Water Resources as groundwater monitoring entities, as defined, for the purposes of monitoring and reporting with regard to groundwater elevations in all or part of a basin or subbasin, as defined. The bill would require the department to work cooperatively with each monitoring entity to determine the manner in which groundwater elevation information should be reported to the department. The bill would authorize the department to make recommendations for improving an existing monitoring program, require additional monitoring wells under certain circumstances, and require the department, under prescribed circumstances, to perform groundwater monitoring functions for those portions of a basin or a subbasin for which no monitoring entity has agreed to perform those functions under this program. This bill contains other related provisions and other existing laws.

SB 133(Corbett) Groundwater: wells, exploratory holes, and other excavations.

Location: 05/04/2009-S APPR.

Summary: This bill would authorize the Alameda County Water District (ACWD) to establish a program for permitting and inspecting the construction, operation, decommissioning, abandonment, or destruction of wells, exploratory holes, or other excavations to protect groundwater.

SB 143(Cedillo) Hazardous materials: California Land Reuse and Revitalization Act of 2004.

Location: 04/29/2009-S APPR.

Summary: This bill would remove the January 1, 2010 sunset date of the California Land Reuse and Revitalization Act (CLRRA).

SB 413(Ducheny) Waste discharge requirements: fees.

Location: 04/29/2009-S APPR.

Summary: The Porter-Cologne Water Quality Control Act, with certain exceptions, requires a waste discharger to pay an annual fee established by the State Water Resources Control Board. The act requires the total amount of fees collected to equal that amount necessary to recover certain costs relating to the administration of waste discharge requirements. Revenues generated by the imposition of the fee are deposited in the Waste Discharge Permit Fund for expenditure, upon appropriation by the Legislature, for specified water quality purposes. This bill, for the purpose of calculating the annual fee, would specify that recoverable costs also include costs incurred by the State Water Resources Control Board and the California regional water quality control boards in the preparation of water quality control plans.

SB 524(Corrae) Solid waste: auto shredder residue.

Location: 04/29/2009-S APPR.

Summary: The California Integrated Waste Management Act of 1989 requires materials that require special handling, as defined, to be removed from major appliances and vehicles in which they are contained prior to crushing for transport or transferring to a baler or shredder for recycling. The act requires the California Integrated Waste Management Board (board), in consultation with specified entities, including the Department of Toxic Substances Control, to evaluate the use of recycling residue, which is defined as nonhazardous residue or residue treated to be nonhazardous that is a direct result of a metals recovery operation for the express purposes of recycling, for use as solid waste landfill cover materials or for use as extenders for currently used cover material. This bill would require the Secretary for Environmental Protection, on or before February 1, 2010, to establish an auto shredder residue working group, comprised of representatives of the board, the department, the State Air Resources Board, the State Water Resources Control Board, members of the auto shredder industry, landfill operators, and other interested stakeholders. The bill would require the working group to review and evaluate the existing practice of using treated auto shredder residue as alternative daily cover, determine the effects of the department's proposed revocation of the current regulatory classification of treated auto shredder residue and resulting prohibitions on its use as alternative daily cover, determine whether the current regulatory classification of treated auto shredder residue poses a threat to human health and the environment, identify the constituents in auto shredder residue that could pose health and safety or environmental problems when used as alternative daily cover in accordance with applicable regulations, recommend approaches to work with the auto industry to manufacture vehicles that produce less hazardous waste at end-of-life, and recommend changes to statute, regulation, or agency practice, if any, based on the working group's analysis. This bill contains other related provisions and other existing laws.

SB 670(Wiggins) Vacuum or suction dredge equipment.

Location: 04/28/2009-S APPR.

Summary: Existing law prohibits the use of any vacuum or suction dredge equipment by any person in any river, stream, or lake of this state without a permit issued by the Department of Fish and Game. Under existing law, it is unlawful to possess a vacuum or suction dredge in areas, or in or within 100 yards of waters, that are closed to the use of vacuum or suction dredges. A violation of the permit requirement is a misdemeanor. The department is authorized to close areas otherwise open for dredging and for which permits have been issued if there is an unanticipated water level change and the department determines that closure is necessary to protect fish and wildlife resources. Existing law requires the department to adopt regulations to implement certain of the vacuum or suction dredge equipment requirements and authorizes the department to issue regulations with respect to other requirements. Existing law requires that the regulations be adopted in accordance with the requirements of the California Environmental Quality Act (CEQA). This bill would prohibit the use of any vacuum or suction dredge equipment in any river, stream, or lake until the director of the department certifies to the Secretary of State that (1) the department has completed an environmental review of its existing vacuum or suction dredge equipment regulations as ordered by the court in a specified court action, (2) the department has transmitted for filing with the Secretary of State a certified copy of new regulations, and (3) the new regulations are operative. This bill contains other related provisions and other existing laws.

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AB 13(Salas) Sacramento-San Joaquin Delta Conservancy.

Location: 04/30/2009-A APPR.

Summary: Existing law authorizes various conservancies to acquire, manage, direct the management of, and conserve public lands in the state. This bill would establish the Sacramento-San Joaquin Delta Conservancy to restore, maintain, and enhance ecosystems, including habitats, wildlife corridors, native species, and open space, in the Sacramento-San Joaquin Delta and Suisun Marsh, and to develop and implement projects to address the economic viability of the Delta region, consistent with a comprehensive Delta sustainability program.

AB 450(De La Torre) Recycled water: oil refineries.

Location: 04/29/2009-A APPR.

Summary: Existing law declares that the use of potable domestic water for various nonpotable uses is a waste or an unreasonable use of water, and prohibits a person or public agency from using water from any source of quality suitable for potable domestic use for various nonpotable purposes, including cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, if suitable recycled water is available. This bill would declare that the use of potable domestic water for oil refineries is a waste or unreasonable use of water, if certain requirements are met. The bill would additionally prohibit a person or public agency from using potable water for oil refinery purposes, if certain requirements are met. The bill would state that it is the intent of the Legislature to provide incentives to facilitate compliance with these provisions. These provisions would become operative on January 1, 2020

AB 790(Ruskin) State scientists: salaries.

Location: 04/22/2009-A APPR.

Summary: Existing law generally requires the Department of Personnel Administration to establish and adjust salary ranges for each class of position in the state civil service subject to any constitutional merit limits. Existing law requires the salary range to be based on the principle that like salaries shall be paid for comparable duties and responsibilities. Existing law prohibits the department from making any adjustments that require expenditures in excess of existing appropriations that may be used for salary increase purposes. This bill would implement the salary determinations of the Department of Personnel Administration for 14 classifications of state scientist supervisory employees covered by the April 28, 2008, Director's Decision of the Department of Personnel Administration. This bill contains other related provisions.

AB 846(Torrico) State agencies: civil and administrative penalties.

Location: 04/21/2009-A APPR.

Summary: The Administrative Procedure Act contains provisions governing the conduct of administrative adjudication for state agencies. This bill would require the Department of Toxic Substances Control, the State Air Resources Board, the Department of Industrial Relations, and the State Water Resources Control Board to adjust the maximum amounts of specified civil and administrative penalties to take into account inflation on an annual basis using the Consumer Price Index, as provided. The bill would require, if a penalty below these maximum levels is sought, that the penalty be assessed at a level that recovers any economic benefits derived by the violator, except as specified. Because local air districts and unified program agencies would be subject to this requirement, this bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.

AB 900(De Leon) Water diversion: statements of water diversion and use.

Location: 04/29/2009-A APPR.

Summary: Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the State Water Resources Control Board a prescribed statement of diversion and

use. Existing law requires a statement to include specified information, including, on and after January 1, 2012, monthly records of water diversions. Under existing law, the monthly record requirement does not apply to a surface water diversion with a combined diversion capacity from a natural channel that is less than 50 cubic feet per second or to diverters using siphons in the tidal zone. This bill would delete an exception to the statement requirement for diversions included in the consumptive use data for the delta lowlands published by the department in its hydrologic data bulletins. The bill would add an exception to the statement requirement for a surface water diversion from the Sacramento-San Joaquin Delta, as defined, that has a combined diversion capacity of less than 10 gallons per minute. The bill would, commencing January 1, 2011, impose the monthly record requirement on any surface water diversion that has a specified diversion capacity that is within the Delta, unless the board makes a specified determination. The bill would also provide that the monthly record requirement would not apply to a surface water diversion that is outside the Delta, and that has a combined diversion capacity from a natural channel that is less than 50 cubic feet per second. The bill would make related findings and declarations.

AB 914(Logue) Mandatory minimum civil penalties: publicly owned facilities.

Location: 04/28/2009-A APPR.

Summary: Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act (state act). The state act, with certain exceptions, imposes a mandatory minimum penalty of \$3,000 for each serious waste discharge violation, as defined, or for certain other described violations if those violations occur 4 or more times in any period of 6 consecutive months, as prescribed. The state act authorizes the state board or a regional board to elect to require a publicly owned treatment works (POTWS) serving a small community, as defined, in lieu of assessing the mandatory minimum penalty against that POTWS, to spend an equivalent amount towards the completion of a compliance project proposed by that POTWS if certain requirements are met. This bill would authorize the state board or a regional board to elect to require a publicly owned facility serving a small community, in lieu of assessing the mandatory minimum penalty against that facility, to spend an equivalent amount towards the completion of a compliance project proposed by that facility if certain requirements are met. The bill would define a "publicly owned facility serving a small community" to mean a public entity, including a POTWS, or a public drinking water system whether privately or publicly owned, serving a population of 20,000 persons or fewer or a rural county, with a financial hardship, as specified.

AB 1242(Ruskin) State water policy.

Location: 05/05/2009-A APPR.

Summary: Existing law establishes various state water policies, including the policy that the use of water for domestic purposes is the highest use of water. This bill would declare that it is the established policy of the state that every human being has the right to clean, affordable, and accessible water on an equitable basis, that is adequate for the health and well-being of the individual and family. The bill would require relevant state agencies, including the Department of Water Resources, State Water Resources Control Board, and State Department of Public Health, to employ all reasonable means to implement this state policy. Those state agencies would be required to revise, adopt, or establish policies, regulations, and grant criteria to further this state policy.

AB 1351(Blakeslee) Renewable energy resources.

Location: 05/06/2009-A APPR.

Summary: Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity and requires the commission

to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year. This bill would delete the requirement that a hydroelectric generation facility be certified by the board pursuant to the federal Clean Water Act and would instead allow a facility to meet the certification requirement if it is certified by any state board or agency pursuant to the federal Clean Water Act. This bill contains other existing laws.

SB 12(Simitian) Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2009.

Location: 05/05/2009-S APPR.

Summary: Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. The Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992 creates the Delta Protection Commission and requires the commission to prepare and adopt a comprehensive long-term resource management plan for specified lands within the Sacramento-San Joaquin Delta. This bill would enact the Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2009. The bill would establish the Delta Ecosystem and Water Council. The council would be required to prepare and adopt a plan referred to as the California Delta Ecosystem and Water Plan (plan) to advance the coequal goals of restoring the Delta ecosystem and creating a more reliable water supply in California. The council would be required to establish a goal for the adoption of the plan by December 1, 2010. If the plan is not completed by that date, the council would be required to adopt an interim strategic plan. The plan would be required to include specified components, including species protection requirements, Delta water flow and water quality requirements, and information relating to land use in the Delta. This bill contains other related provisions and other existing laws.

SB 229(Pavley) California Water Commission: Bay-Delta.

Location: 04/14/2009-S APPR.

Summary: Existing law establishes the 9-member California Water Commission in the Department of Water Resources and requires the commission to conduct an annual review of the progress and operation of the State Water Project and to carry out various other related functions. This bill would revise the membership and functions of the commission. The bill would establish the commission in the Natural Resources Agency as an independent commission. The commission would consist of 5 members appointed by the Governor and subject to the confirmation of the Senate. The commission would have primary authority to implement and approve and oversee the implementation of the Bay-Delta Interim Governance Act of 2009, as described in (2). The bill would require the commission to serve as lead agency to implement projects recommended by the final environmental impact report of the Bay-Delta Conservation Plan, or delegate these responsibilities to other appropriate state or local entities. This bill contains other related provisions and other existing laws.

SB 261(Dutton) Water use.

Location: 04/30/2009-S APPR.

Summary: Existing law requires the Department of Water Resources to convene an independent technical panel to provide information to the department and the Legislature on new demand management measures, technologies, and approaches. "Demand management measures" means those water conservation measures, programs, and incentives that prevent the waste of water and promote the reasonable and efficient use and reuse of available supplies. Existing law requires urban water suppliers to prepare and adopt urban water management plans with specified components. This bill would require

an urban water supplier to develop and implement a water use efficiency and efficient water resources management plan to reduce residential potable water use in a specified manner or achieve extraordinary water use efficiency, as defined. The urban water supplier or the regional water management group, as applicable, would be required to report its progress towards achieving a prescribed water use efficiency and efficient water resources management target in specified documents. This bill contains other related provisions.

SB 457(Wolk) Sacramento-San Joaquin Delta.

Location: 05/05/2009-S APPR.

Summary: Existing law requires various state agencies to carry out programs, projects, and activities on behalf of the Sacramento-San Joaquin Delta. This bill would create a 9-member Delta Stewardship Council in the Natural Resources Agency with specified powers and responsibilities relating to the Delta, including approving the Delta Stewardship Plan to guide and shape management of the Delta. The bill would require the commission to present the council with a draft plan on or before October 1, 2010. The bill would require the council to adopt the plan on or before January 1, 2011. The bill would require the council to review, and if necessary, amend the plan at least every 5 years. This bill contains other related provisions and other existing laws.

SB 458(Wolk) Conservancies: Sacramento-San Joaquin Delta Conservancy.

Location: 04/14/2009-S APPR.

Summary: Existing law authorizes various conservancies to acquire, manage, direct the management of, and conserve public lands in the state. This bill would establish the Sacramento-San Joaquin Delta Conservancy to undertake various activities related to the Delta, as defined, including supporting efforts that advance both environmental protection and the economic well-being of Delta residents, and cooperating with other Delta governance entities. The bill would prescribe the management, powers, and duties of the conservancy. The bill would create the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury. Moneys in the fund would be available, upon appropriation, for the purposes of the conservancy.

SB 539(Wiggins) Salmon and steelhead trout: California Ocean Protection Trust Fund.

Location: 05/05/2009-S APPR.

Summary: The California Ocean Protection Act establishes the Ocean Protection Council in state government and provides that the council consists of the Secretary of the Natural Resources Agency, the Secretary for Environmental Protection, the Chair of the State Lands Commission, and 2 public members appointed by the Governor. The act requires the council, among other things, to coordinate activities of state agencies that are related to the protection and conservation of coastal waters and ocean ecosystems, and to establish policies to coordinate the collection and sharing of scientific data related to coast and ocean resources between agencies. The act also establishes the California Ocean Protection Trust Fund and authorizes moneys in the trust fund to be expended, upon appropriation by the Legislature, and upon authorization by the council, for grants or loans to public agencies, nonprofit corporations, or private entities for, and direct expenditures on, various projects and activities related to the protection of coastal and ocean resources. This bill would additionally include among the projects and activities eligible for funding from the trust fund projects and activities related to restoration of native salmon and steelhead trout populations and restoration of the state's salmon fishery.

SB 681(Pavley) Water diversion and use.

Location: 04/28/2009-S APPR.

Summary: Existing law generally provides that the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, may not be required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality. This bill would expand the exemption to other provisions relating to water use, including provisions that require the payment of fees to the State Water Resources Control Board (board) for official services relating to statements of water diversion and use. This bill contains other related provisions and other existing laws.

SB 736(Pavley) Water consumption fee.

Location: 03/19/2009-S N.R. & W.

Summary: Existing law requires a person who files a specified application, registration, petition, or request relating to water use to pay certain fees imposed by the State Water Resources Control Board, in accordance with a prescribed fee schedule. This bill, with specified exceptions, beginning on an unspecified date, would impose, on a person diverting or extracting more than an unspecified amount of water, a water resource consumption fee in an unspecified dollar amount per acre-foot of water diverted or extracted. The fees would be deposited in the Water Resources Consumption Fund, which the bill would create, the proceeds of which would be available, subject to appropriation, for unspecified purposes. This bill contains other existing laws.

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AB 49(Feuer) Water conservation: agricultural water management planning.

Location: 04/29/2009-A APPR. SUSPENSE FILE

Summary: (1) Existing law requires the Department of Water Resources to convene an independent technical panel to provide information to the department and the Legislature on new demand management measures, technologies, and approaches. "Demand management measures" means those water conservation measures, programs, and incentives that prevent the waste of water and promote the reasonable and efficient use and reuse of available supplies. This bill would require the state to achieve a 20% reduction in urban per capita water use in California by December 31, 2020. The state would be required to make incremental progress towards this goal by reducing per capita water use by at least 10% on or before December 31, 2015. The bill would require the department to develop, by December 31, 2010, and through a public participation process, regional urban water use targets and interim regional urban water use targets in accordance with specified requirements. The bill would require agricultural water suppliers to implement water use efficiency best management practices and would impose related reporting requirements on agricultural water suppliers. The bill would require the department, in consultation with other state agencies, to develop a single standardized water use reporting form. The bill, with certain exceptions, would condition eligibility for certain water management grants or loans to urban water suppliers and agricultural water suppliers on the implementation of water conservation requirements established by the bill. This bill contains other related provisions and other existing laws.

AB 68(Brownley) Solid waste: single-use carryout bags.

Location: 05/06/2009-A APPR. SUSPENSE FILE

Summary: Existing law requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store. Existing law imposes various requirements on at-store recycling programs, including requiring a store to maintain records describing the collection, transport, and recycling of plastic carryout bags collected by the store. This bill would, on and after July 1, 2010, prohibit a store, as defined, from providing a single-

use carryout bag to a customer unless the store charges a fee of not less than \$0.25 per bag at the point of sale. The bill would exempt certain customers from paying the fee. The bill would establish the Bag Pollution Fund in the State Treasury and would require a store to remit the single-use carryout bag fees, less a specified amount, to the State Board of Equalization for deposit in that fund. The bill would prohibit a store from distributing a single-use carryout bag that is not a plastic or compostable carryout bag that meets specific requirements. This bill contains other related provisions and other existing laws.

AB 87(Davis) Single-use carryout bags: environmental effects: mitigation.

Location: 05/06/2009-A APPR. SUSPENSE FILE

Summary: Existing law requires, until January 1, 2013, an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store. Existing law imposes various requirements on at-store recycling programs, including requiring a store to maintain records describing the collection, transport, and recycling of plastic carryout bags collected by the store. This bill would instead prohibit, on and after July 1, 2010, a store, as defined, from providing a single-use carryout bag, including a green carryout bag, to a customer unless the store charges a fee of not less than \$0.25 per bag at the point of sale. The bill would exempt certain customers from paying the fee. The bill would establish the Bag Pollution Fund in the State Treasury and, by January 31, 2011, would require a store that collects the single-use carryout bag fees to remit the fees, less a specified amount to be used as required, to the State Board of Equalization for deposit in that fund, and do so on a quarterly basis thereafter. This bill contains other related provisions and other existing laws.

AB 410(De La Torre) Recycled water.

Location: 04/29/2009-A APPR. SUSPENSE FILE

Summary: This bill would designate \$5 million from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84), to the Department of Water Resources (DWR) for allocation to certain hydrologic regions of the state to prepare salt and nutrient management plans, consistent with the State Water Resources Control Board's (State Water Board) recycled water policy. The bill also would set new statewide targets for water recycling and require DWR to assess every five years the progress towards meeting those targets.

AB 1066(Mendoza) Forest practices: timber harvesting plans.

Location: 05/06/2009-A APPR.

Summary: The Z'Berg-Nejedly Forest Practice Act of 1973 prohibits a person from conducting timber operations, as defined, unless a timber harvesting plan prepared by a registered professional forester has been submitted to the Department of Forestry and Fire Protection, and approved. The act provides that a timber harvesting plan is effective for a period of not more than 3 years, unless extended as specified. This bill would instead provide that a timber harvesting plan is effective for a period of not more than 10 years, unless extended as specified.

AB 1321(Eng) Environment: The Advance Infrastructure Mitigation Program Act.

Location: 05/06/2009-A APPR.

Summary: The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect. This bill would enact the Advance Infrastructure Mitigation Program Act, which would establish the Advance Infrastructure Mitigation Program, including defining terms for that purpose. The bill would authorize the

Natural Resources Agency to administer and implement the program by taking specified actions. Those actions would include preparing, approving, and implementing regional advance mitigation plans, the contents of which the bill would specify, for planned infrastructure projects, as defined, identified by an infrastructure planning agency, as defined. The bill would specify that the purpose of a regional advance mitigation plan is to provide effective mitigation and conservation of natural resources and natural processes on a landscape, regional, or statewide scale, to expedite the environmental review of planned infrastructure projects, and to facilitate the implementation of measures to mitigate the impacts of those projects by identifying and implementing mitigation measures in advance of project approval. The bill also would authorize the agency to acquire, restore, manage, monitor, and preserve lands, or fund those actions, in accordance with an approved regional advance mitigation plan or as otherwise specified, and to establish or fund the establishment of mitigation banks and conservation banks and purchase credits at those types of banks as specified. The bill would authorize the agency to take other specified actions with respect to mitigation credits or values created or acquired under the program. This bill contains other related provisions.

AB 1366(Feuer) Residential self-regenerating water softeners.

Location: 04/29/2009-A APPR.

Summary: This bill would authorize local agencies that maintain a community sewer system in the Central Coast, South Coast, San Joaquin River, or Tulare Lake hydrologic regions and in the counties of Butte, Glenn, Placer, Sacramento, Solano, Sutter, and Yolo to take action to control residential salinity inputs from self-regenerating water softeners if the appropriate Regional Water Quality Control Board (Regional Water Board) makes a finding that control of residential salinity inputs from water softeners would contribute to the achievement of water quality objectives. This bill would require local agencies to compensate owners of water softeners, if they adopt an ordinance to require the removal of existing water softeners.

SB 310(Ducheny) Water quality: stormwater and other runoff.

Location: 04/29/2009-S APPR.

Summary: Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements for the discharge of stormwater in accordance with the federal national pollutant discharge elimination system (NPDES) permit program pursuant to the federal Clean Water Act and the Porter-Cologne Water Quality Control Act. Various programs finance regional water management planning. This bill would authorize a county, city, or special district that is a permittee or copermitttee under an NPDES permit for a municipal separate storm sewer system to develop a watershed improvement plan that addresses major sources of pollutants in receiving water, stormwater, urban runoff, or other surface runoff pollution within the watershed or subwatershed to which the plan applies. The regional boards would be authorized to participate in the preparation of the watershed improvement plan. The bill would authorize a county, city, or special district, or combination thereof, to impose fees on activities that generate or contribute to runoff, stormwater, or surface runoff pollution to pay the costs of the preparation of a watershed improvement plan or the implementation of a plan that is approved by a regional board if the plan will facilitate compliance with one or more water quality requirements. The bill would authorize a county, city, or special district, or combination thereof, to plan, design, implement, construct, operate, and maintain controls and facilities to improve water quality.

SB 346(Kehoe) Hazardous materials: motor vehicle brake friction materials.

Location: 04/23/2009-S APPR.

Summary: Existing law establishes the Department of Toxic Substances Control, in the California Environmental Protection Agency, with powers and duties regarding the management of hazardous waste. Existing law, administered by the department, prohibits the management of hazardous waste except in accordance with the hazardous waste control laws, including laws governing the removal of any

mercury-containing vehicle light switch from a vehicle, and the regulations adopted by the department. A violation of the hazardous waste control laws is a crime. This bill would require the department to conduct a baseline survey, on or before January 1, 2013, of the concentration levels of nickel, zinc, copper, and antimony in motor vehicle brake friction materials. The bill would require the department, commencing on January 1, 2013, and at least every 3 years thereafter, to monitor the concentration levels of nickel, zinc, and antimony in motor vehicle brake friction materials to ensure that those levels do not increase by more than 50% above the baseline levels established through the baseline survey. In that case, the bill would require the department to ask the State Water Resources Control Board or the Office of Environmental Health Hazard Assessment, as specified, to determine whether there is a need for controlling the use of the relevant constituent in brake friction material. If the department determines that there is a demonstrated need for controlling the use of the studied constituents in brake pads, the bill would require the department to prioritize the presence of those constituents in brake friction materials for regulation, as specified. The bill also would require the department to monitor copper. This bill contains other related provisions and other existing laws.

SB 460(Wolk) Water management plans.

Location: 04/30/2009-S APPR.

Summary: The Urban Water Management Planning Act requires each urban water supplier to prepare and implement a water management plan for the efficient use of available water supplies. The Agricultural Water Management Planning Act requires, until 1993 except as otherwise provided, every agricultural water supplier serving water directly to customers to prepare an informational report based on information from the last 3 irrigation seasons on its water management and conservation practices. This bill would require urban water suppliers to include additional information in their reports, including for each plan a detailed description and analysis of a long-term plan to reduce water use. The bill would require agricultural water suppliers to prepare and adopt a specified agricultural water management plan. This bill contains other related provisions.

SB 565(Pavley) Water recycling.

Location: 05/04/2009-S APPR.

Summary: Existing law establishes the State Water Resources Control Board and the California regional water quality control boards as the principal state agencies with authority over matters relating to water quality. Existing law requires specified persons who discharge waste, as defined, in a manner that could affect the quality of the waters of the state, to pay an annual fee to the state board according to a fee schedule established by the board. This bill would require the board, in consultation with the Department of Water Resources and the State Department of Public Health, to develop a plan to ensure that at least 50% of wastewater that is annually discharged into the ocean, as of the year 2009, is recycled and put to beneficial use by the year 2030. The bill would prescribe various requirements with respect to that plan. The bill would require the board to impose a fee on each person discharging wastewater into the ocean and would require that fee to be deposited into the Ocean Discharge Recycling Fund, which the bill would establish. The bill would authorize the board to expend the moneys in that fund, upon appropriation by the Legislature, for the purposes of carrying out the wastewater recycling plan.

SB 721(Steinberg) Energy: greenhouse gas emissions.

Location: 05/04/2009-S APPR. SUSPENSE FILE

Summary: The California Global Warming Solutions Act of 2006 requires the State Air Resources Board to adopt regulations to require the reporting and verification of emissions of greenhouse gases and to monitor and enforce compliance with the reporting and verification program, and requires the state board to adopt a statewide greenhouse gas (GHG) emissions limit equivalent to the statewide GHG emissions levels in 1990 to be achieved by 2020. The act requires the state board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG

emission reductions. The act requires all state agencies to consider and implement strategies to reduce their GHG emissions. This bill would create the Climate Action Team (CAT), consisting of representatives from specified state agencies, that would be responsible for coordinating the state's overall climate policy. The CAT, on or before January 1, 2011, and annually thereafter, would be required to prepare, adopt, and present to the Legislature, a strategic research, development, demonstration, and deployment plan that establishes priorities and identifies key expenditure categories for research, development, demonstration, and deployment funds to be expended by the state agencies represented on the CAT for the following fiscal year. The bill would require a state agency that is represented on the CAT to expend research, development, demonstration, and deployment funds, which would be administered by the Department of Transportation and allocated for clean technology, environmental protection, and public interest energy research, consistent with this plan. The CAT, on or before January 1, 2011, and biennially thereafter, would also be required to prepare and adopt a climate change impact mitigation and adaptation plan that includes specified information. This bill contains other related provisions and other existing laws.

Total rows: 62

EXHIBIT 3



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

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P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5181 • FAX: (916) 341-5199 • <http://www.waterboards.ca.gov>



Arnold Schwarzenegger
Governor

May 11, 2007

VA U.S. MAIL AND EMAIL

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rw Wyatt@allenmatkins.com

Dear Ms. Newman and Messrs. Duchesneau, Hunsucker, León, Sommer, and Wyatt:

PETITIONS OF KWIKSET LOCKS, INC.; KWIKSET CORPORATION; EMHART INDUSTRIES, INC.; BLACK & DECKER, INC.; AND BLACK AND DECKER (U.S.), INC. (AMENDED CLEANUP AND ABATEMENT ORDER NO. R8-2005-0053 FOR KWIKSET LOCKS, ET AL.) SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD: EX PARTE INQUIRY SWRCB/OCC FILE A-1824

As explained in my letter to Mr. Meeder and Mr. Wyatt, dated April 10, 2007, I conducted an inquiry into any potential ex parte contacts by current members of the State Water Resources Control Board (State Water Board) who may participate in any action in this matter and by staff members who may advise State Water Board members on such actions. As discussed in that letter, the inquiry I conducted goes beyond any applicable legal requirements for such an inquiry. Below is a description of the inquiry and the results thereof. In the interest of full disclosure, this letter is being sent to all parties, and will be posted on the internet and sent to the Lyns list for this matter. In addition, I am attaching hereto certain documents described. As explained in my April 10, 2007 letter, documents that were attached to the earlier disclosure letter from Tam Doduc (dated March 28, 2007) are not attached to this letter.

California Environmental Protection Agency

Recycled Paper

This letter describes the search and the documents and memoranda that are disclosed. The inquiry included a search of numerous State Water Board files and documents, and personal interviews with all State Water Board members and all members of the Advisory Team except support staff. The State Water Board members are the current membership (Tam Doduc, Arthur Baggett, Charlie Hoppin, Frances Sphly-Weber, and Gary Wolf). The Advisory Team includes four attorneys (Michael Lauffer, Elizabeth Jennings, Karen O'Hare, and James Herink), two engineers (James Marzban and Wrennilyn Fua), and the top executives of the State Water Board (Dorothy Rice, Tom Howard, and Jonathan Bishop). There are also two clerical members of the Advisory Team (Dolores White and Gabrielle Durig), whose roles are purely as support staff and who perform only clerical functions. While prior Board members (who obviously will not participate in any decisions in this matter) were not queried, I personally queried all current Board members and Advisory Team members about all communications they had, including any communications relayed through prior Board members. I also oversaw a search of emails sent or received by each of the persons interviewed. The search was conducted to turn up any email concerning or mentioning any of the above petitions, and other key terms, including "perchlorate," "Rialto," and the names of the potentially responsible entities. I personally reviewed the emails that came up during the search.

After my review of documents and interviews, I compiled all of the documents and information I had received. In determining what to disclose, I did not disclose documents in the petition files related to this matter that had clearly gone to all parties. (Some of the documents disclosed herein may have in fact been circulated to all parties, but where that could not be determined with certainty such documents are disclosed.) For documents that were not part of one of these petitions, I excluded documents that were related to publicly noticed State Water Board meetings that clearly stated in the agenda that they concerned groundwater contamination in Rialto and which documents were widely available for public review. (The agenda items in this category were from State Board meetings on November 19, 2002 and April 30, 2003, and both involved allocation of funding for water protection projects. The information on these items may be found at <http://www.waterboards.ca.gov/wksmtos/pastagn02.html>.) I also excluded from disclosure emails retrieved that did not have any relation to the perchlorate contamination in Rialto. For oral communications, I did not include communications that were made or received during the pre-hearing conference in this matter. For written and oral communications, I excluded confidential communications among and between current State Water Board members and Advisory Team members. I also excluded the documents that were already disclosed as attachments to Ms. Doduc's March 28, 2007 letter to the parties.

Search of State Water Board Files

I personally conducted a search of all documents that were in the following State Water Board water quality petition files: A-1491, A-1527, A-1732, A-1797, and A-1824. (For those files with associated petitions, e.g. A-1732(a), I searched all associated files.) I also directed the assistants to each State Water Board member to search for any documents in their custody that referred to perchlorate contamination in the Rialto area.

That search revealed four documents that are attached:

1. Letter from Senator Nell Soto to Mr. Baggell, dated July 22, 2002, regarding Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) Order No. R8-2002-0051. (Attachment 1.)
2. Memorandum from Gerard Thibeault to Karen O'Haire, dated August 14, 2002, regarding petitions A-1491 and A-1491(a). (Attachment 2.)
3. Email, dated July 14, 2006, disclosing an ex parte contact from Robert Wait to Karen O'Haire. (Attachment 3.)
4. Routing slip from Linda Adams to Tam Doduc, dated July 26, 2006, and attached letters regarding a letter from Barry Groveman and Michael Bradbury to the Department of Toxic Substance Control and responses thereto. (Attachment 4.)

It is anticipated that the State Water Board will receive non-evidentiary policy statements from interested persons. Pursuant to the requirements set forth in the Third Revised Notice of Public Hearing, interested persons are not required to serve their policy statements on all parties. In order to ensure access by all parties, the policy statements will be posted on the State Water Board's website.

Search of State Water Board Agenda Items

The State Water Board clerk conducted a search of State Water Board agenda items since 2002 wherein perchlorate contamination in Rialto was discussed. That search revealed one document that is disclosed. On November 2, 2005, Gerard Thibeault made an informational presentation to the State Water Board concerning various issues before the Santa Ana Water Board. The presentation included some discussion of the Rialto perchlorate matter. The agenda for the State Water Board meeting, the powerpoint presentation that accompanied Mr. Thibeault's presentation, and a transcription of the presentation are attached. (Attachment 5.) It is noted that at the time of the presentation, there were no active petitions or other action issues before the State Water Board.

Interviews

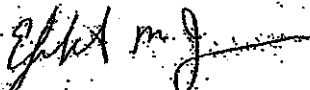
I conducted personal interviews with all current State Water Board members and Advisory Team members. I asked each person a series of questions aimed at determining whether they had received oral communications concerning any matter related to the Rialto perchlorate contamination, including but not limited to the contamination, the potentially responsible parties, proposed or adopted enforcement orders, and any requests for action. If the interviewee had received any communications, I questioned him or her regarding the time and circumstances of the communication, who was present, and whether he or she responded. I prepared a memorandum describing all such communications. (Attachment 6.)

May 11, 2007

Emails

The search of emails revealed several emails that appear to have been sent between Board members or Advisory Team members and a person other than those individuals, but not to all of the parties in this matter. Excluded from the emails disclosed are those that are solely copies of newspaper articles. (Attachment 7.)

Sincerely,



Elizabeth Miller Jenkins
Staff Counsel IV

Attachments

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jmann@nelconline.org

(Continued on next page)

Ms. Penny Newman, et al.

-5-

May 11, 2007

cc: Mr. Gerard Thibeault [via U.S. & email only]
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Ms. Ann Stordavant [via email only]
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Mr. Robert Holub [via email only]
Supervising Water Resource Control Engineer
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Erik Spiess, Esq. [via email only]
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Lyris List

Perchlorate Email Distribution List

California Environmental Protection Agency

 Recycled Paper

ATTACHMENT 1

Com Track #556

STATE CAPITOL
ROOM 4074
SACRAMENTO, CA 95834-1500
(916) 445-3888
(916) 445-0728 FAX

822 N. BLVD AVENUE
SUITE A
ONTARIO, CA 91762
(909) 864-7748
(909) 864-3623 FAX

215 NORTH G STREET
SUITE 101
SAN BERNARDINO, CA 92401
(909) 381-1832
(909) 381-0739 FAX

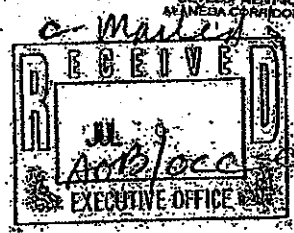
365 E. SAREY AVENUE
FONTANA, CA 91782
(909) 864-3333
(909) 864-2206 FAX

California State Senate

SENATOR
NELL SOTO
THIRTY-SECOND SENATORIAL DISTRICT



COMMITTEES:
PUBLIC EMPLOYMENT AND
RETIREMENT BOARD
GOVERNMENTAL ORGANIZATION
INSURANCE
LOCAL GOVERNMENT
TRANSPORTATION
VETERANS AFFAIRS
SELECT COMMITTEES
DEFENSE AND VETERANS
RETIREMENT AND SPACE
FLIGHT INDUSTRIES BOARD
URBAN ECONOMIC
DEVELOPMENT BOARD
ALABAMA CORRIDOR EAST



rg - OLA - Tom Soto

July 22, 2002

Art Baggett, Chairman
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Mr. Baggett:

I am writing to express my objection to the Requests made by Goodrich Corporation and Kwikset Corporation that the State Water Resources Control Board place a stay on the effects of the SARWQCB Executive Officer's Order No. R8-2002-0051. Any stay of this Order will be counterproductive to the process that I've initiated through the development of the Inland Empire Perchlorate Regulatory Task Force. This is nothing but a law attempt by the polluters to hide under the desk of the State Water Resources Control Board and I don't want them to think they can. It would also be harmful to the People of the State and will possibly exacerbate the perchlorate pollution in the affected areas. I support the Regional Board and the affected Water Agencies in their efforts to stem the tide of this pollution.

As you know, I am extremely concerned about the health and welfare of my constituents in the 32nd District. In that regard, I formed the Inland Empire Perchlorate Regulatory Task Force ("Task Force") which consists of The Santa Ana Regional Water Quality Control Board, the Cities of Colton and Rialto, the West San Bernardino County Water District, Fontana Water Company (collectively the "Water Agencies"), the Department of Health Services, the Department of Toxic Substances Control, the San Bernardino County District Attorney's office and others (including my office). The purpose of the Task Force is to quickly address the perchlorate pollution in the groundwater in the Fontana, Rialto and Colton area.

I give you this background so that you and your staff will understand the very serious nature of the perchlorate problem in this area which is totally unacceptable to me and my constituents.

2548142

Art Baggett
July 22, 2002
Page Two

Eighteen of the Water Agencies' wells have been shut down or are limited in their use due to the perchlorate pollution. Any delay in solving this problem is too long. I believe that the stay requests are designed to further defer resolution of this crisis and will only serve the interests of the Corporations bringing them to the detriment of the people. Your Board has first hand knowledge of the impact of the perchlorate contamination in my district as my staff has kept your offices informed, as has the staff of the Task Force. Let me put it this way. The PRPs have known about this for at least several years. Had they taken action then, we would not be in the position right now to heartily encourage them to support the efforts of the Task Force. Just to tell you how bad it is, one of the Water Agencies is projecting a shortfall of up to 15 million gallons per day in their service area. They may have to resort to distributing bottled water in my district. This is not acceptable. Because of this, one of the missions I've asked the Task Force to accept is to identify sources of replacement water.

The Order at issue is but the first step in the process of getting to the root of the problem. What we do know, however, is that this past year is the driest year known since records have been kept and the summer months are upon us. The 210 Freeway Extension project is in full swing and will bring more density and demand for water to this Region. Clean water is necessary for the physical and economic strength of this area, as well as the environmental health of the Region. Just recently a developer has considered pulling out of Fontana due to water supply questions, while another is looking to have their development restricted to another water agency.

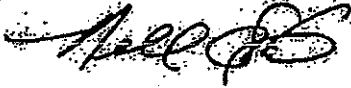
Finally, not only has one of the PRPs not been open to discussing their possible contribution to the area's groundwater pollution, but they actually came to my Sacramento office and expressed concern to my staff that my letter sent to the RWQCB actually stopped any progress toward their own voluntary clean up, which by the way no one can find any evidence ever existed—and then demanded that "the Senators' letter be rescinded". I've recently learned from the Task Force that beyond that, since the Order was issued to Goodrich by the RWQCB, Goodrich and Kwikset have ignored it entirely and have not even complied with the deadlines. Goodrich and Kwikset were required to submit plans to characterize the vertical and lateral extent of the perchlorate plume by July 8, 2002. Instead, the companies chose to fight the Regional Board and request a stay of the Order, so as to delay further investigations. So, while the families and the children of my district are possibly out there drinking jet-fuel and propellants, these guys are arguing over legal strategies to avoid cleaning up this mess and telling elected officials like me that I am an obstacle to environmental clean up. Such tactics used on their behalf only prolong the time it takes to find a solution.

Again, I am glad that Jerry Thibeault took the initiative to issue the Order in response to my concerns and my letter to him, and I join him, the SARWQCB and the other members of the Task Force in asking that you deny the stay request so that this matter may move forward as

Art Baggett
July 22, 2002
Page Three

expeditiously as possible. Thank you for taking my concerns and those of the affected Water Agencies into consideration. Please feel free to call me with any questions you may have.

Sincerely,



NELL SOTO
Senator, 32nd District

NSpk

ATTACHMENT 2

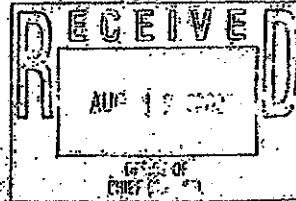


California Regional Water Quality Control Board
Santa Ana Region

Gray Davis
Governor

Winston H. Jolley
Secretary for
Environmental
Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone: (909) 782-2136 FAX: (909) 781-6288



TO: Karen O'Haire, Staff Counsel
Office of the Chief Counsel
State Water Resources Control Board

FROM: Gerard J. Thibault *Gerard J. Thibault*
Executive Officer
SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

DATE: August 14, 2002

SUBJECT: PETITIONS OF GOODRICH AND KWIKSET (A-1491 AND A-1491(A))

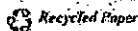
We are in receipt of your letter of August 12, 2002 setting a deadline for the submission of the Regional Board's administrative record in this matter and its response to the petitions. The petitions challenge a Cleanup and Abatement Order ("CAO") issued by this office on June 6, 2002.

Upon receipt of the petitions, the Regional Board scheduled a hearing to be held on September 10, 2002. At that time, staff will present evidence that supports the CAO and both Kwikset and Goodrich will have an opportunity to provide evidence and arguments concerning the CAO. The Regional Board's hearing may result in an affirmation of the CAO. If so, the hearing transcript and the assembled administrative record can be forwarded to the State Board at that time. However, the Regional Board's hearing may also result in a rescission of the CAO. In that event, the petitions before the SWRCB would become moot.

For these reasons, we respectfully submit that the SWRCB's August 12, 2002 letter is premature. The Regional Board requests that review of the petitions of Goodrich and Kwikset be postponed pending the Regional Board's September 13, 2002 hearing on the CAO.

Thank you for your consideration of this matter. If you have any questions or concerns, please contact me at (909) 782-3284.

California Environmental Protection Agency



ATTACHMENT 3

From: Karen O'Haire
To: rwyatt@allenmatkins.com; Thibeault, Gerard
Date: 7/14/2006 11:39:37 AM
Subject: Re: Petitions A-1732, A-1732(a), A-1732(b), A-1732(c), A-1732(d)

At approximately 11:05 am this morning I received a telephone call from Robert D. Wyatt. Mr. Wyatt informed me that the Petitioners in the above matters would be responding to Gerard Thibeault's letter dated July 13, 2006 to Celeste Cantu and Michael Lauffer by Monday or Tuesday of next week.

In my letter dated June 28, 2006, I requested that all communications with this office be conducted in writing with copies to all parties. I expect all parties to comply with this request. Thank you.

Karen A. O'Haire
Sr. Staff Counsel
State Water Resources Control Board
1001 I Street
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fax: (916) 344-5199
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ATTACHMENT 4

California Environmental Protection Agency



AGENCY-WIDE ROUTE SLIP

From: <i>Linda Adams</i>	Telephone: <i>374-4211</i>	EDO/Unit: <i>CITEPA</i>
Date Sent:	Due Date:	
SUBJECT: <i>Tax - Peachbrook - City of Rialto</i>		
ACTION:		
<input type="checkbox"/> For Your Approval/Signature	<input type="checkbox"/> Please Advise/Make Recommendation(s)	
<input type="checkbox"/> For Your Review and Comment	<input type="checkbox"/> For Appropriate Action	
<input type="checkbox"/> For Information Only	<input type="checkbox"/> Other (Specify)	
<input checked="" type="checkbox"/> For Control		
Notes:		

ROUTE TO:

Name	RECEIVED	
	Received On	Completed On
1. <i>Tam Dodge</i>		<i>7/25/06</i>
2.		
3.		
4.		
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8.		
9.		
10.		

Comments:

Please return to:

7/24/06

Coply to: Tom Dodine ml

C O V E R
S H E E T

FAX

To: Linda Adams
Fax #: 916-324-0908
Subject: Perchlorate
Date: July 26, 2006
Pages: [14], including this cover sheet

Jam,
See m
L

COMMENTS:

From: [Redacted] of...
[Redacted] Brown
[Redacted] Secretary
Law Offices of [Redacted] Owen
266 West Hospitality Lane, Suite 302
San Bernardino, California 92408
Phone: 909-390-8027
Fax: 909-390-9837

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS PRIVILEGED AND CONFIDENTIAL. IT IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE RECEIVER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

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JUL 26 2006 16:37

PAGE 01

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C O V E R

F A X

S H E E T

To: Linda Adams
Fax #: 916-324-0908
Subject: Perchlorate
Date: July 20, 2006
Pages: [14], including this cover sheet.

COMMENTS:

From: [redacted] of...

[redacted] Brown
[redacted] Secretary
Law Office of [redacted] Owen
268 West Hospitality Lane, Suite 302
San Dimas, CA 91773-92408

Phone: 909-302-8027
Fax: 909-302-9037

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JUL 20 2006 15:37

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City of Rialto

CALIFORNIA
Office of the City Attorney

July 20, 2006

Robert A. Owen
City Attorney

VIA TELECOPY AND FIRST CLASS MAIL

Linda Adams, Secretary
California Environmental Protection Agency
P.O. Box 2815
Sacramento, CA 95812-2815

Re: Comments of the City of Rialto about January 19, 2006 Letter to Timothy Swickard Hand-Delivered to You by Barry Groveman

Dear Ms. Adams:

We are advised that one of the City of Rialto's former lawyers, Barry Groveman, recently hand-delivered to you a copy of a January 19, 2006 letterhead printed on Weston Benschhoff's letterhead, signed by Michael D. Bradbury, co-signed by Michael Groveman of Musick Peeler & Garrett LLP, and addressed to Timothy J. Swickard, General Counsel to the Department of Toxic Substances Control ("DTSC"), concerning perchlorate contamination in the Inland Empire (the "Letter"). (A copy of the Letter is attached for your convenience.)

I write to notify you that Mr. Groveman does not represent Rialto, and the dissatisfaction expressed in the Letter with respect to the efforts of our local Regional Water Quality Control Board, Santa Ana Division ("Regional Board") to respond to the perchlorate contamination are contrary to Rialto's own views. Rialto is keenly aware of the status of the cleanup efforts as the plume lies beneath Rialto, and Rialto's water supply is the most severely impacted of all the purveyors.

¹The letter does not identify Weston Benschhoff's firm. Weston Benschhoff briefly represented Pyro Spectaculars, Inc., one of the potentially responsible parties identified by the Regional Water Quality Control Board, Santa Ana Division, and a defendant in Rialto's CERCLA suit entitled *City of Rialto et al. v. United States Department of Defense, et al.* CV 04-00079-VAP, it no longer does so. We do not know who Weston Benschhoff currently represents.

150 SOUTH PALM AVENUE, RIALTO, CALIFORNIA 92376

709.907.0077 • Fax 709.907.0077

JUL 20 2006 15:37

PAGE: 02

When I spoke to Mr. Swickard about the Letter, I thought Mr. Groveman was attempting to persuade the Regional Board to take away management of basin cleanup from the Regional Board to DTSC, or to a perchlorate "czar" with institutional knowledge, and waste of time and resources from Goodrich (which, notably, did not sign the Letter) parties that they are ready or interested in becoming the leader of a group of settling Perchlorate's federal cost recovery litigation.

Another explanation for positions asserted in the Letter, which the drafter attributes to Rialto, is that since Rialto terminated Mr. Groveman as special counsel on perchlorate matters, he has relentlessly opposed Rialto's attempts to respond to the perchlorate contamination within its jurisdiction, threatened to sue the County of San Bernardino's ("County") Interim Remedial Action Plan that was developed in response to the Regional Board's Cleanup and Abatement Order issued to the County, and has even taken steps to block Rialto's proposed settlement with smaller potentially responsible parties.

Against that background, Rialto asks that you regard any suggestion in the Letter that Rialto shares the views expressed in the Letter. Rialto is pleased with the progress of the Regional Board's efforts, and does not want to hinder its efforts, and does not want to be pursuing information to advance an effective cleanup. It is on the same range of views, which will bring us closer to the views expressed in the Letter.

Rialto supports the Regional Board in this effort and appreciates its commitment of resources towards resolving the perchlorate problem, and under the competent direction of the Regional Board's leadership.

the County accepted the Cleanup and Replacement Water Order and the Replacement Water Order issued in favor of Rialto. The County prepared an Interim Remedial Action Plan, designed and installed a number of test wells, generated substantial data on the plume of perchlorate emanating from the Mid-Valley Sanitary Landfill ("Landfill"), negotiated an agreement with Rialto regarding the implementation of the Replacement Water Order, and installed a barrier well system at a total cost in the millions of dollars. The barrier well system, which is now partly operational, should capture the entire perchlorate plume which the County believes is attributable to its Landfill. Treated water is being delivered to Rialto pursuant to the Replacement Water Order.

Linda Adams, Secretary
July 20, 2006
Page 3

- Nine entities have submitted requested information to the Regional Board in response to Water Code section 13267 investigation letters.
- Nine additional entities have performed investigations, generating data which has supported detailed basin characterization.
- Five field investigations are still ongoing, three on or near the 160-acre site, one on a site near the Landfill, and one (directed by the County) in and around the plume emanating from the County's landfill.
- More orders will be issued soon against regional polluters.

The Letter's assertion that the Regional Board has been lax in issuing replacement water orders in favor of Fontana Water Company ("FWC") and West Valley Water District ("WVWD") is unsupported. Further, it fails to mention that both of those purveyors actually withdrew their request for a water replacement order. The attached Regional Board letter shows the failure of the Regional Board to issue a Replacement Water Order in favor of FWC and WVWD is attributable to the inability of those entities to show they are entitled to that Order, not to the alleged misconduct or lack of work by Regional Board staff.

Conclusion

Rialto would welcome the opportunity to brief you in greater detail on the percolate response in the Rialto Basin groundwater supply before we arrive at any decisions regarding the measures requested in the January 19th letter. Feel free to telephone me to discuss this matter further.

Sincerely yours



Mark A. Owen

- Enclosures: (1) January 19, 2006 Weston Bensinger, Schefort Rubalcava MacGeech LLP letter to Timothy J. Swickard.
(2) December 16, 2004 Regional Board letter regarding FWC and WVWD's request for Replacement Water Order.

cc: Honorable Mayor and City Council, City of Rialto
Honorable Mayor and City Council, City of Corona
Gerard Thibeault, Executive Officer, Regional Board

Linda Adams, Secretary
July 20, 2006
Page 4

Jorge Leon, Esq.
Timothy Swickard, Esq.
Bary Groveman, Esq.
Michael Bradbury, Esq.
Art Korman, Esq.
Gerald Pagans, Esq.
Congressman Joe Baca
Joel Moskowitz, Esq.
Robert Jocks, Esq.
Scott Sommer, Esq.
Susan Trager, Esq.
Christian Carrigan, Esq.

JUL 20 2006 16:38

PAGE 05

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**WESTON BENSEN OF
ROCHEFORT RIBALDO MACCLISH LLP**
ATTORNEYS AT LAW

COPY

January 19, 2006

NOT RECORDED
BY THE COUNTY CLERK

HAND DELIVERED

Timothy J. Swickard, Esq.
Chief Counsel
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95832-0806

Re: Perchlorate Contamination in the Inland Empire

Dear Mr. Swickard:

The Colton, Fontana and Rialto area of the Inland Empire is facing a groundwater pollution crisis that has caused a water supply problem in the region. Specifically, the chemical perchlorate, which impairs thyroid function, especially in infants and pregnant women, is polluting the groundwater aquifers on which the West Valley Water District, the Fontana Water Company ("Water Providers") and other water providers (including the City of Colton and Rialto) rely and presents an imminent and substantial endangerment to health and the environment. The City of Rialto, for example, has declared two public health emergencies related to the water supply crisis. The perchlorate pollution has forced the Water Providers and the other impacted water agencies to shut down and/or restrict use of twenty-one (21) groundwater production wells in the area, representing approximately 10% of the region's water supply, which serves a population of over 500,000 people. In addition, more groundwater production wells may need to be shut down in the near future as the pollution continues to spread.

The Water Providers have responded to the water crisis in a number of ways including the completion of an interim settlement agreement with a major defense contractor that is potentially responsible for a significant portion of the pollution. State and federal funds have also been pursued with considerable assistance from state and federal officials, however the amount needed to restore crucial water supplies is substantial. The regulatory agencies have not been successful in promoting a solution and in fact have hindered solutions by inaction and the weak application of existing

393 SOUTH HOPE STREET • SEVENTH FLOOR • LOS ANGELES, CA 90071 • TEL 213 576 1800 • FAX 213 576 1100
2801 CONNECTICUT ROAD, SUITE 215 • WESTLAKE VILLAGE, CA 91361 • TEL 805 497 8174 • FAX 805 497 8264
WWW.WBMLP.COM

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Timothy J. Swickard, Esq.
 January 19, 2006
 Page 2

enforcement tools. The most troubling issue is the lack of characterization of the nature and extent of the plume of contamination which some have estimated to be traveling at the rate of 2 to 3 feet per day and can knock out remaining water supply wells without warning. In addition, some water providers are not capable of receiving potable drinking water from the Metropolitan Water District of the California State Water Project, which further limits the overall amount of usable water in the region. Finally, but equally important, alternate water supplies are not available in this region. The combined effect of inadequate infrastructure, no alternate water supplies, lack of information about the plume and significance of the contaminant have created intractable and severe conditions. This regulatory paralysis represents a missed opportunity to achieve bold progress in addressing the water crisis affecting over 500,000 people in the Inland Empire. With a more defined mandate by Cal-EPA, dramatic results can be achieved.

The water crisis also is having a negative impact on the region's economic growth. It is critical to push for solutions that facilitate cooperation between water providers and responsible parties rather than divisive multi-party litigation that spans years. Critical to such solutions is the effective use of enforcement strategies by the regulatory oversight agencies under the umbrella of Cal-EPA. On the other hand, failure to utilize such strategies due to bureaucratic inertia can have the reverse effect, because the inaction provides an incentive to become recalcitrant. Here, the Water Providers have worked successfully with a major responsible party willing to lead a cooperative group to negotiate solutions beneficial to the region. If successful, this will avoid litigation. However, not one of the other identified potential responsible parties has been willing to participate and the lack of enforcement has seemingly justified their recalcitrance. The lack of timely and effective enforcement by the Regulators has forced the Water Providers to look to this Administrator for direct assistance. The following are the specific objectives that the Water Providers are seeking to achieve through the Administration:

1. **Administration Recognition of the Perchlorate Pollution:** The Water Providers and other affected water agencies such as the Cities first want to educate the Administration on the unique circumstances associated with the perchlorate pollution impacting the Inland Empire. The Water Providers want to set aside politics and get down to the business of developing

The Water Providers met with the former Secretary of the California EPA, Terry Tammien and his staff to discuss related issues.

Walter Beinhart
 Secretary
 California Environmental Protection Agency



State of California
Department of
Environmental
Protection

California Regional Water Quality Control Board Central Coast Region



Approved Signature
Division

Address: 10000 Highway 101, Suite 101, San Luis Obispo, California 93401
Phone: (805) 340-4000 Fax: (805) 340-4100

July 6, 2004

Mr. Richard W. McClure
Olin Corporation
Environmental Remediation Group
PO Box 298
Charleston, TN 37310-0298

Certified Mail No. 9009 0208 0012 0159 6985

Return Receipt Requested

Mr. Jay McLaughlin
President and CEO
Standard Pines Corporation
PO Box 1047
Boston, MD 21601

Dear Messrs. McClure and McLaughlin:

**Slice 425 TENNANT AVENUE, MORGAN HILL, CLEANUP OR ABATEMENT ORDER
NO. RC-2004-0101, 425 TENNANT AVENUE FACILITY, SANTA CLARA COUNTY**

Enclosed is Cleanup and/or Abatement Order (Order No. RC-2004-0101). This Order directs you to supply uninterrupted replacement water to well owners with perchlorate-contaminated wells. Olin Corporation and Standard Pines Corporation (hereinafter "Discharger") have been named in this Order because it is or was the owner and operator.

This Order establishes criteria for supplying interim and long-term uninterrupted water service to private well owners with perchlorate-contaminated wells. The Order requires Discharger to provide interim uninterrupted water to well owners whose wells meet two important criteria. The first criteria is for wells that test at or higher than 4ppb. All owners with wells that test at or higher than 4 ppb shall be supplied interim uninterrupted water service (or truly bottled water). The Order also establishes a mechanism for stopping bottled water supply to these wells and includes follow up monitoring. The second criterion is for wells that test less than 4 ppb. For those wells Discharger may cease supply of uninterrupted water service if, after four quarters of testing, the results remain less than 4 ppb. However, the Order will still require additional testing to monitor perchlorate groundwater concentrations.

The Order also requires Discharger to begin implementation of long-term uninterrupted water supply service for wells with concentrations at or above 4 ppb. As part of this requirement, Discharger will be submitting a plan schedule for long-term uninterrupted water supply implementation. In addition, Discharger is required to submit a detailed plan for long-term uninterrupted water supply

California Environmental Protection Agency



July 6, 2004

Options for wells with concentrations ranging from 400-99 ppb. Once this plan is approved by the Executive Officer, Discharges will be required to implement the plan.

As noted in the Order, any person affected by the Order may petition the State Water Resources Control Board for review within 30 days. (California Water Code §13329) You may also request a Regional Board hearing by contacting Staff Counsel, Paul L. Olson by facsimile to (916) 341-5129 within 30 days of receipt of this letter. The hearing will be conducted by the Regional Board at a public meeting or by the Executive Officer, as determined by the Executive Officer. A hearing by the Executive Officer may consist of a review of the record after interested parties have had the opportunity to submit any additional written materials. Any hearing will be open to Chip Corporation, Bunker Press Corporation and other interested parties. A request for a Regional Board hearing does not toll or otherwise extend the 30-day period for filing a petition with the State Board pursuant to Water Code Section 13329.

If you have questions, please call David Acher at (916) 572-4644 or Brian Gobler at (916) 549-2467.

Sincerely,

Roger W. DeGgs
Executive Officer

3450 Capitol Blvd, Sacramento, CA 95833 TEL: 916-227-1111 FAX: 916-227-1112

Attachment: Order No. R3-2004-0101

cc via e-mail:

Mr. Paul Olson
Office of the Chief Counsel
State Water Resources Control Board

Mr. Jim Adkins
City of Morgan Hill

Mr. Rich Chandler
Kames

Mr. Peter Forest
San Martin County Water

Ms. Sylvia Hamilton
PCAO

Mr. Tom Mohr
Santa Clara Valley Water District

PCAO Members

Elected Officials

U.S. Environmental Protection Agency

Mr. Steven L. Hoch
Hatch & Parent

California Environmental Protection Agency

Recycled Paper

Timothy J. Swickard, Esq.
January 19, 2006
Page 3

solutions, including working with those industrial parties, such as Goodrich, that appear ready to cooperate.

2. **Specific Action by the Administration:** Once the Administration is informed of the specific issues associated with this crisis, the Water Providers believe that the Administration can take specific actions and provide assertive leadership to reduce perchlorate contamination in the Island Empire. By bringing its full weight, authority and prestige, the Administration can assert leadership and take charge of a chaotic and economically debilitating crisis that lead the adoption and implementation of a remedy. The administration can take the following specific steps, among others, to address the perchlorate crisis:

• **Appoint a Perchlorate Remediation Czar** - The Perchlorate Remediation Czar can convene and chair an ad hoc spill and groundwater remediation authority. The Czar can use this remediation authority to track the development of an interim and long-term remediation plan and promote cleanup remediation without expensive and time consuming civil litigation.

• **Partnership with Other Water Entities** - The Administration, through the Czar, can partner with the regional water quality authority, the local Watermaster and Water Providers. This partnership, among other things, can: (i) provide a unified voice for remediation; (ii) mandate needed technical assessments of the pollution, and (iii) maximize the use of existing administrative resources.

• **Establish Safe-Harbor Provisions** - The Administration can develop safe-harbor provisions for potentially responsible parties ("PRPs"). Such safe-harbors can include: (i) recouping dollar-for-dollar credit; and (ii) adding additional leverage associated with state and federal financing.

• **Implement Interim Remedies** - The Administration can promote the implementation of an interim remedy that can include: (i) installation of wellhead treatment systems; (ii) the development of a replacement water plan that includes the relaxation of barriers to water delivery among local water agencies and the implementation

Wishon, Baschoff
Rochester, Rubincov, McCusker

NP18A

Timothy J. Swickard, Esq.
January 19, 2006
Page 4

of a replacement water and to offset alternate sources of water supply and (ii) the promotion of interconnections between regional water systems.

Implement Long-Term Remedies -- The Administration can promote the implementation of a long-term remedy that can include: (i) a coordinated extraction plan, (ii) enhanced wellhead treatment, (iii) restoration of the contaminated water supply, and (iv) relieving PRPs from the obligation of implementing separate remediation systems.

Water Orders -- A "Water Order" was recently issued by the Central Region (RWQCB) against the Olin Company for "perchlorate" contamination impacting waters of the State. This Order is on "all fours" with what we desperately need in the Inland Empire. In the Inland Empire the facts and empirical data relating to one of the main PRPs -- the "Mid Valley Landfill" are much more compelling than the facts that caused the Order to be issued against Olin. A similar order to the Mid Valley Landfill and other PRPs (which can clearly be issued pursuant to Water Code section 13504), would make all the difference to the Water purveyors, Cities and the people in the region. Most important it will get the ball rolling to provide sustainable water and to provide incentives to PRPs in high serious discussions with the impacted Water Purveyors -- as the Goodrich Co has done. Goodrich is willing to lead the group if the other PRPs will enter the process. The other PRPs prefer to deal with the much less aggressive process of the Santa Ana RWQCB -- with very minor if any threat of any penalty. The list of actions taken by the RWQCB to date demonstrates much more motion than action. If you look into the letters and minor directives they have issued (beyond the rules and regs), you will quickly reach the same conclusion. Action and results are desperately needed. Also attached is the order that was joyfully issued to Shell Oil, et al. several years ago by USEPA and the LA RWQCB which is still in effect. That Order concerned MCHB contamination that impacted wells operated by the City of Santa Monica and the Southern California Water Company. It has made a major difference in the resolution of that matter.

WALTER BOESCH
ROBERTA RUBENGA MACENISA
WATERWORKS

11441

Timothy J. Swickard, Esq.
January 19, 2006
Page 5

Thank you for agreeing to meet with us. We look forward to working together to solve this unprecedented water quality problem in the State of California and the Inland Empire.

Very truly yours,

Barry C. Groveman
MUSICK, PEELER & GARRETT LLP

Michael D. Bradbury
WESTON, BENSHOOF, ROCHFORT,
RUBALCAY & MACCLISH LLP

MOB/paw
Enclosures

WESTON BENSHOOF
ROCHFORT RUBALCAY MACCLISH
LLP

JUL 20 2006 16:39

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California Regional Water Quality Control Board
Santa Ana Region



City of Tustin
Secretary for
Environmental
Protection

3377 Main Street, Suite 300, Riverside, California 92501-3348
Phone (951) 782-1130 - FAX (951) 781-0288
<http://www.waterboards.ca.gov/santarana>

Arpell
Schwarzenegger
Governor

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DEC 17 2004

LAW OFFICES OF
SUSAN M. TRAGER

December 16, 2004

Mr. Steven J. Ellis
Musick, Peeler & Garrett LLP
One Wilshire Boulevard, Suite 2000
Los Angeles, CA 90017-3383

PETITION OF WEST VALLEY WATER DISTRICT AND FONTANA WATER COMPANY
FOR ISSUANCE OF WATER REPLACEMENT ORDER TO THE COUNTY OF SAN
BERNARDINO

Dear Mr. Ellis:

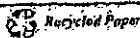
We have received your letter of December 9, 2004. While we won't purport to respond to everything in that letter (or in your October 22, 2004 letter), it appears some clarification is necessary in order to help facilitate timely consideration of the subject petition.

You initiated this process by filing the subject petition on September 14, 2004. Given the importance of this matter, Board staff scheduled your petition for Board consideration at the earliest available Board meeting (November 5, 2004). You then requested postponement of the scheduled November 5 hearing. As we understand your letters, you now believe additional data are necessary to support your petition. Board staff have assisted you in obtaining additional data that you have requested.

We have not yet been provided with the technical basis that would support your petition, and you have not clearly defined the extent of the data set necessary for you to present your case to the Board. Given this uncertainty, we believe it would be appropriate for you to notify us, consistent with the timing constraints specified in my November 23, 2004 letter, when you are ready for us to schedule a hearing on your petition.

Your letter also expressed concerns with the hearing structure specified in the October 16, 2004 Notice of Hearing in this matter. Given the unusual nature and form of your petition, we believe that the structure outlined in the Notice will afford the Board and staff the best opportunity to thoroughly consider the issues that you ultimately raise in the hearing.

California Environmental Protection Agency



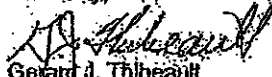
Steven J. Elle

-2-

December 16, 2004

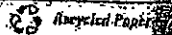
If you have any questions, please call me at (951) 782-3284, Kurt Berchtold at (951) 782-3286, or Jorge Leon at (916) 341-5180.

Sincerely,


Gerard J. Thibeault
Executive Officer

CC: Regional Board
Jorge Leon, SWRCB - OCC
Barry C. Groveman, Musick, Peeler & Garbutt LLP
Joel Moskowitz, Moskowitz, Branson, Winston & Blinderman LLP
Anthony Aratza, West Valley Water District
Michael J. McGraw, Fontana Water Company
Gerald J. Black, Fontana Water Company
Timothy J. Ryan, San Gabriel Valley Water Company
Gerald Eagers, Redwino & Sherrill
Michael Whitehead, San Gabriel Valley Water Company
Susan Trager
Danielle Sakai, Best, Best & Krieger LLP

California Environmental Protection Agency

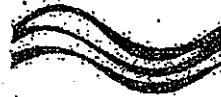


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ATTACHMENT 5



STATE WATER BOARD

WORKSHOP
Wednesday, November 2, 2005 - 10:00 a.m.
Coastal Hearing Room - Second Floor
The Seena Jr. / CAMERA Building
1001 J Street, Sacramento

REVISED (SEE ITEMS #2, #3 & DELETED #8)

PUBLIC FORUM

Any member of the public may address and ask questions of the Board relating to any matter within the State Water Board's jurisdiction, provided the matter is not on the agenda, or pending before the California Water Boards. Presentations at the Public Forum will be limited to 5 minutes, or otherwise at the discretion of the Chairman.

INFORMATIONAL ITEMS

- 1. Informational presentation by Gerard Thibault, Santa Ana Water Board Executive Officer, on Regional Board Issues
- 2. Informational item on water quality issues associated with California Port operations.
- 3. Informational presentation by Michael Lauffer, Chief Counsel, regarding ex parte communications.

CONSENT AGENDA (Items 4 - 7)

FINANCIAL ASSISTANCE

- 4. Consideration of adoption of a State Revolving Fund Program reimbursement resolution.
- 5. Consideration of a resolution adopting the Small Community Growing Water Grant Program Competitive Project List.
- 6. Consideration of a resolution authorizing the San Francisco Bay Water Board's request for additional funding in the amount of \$400,000 from the State Water Pollution Cleanup and Abatement Account for the Gamboni Mine cleanup in Marin County.

WATER QUALITY

- 7. Consideration of a resolution authorizing the Executive Director to execute two grant agreements with the U.S. Department of Energy for regulatory oversight at sites in the San Francisco Bay Region.

REGULAR AGENDA (Items 8-9)

WATER QUALITY

- 8. Consideration of a resolution adopting the California Ocean Plan Triennial Review and Work Plan 2005-2008 (Written comments are due by 5:00 p.m., November 4, 2005)
- 9. Consideration of a resolution approving an amendment to the Water Quality Control Plan for the San Diego Region to establish a total maximum daily load for total nitrogen and total phosphorus in Rainbow Creek.

NOTICE OF PUBLIC HEARING

WATER QUALITY

8. Goods movement through California Ports

CLOSED SESSION ITEM

(Note: Closed Sessions are not open to the public)

LITIGATION

(This closed session is authorized under Government Code section 11126(e)(1)).
The Board will meet in closed session to discuss ongoing litigation in the case of *Yuba County Water Agency v. State Water Resources Control Board and consolidated cases* (San Joaquin County Superior Court, Case No. CV026505, previously Yuba County Superior Court Case Nos. YCSCCVPT 03-000589, 03-000591, 03-000627, 03-000634, and 03-000635).

The Board encourages submission of written comments. Unless otherwise specified, written comments must be received by 5:00 p.m., October 26, 2005 and will not be accepted after that time. Time limitations on presentations may be imposed.

See "Presentations to the Board" at <http://www.waterboards.ca.gov/board.html>. Agenda items will be electronically available after October 24, 2005.

Written comments on agenda items are to be addressed and submitted to Debbie Irvin, Clerk to the Board, either by email at dirvin@waterboards.ca.gov, fax (916) 344-5620, or mail addressed to State Water Board, P.O. Box 100, Sacramento, California, 95812-0100. Please also indicate in the subject line, "COMMENT LETTER - 11/02/05 BOARD MEETING, and ITEM NUMBER ____". If you have questions about the agenda, contact Debbie Irvin via email or call (916) 344-5600. For a map to our building, see our web site at <http://www.calepa.ca.gov/EPA/ldg/location.htm>.

All visitors are required to sign in and receive a badge prior to attending any meeting. Valid picture identification may be required due to the security level so please allow up to 15 minutes for this process. Individuals who require special accommodations are requested to contact Adrian Perez, Office of Employee Assistance, at (916) 344-5680.

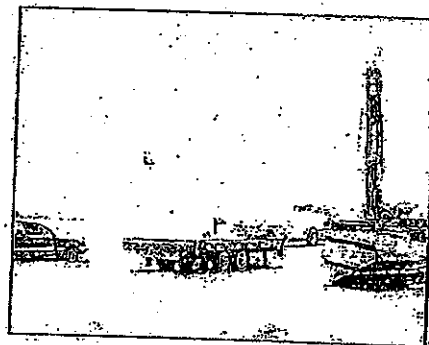
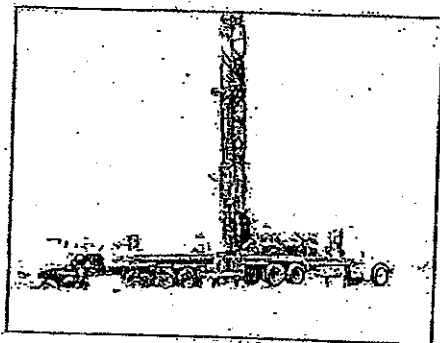
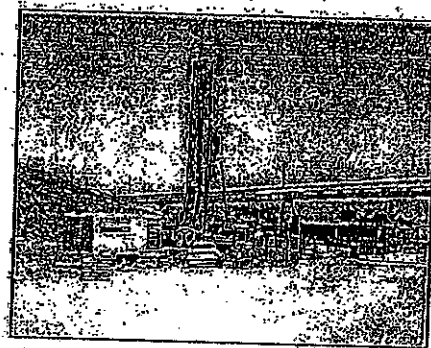
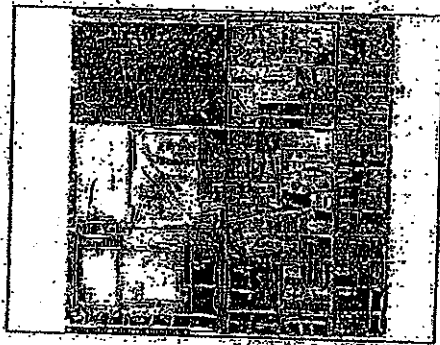
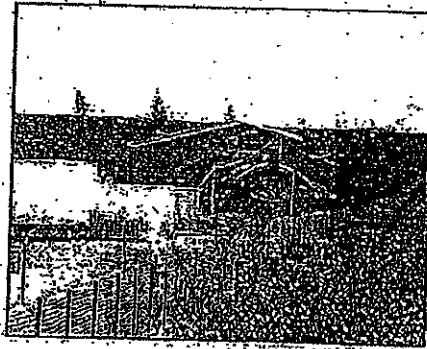
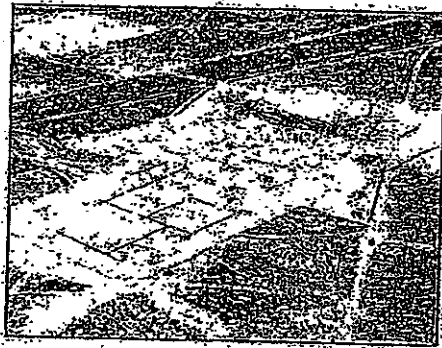
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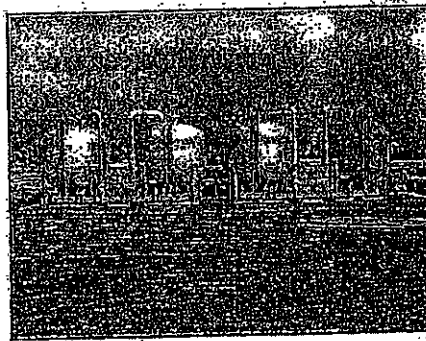
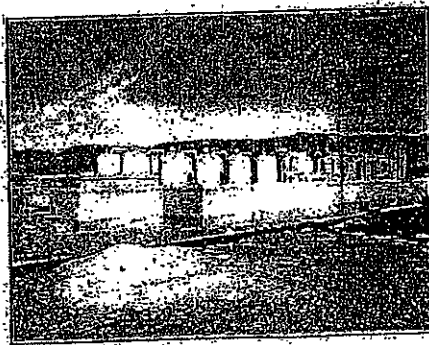
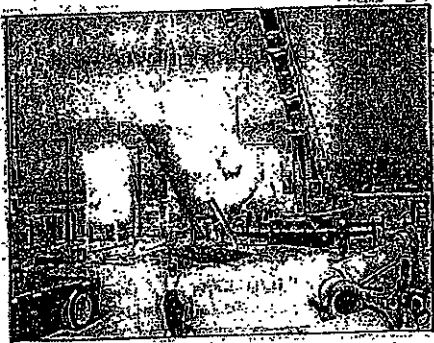
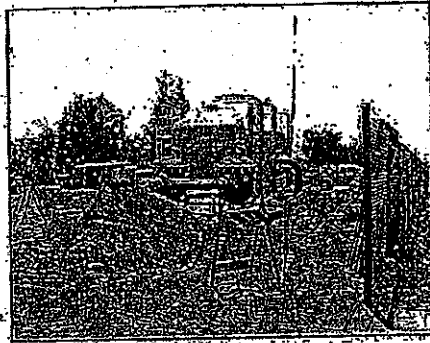
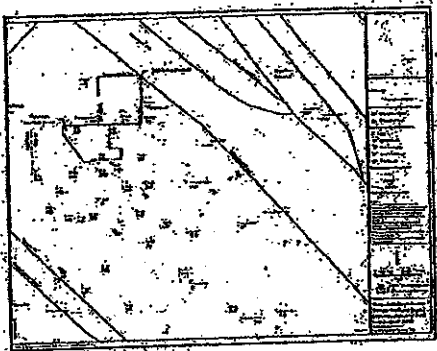
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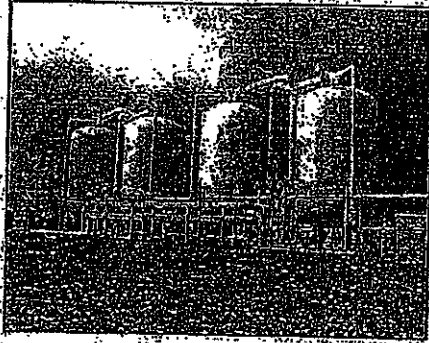
318

It would be helpful if those wishing to present a Microsoft PowerPoint presentation during the meeting would provide either a CD or send an email at least two working days prior to the meeting.

An audio broadcast will be heard via the World Wide Web at <http://www.calpa.ca.gov/Broadcast/>.







Current Enforcement

- Enhart (Black & Decker) Cleanup and Abatement Hearing scheduled for May
 - Discovery
 - Submittal of Evidence
 - Designation of Expert Witnesses
 - Briefing schedules

Enhart Enforcement

- Separation of Functions
 - Staff Prosecution Team
 - 3 Deputy Attorney General
 - OCC Deputy Chief Counsel Wyeck
 - OCC Senior Staff Counsel Leon
 - ED A/AG
 - Technical Staff
 - Board Advisory Team
 - OCC Deputy Chief Counsel Cobb
 - Regional Board Technical Staff

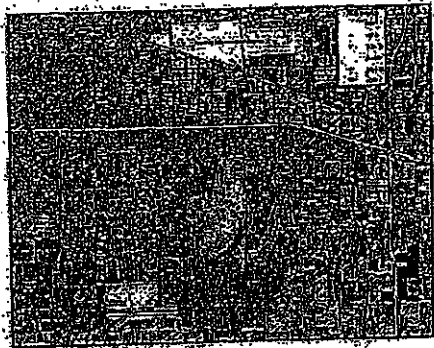
Goodrich Enforcement

- Consent order scheduled for Nov 16th in Riata
 - 6 to 8 wells and sampling
 - Each well ~ 700 feet deep
 - Westbay multiple port completions
 - Approximately \$250,000 per well
 - \$100,000/month stipulated penalties for missing schedule

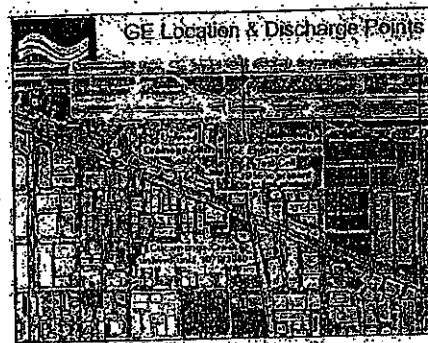
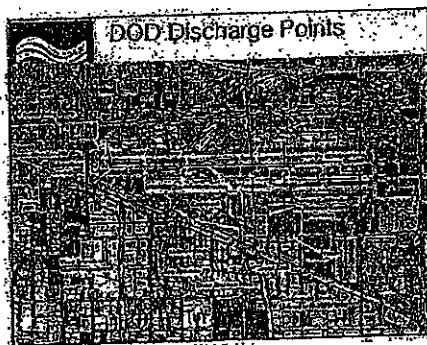
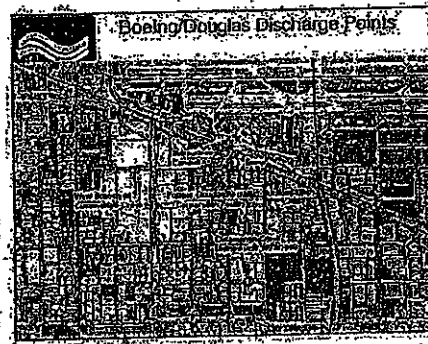
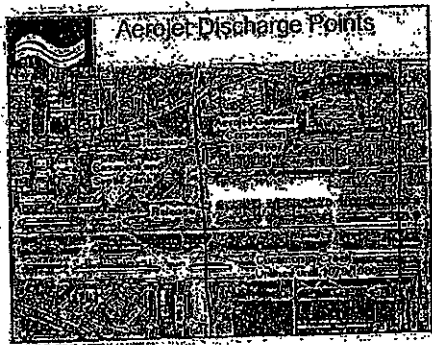
Goodrich Enforcement

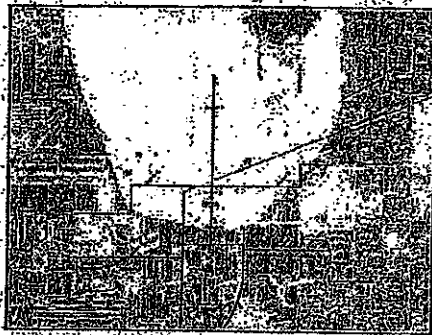
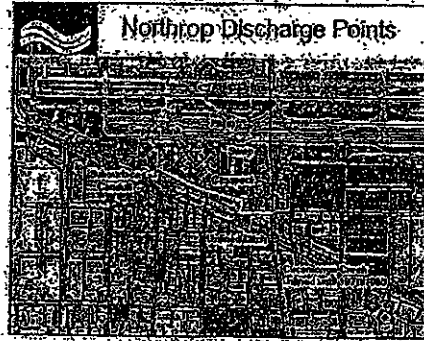
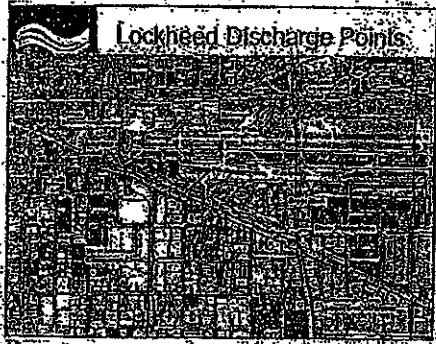
- Staff believes this work will generate data necessary for court substantiation of water replacement orders
- Citizens group petitioned for inclusion of water replacement order
- Full intention to issue water replacement order upon completion of science to substantiate requirement

Ontario Airport TCE Enforcement



- ### PRPs Identified
- Aerjet
 - Boeing/Douglas
 - DOD - Air Force, National Guard
 - General Electric
 - Lockheed
 - Northrop





Present Value Cost to Clean Up TCE Plume

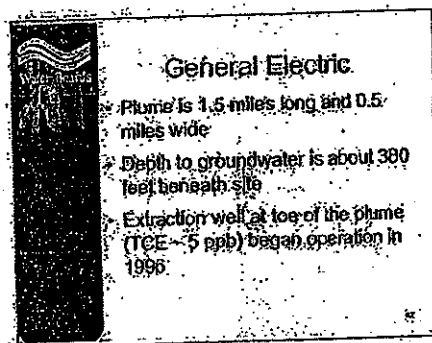
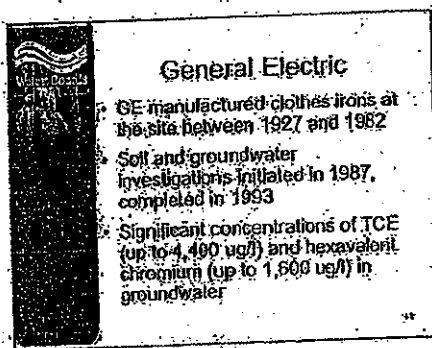
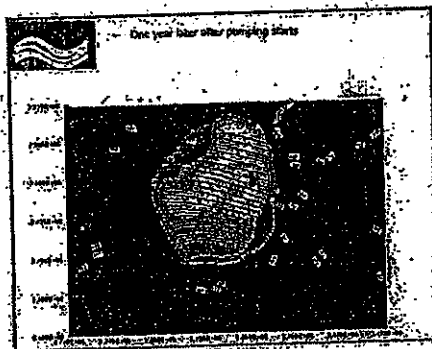
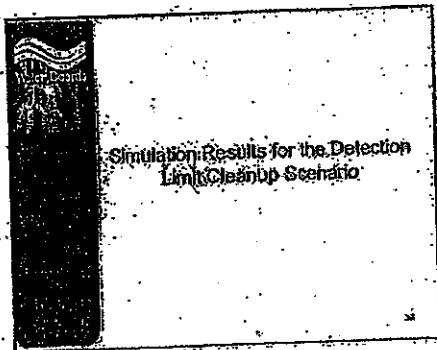
- Clean up period - 50 to 75 years
- Interest rate assumed at 5 percent
- Project is constructed in 2010
- Inflation rate at 3 percent


Present Value Cost to Clean up TCE Plume

- Present value in 2010 of clean up is about:
 - \$413 million for 50-year period
 - \$445 million for 75-year period

Reconnaissance-Level Cost Estimate

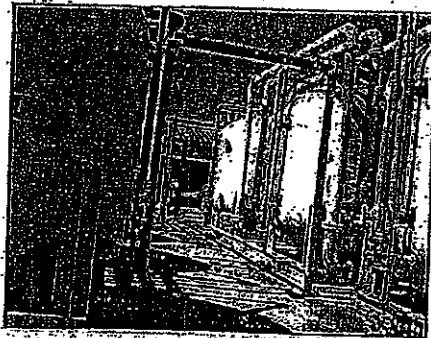
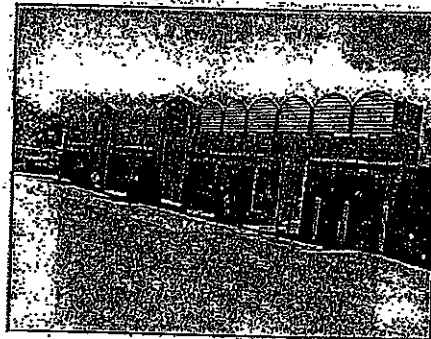
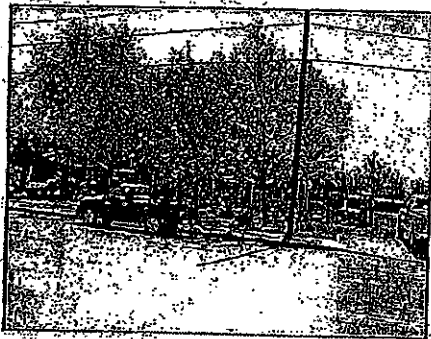

Item	Cost (\$)	Net Cost (\$)
Remediation Work	219,700,000	22,075,000
Construction	24,340,000	311,000
PEA Facility	173,500,000	32,070,000
Construction	11,200,000	915,000
Lockheed Work	150,000,000	11,041,000
Utilities	118,200,000	20,021,000
Contingency at 10%	120,240,000	0
Total	1,122,680,000	38,322,000





General Electric

Since 1996, almost 2 billion gallons of groundwater have been extracted and treated (currently about 2 mgd)

SAWPA TAC

Basin Plan Amendment
Required Monitoring and
Analyses

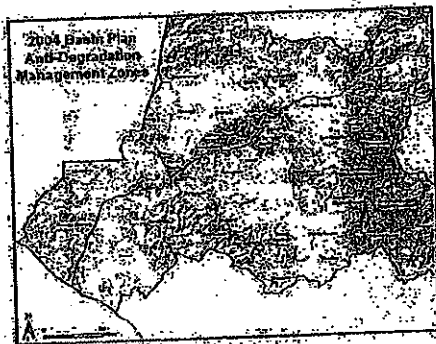
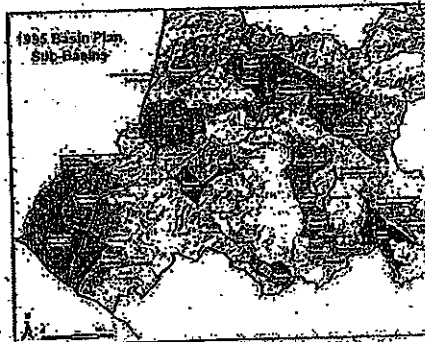
Recomputation of Ambient Water Quality
1984-2003

July 16, 2004

Background

TINIDS Study - Phase 2A

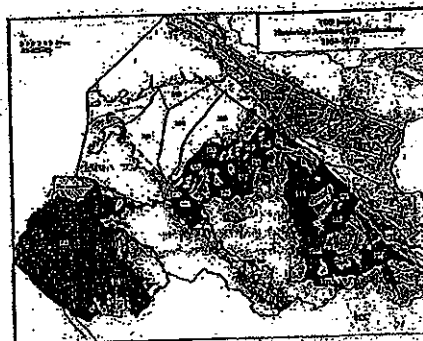
- Updated ground-water basin boundaries
- Management Zones
- Calculated ambient water quality
 - 1954-1973 - Historical Period (new objectives)
 - 1978-1987 - Current Period (measurement of compliance)
- Methods:
 - Five years of pumping
 - 1990s, reviewed process with tributous compliance

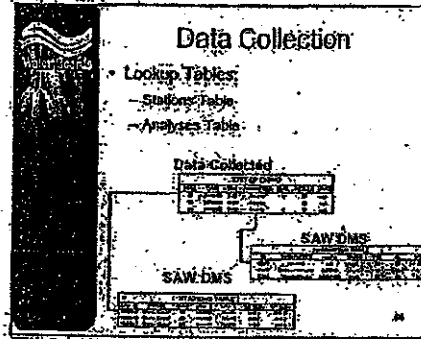
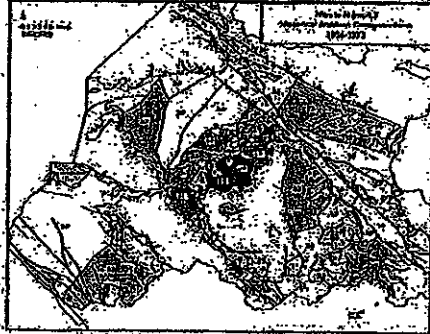


Calculate Ambient Water Quality

TINIDS Study - Phase 2A

- Develop volume-weighted management zone estimates of TDS and nitrate concentrations
 - 1954-1973 - Historical Period
 - 1978-1987 - Current Period
- Re-computation of AWQ
 - 1984-2003
 - Measurement of compliance





Develop Queries to Extract Data

- Queries:
 - Water level data
 - Water quality data
 - TDS
 - NO₃-N
 - Other inorganic and general physical parameters

Develop Queries to Extract Data


- Data checks
 - Develop TDS and NO₃-N data histories
 - Appropriate statistical tests for normality and outliers
- Shapiro-Wilk test
 - Standard method tests
 - Distribution history
 - Measured TDS vs. calculated TDS
 - Measured EC and its ratio
 - TDS to EC ratio
 - Reject data if any test failed

Develop Point Statistics

- Each well must have at least three data points in separate years during the analysis period. If a well has more than one data point in one year, those data are averaged for the year.
- Computed statistics account for variability resulting from:
 - sampling error
 - analytical error
 - hydrological variability
 - nonhomogeneous hydrogeological properties

Estimate Regional Water Quality


- Summary Statement:
 - Develop water quality contours based on point statistics of TDS and NO₃-N



Estimate Regional Water Quality

Procedures:


- Define aquifer geometries
 - Orange County (2 layers)
 - Citrus (3 layers)
 - Bunker Hill Pressure (2 layers)
- Compare well construction to layer geometry
 - Assign each well to particular layer(s)



Estimate Regional Water Quality

Procedures:

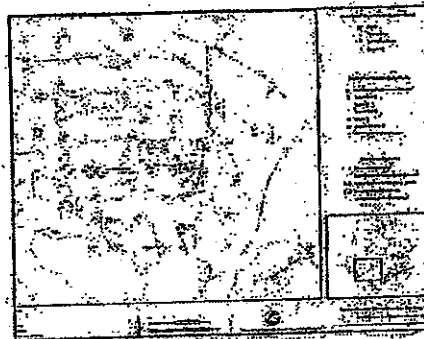

- Plot point statistics on maps
 - TDS and NO₃-N
 - Each layer (where applicable) and each major aquifer
 - Total nodes = 21
- Develop and digitize contours of water quality, accounting for
 - Management zone boundaries
 - Mean values



Compute Ambient Water Quality for Management Zones

Summary Statement:

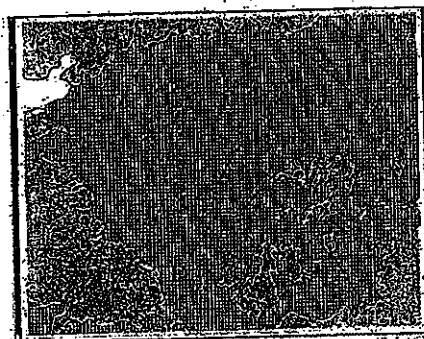
Generate volume-weighted estimates of ambient water quality (TDS and NO₃-N) for individual management zones.

Compute Ambient Water Quality for Management Zones

Procedures:

- Create 3-D grids
 - Water level elevation
 - Water quality (TDS and NO₃-N)
 - Specific yield and specific storage (darcy)
- Use contours and data points
- Software:
 - Surfer during TIMTDS Study
 - Geostatistical Analyst (ArcGIS extension)



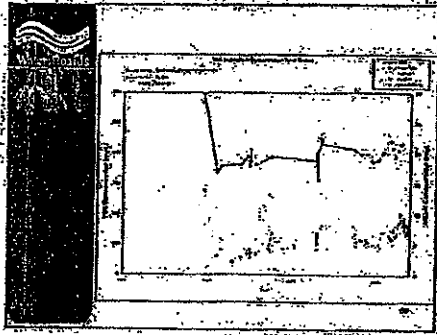
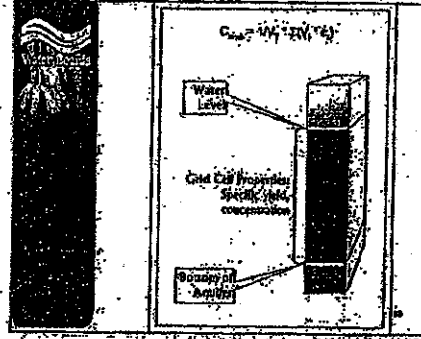
Compute Ambient Water Quality for Management Zones

Compute volume of groundwater in each grid cell - for each layer, if applicable.

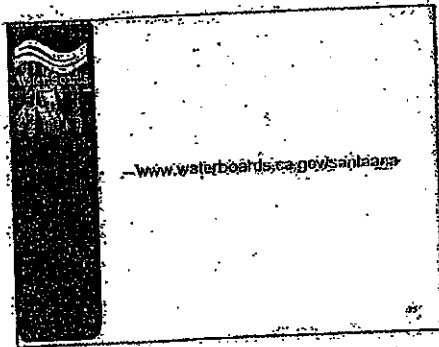
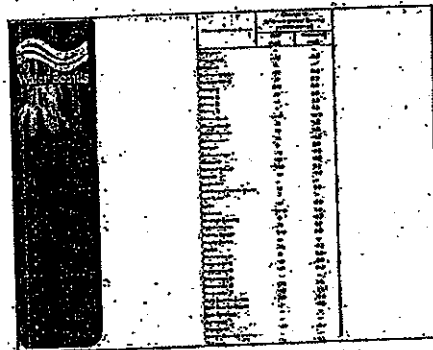
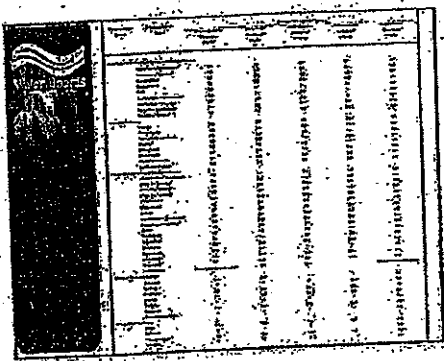
$$V_i = A \cdot (WGL_i - BW_i) \cdot SV_i$$

When:

- V_i = volume of groundwater in grid cell i (in ft³)
- A = area of grid cell (in ft²)
- WGL_i = water table elevation in grid cell i (in ft)
- BW_i = elevation of the bottom of aquifer in grid cell i (in ft)
- SV_i = specific volume of water (in ft³/ft³)



Grid Cell ID	Water Table Elevation (ft)	Bottom of Aquifer Elevation (ft)	Volume of Groundwater (ft ³)
1	100	90	10000
2	95	85	10000
3	105	95	10000
4	100	90	10000
5	90	80	10000
6	100	90	10000
7	105	95	10000
8	100	90	10000
9	95	85	10000
10	100	90	10000
11	105	95	10000
12	100	90	10000
13	95	85	10000
14	100	90	10000
15	105	95	10000
16	100	90	10000
17	95	85	10000
18	100	90	10000
19	105	95	10000
20	100	90	10000



Board Members: Tom Doduc, Art Baggott, Pete Silva, Jerry Securdy.
Executive Director: Celeste Cantu.

State Water Resources Control Board Meeting, November 2, 2005

Report by Jerry Thibeault, Executive Officer of Santa Ana Region 8

Mr. Thibeault is introduced by Celeste Cantu

Mr. Thibeault: Madame Chair and Members of the Board - Good Morning. Celeste has asked us to tell you a little bit about what is going on in the various regions. First thing I wanted to do was to point out for those who have not been on the Board for a long time Region 8 is the smallest of all the Regional Boards down here. However, we have the second largest population of any of the regions. So we are next to L.A. which is the most populous of the regions and we do have the second largest population - very, very diverse set of environmental conditions in the region. This may be a little hard to see here but it shows our region a little bit here (pointing to map on PowerPoint presentation) Newport Beach, Huntington Beach on the coast going inland to (oh yeah, thank you, that would be great Pete) into the Kialto Riverside area, the inland empire, San Bernardino, Yucaipa, going up to Cajon Pass - some of the other photos I am going to show you later are from this area right here in Kialto. This is the 15 freeway going up and the 215 freeway and we have a lot of activity going on in here at the 10 freeway. So I just wanted to be showing you some of these things but we will be focusing on that a lot.

For those who have been on the Board for a while, you are well aware of our perchlorate enforcement case in North Rialto and this Board has been extremely helpful in providing a lot of assistance from the clean-up and abatement account to help provide well head treatment for the folks in Rialto. This whole case started out with the Rialto Ammunition Back-up Storage Point during World War II. The military found a place that was outside of where shelling from off shore ships could reach ammunition storage points and this is in North Rialto. The I-15 freeway is right here - 215 over here and this thing is right in the north part. We have a number of responsible parties for the problem that we have talked about this first enforcement case. Most prominent are Kwikset which has become Emhart which has become Black & Decker and yes it's the same Black & Decker we know and love from Home Depot. And also Goodrich, these are the two main responsible parties. This is what the site looked like in 1955. These buildings over here are where most of the work that was done by West Coast Loading where they loaded shells for use in Korea and other military operations throughout the world. These shells were star burst shells which had a high percentage of perchlorate and this site was later taken over five years later by Goodrich for rocket development. And you see this is way out in the country at that time. I lived a couple of miles from here when this facility was in operation and now it's all surrounded by homes and a large landfill down here on this side but back then, this area was not sewered. Septic tanks, surface impoundments, surface burn pits, lots of opportunities for pollutants to be discharged to the sub-surface.

This is one of the old bunkers from World War II, one of the last remaining bunkers; a lot of munitions were stored there and a lot of materials containing perchlorates. Here is our famous 160 acre site owned by West Coast Loading which became Embart which became Black & Decker and also Goodrich. We have two plumes that extend like that direction to the southeast actually. One large plume from the 160 acres and then another plume generated recently by Robertson Ready Mix working for the County. There was apparently some perchlorate in the subsurface. They had a very large gravel washing operation here -- put a lot of water in the ground and mobilized and generated a whole new plume that is distinct from the plume from 160 acres but moving in the same direction away from the County landfill.

The County has been very cooperative in putting in wells and dealing with this problem. They have moved down several miles from the site. These wells are \$250,000 wells that go down 700 feet. Very difficult to drill. Multiple port completions, a quarter million dollars on each well and this is a well down by the airport -- helicopter landing in the background here -- these are the two plumes -- the County plume shown here and the plume from the 160 acres Goodrich, Kwikset, some fireworks companies, and you can see that they both are moving in the same direction, but they are also moving away from some of the areas that also have perchlorate contamination which we believe comes from agricultural practices, the use of Chilean fertilizer from 1980 through about 1995. So we have a general problem with perchlorates throughout most of the Southern California area from agricultural use of Chilean fertilizer but that is a distinct problem from these two plumes that are the subject of a lot of our fun.

In the case of the County they have been cooperative. They have put in a wellhead treatment system for Rialto well number three as we directed. This is one of the replacement water issues and we have, unfortunately, many of these wellhead treatment systems throughout the area. All over Rialto this is from the Lockheed plume in the Redlands/Riverside area and another one -- this one was actually funded from money from the clean-up and abatement account. This was in Southern Rialto and also for perchlorate treatment.

We have scheduled a clean-up and abatement order hearing for May with Black & Decker. Now you might think well, why don't you schedule a hearing in two weeks, hold that hearing for clean-up and abatement orders, it's a pretty easy thing to do. Well, this is the most difficult enforcement I have seen in 30 years. Black & Decker has an unlimited defense budget and they have been using it and so we are treating this as a court case. We are going through discoveries, submittal of evidence, designation of expert witnesses, briefing schedules and the earliest possible time for us to have the hearing was May. We have also instituted a separation of functions where we have a staff prosecution team. We are using attorney general staff at this stage of the game. This is not in court. This is for a clean-up and abatement order hearing. Three deputies are working with us. Phil Wyles has been really helpful. Jorge Leon has put in an incredible amount of time and our staff has put in thousands of hours in this case. We also have a Board advisory team that is kept separate from us. They are not involved in the prosecution at all. Ted Cobb is

heading up that group along with technical staff from the Board who have not been involved with the perchlorate problem.

Now Goodrich has been a lot more cooperative in this whole thing. We are scheduled to hold a consent order hearing next week in Rialto. They have agreed to put in about 3 million dollars worth of wells for a ten month agreement to not take any further enforcement. This will be five deep wells, each well 700 feet deep - west bay multiple completion wells - a quarter million dollars each one. And also we have thrown in a hundred thousand dollar per month stipulation for missing the agreed upon schedule. This is a serious approach. However, a lot of the folks in Rialto are not very happy with this because it does not require replacement water. The staff position in this is that we don't have the data necessary to substantiate in court the need for replacement water so this work - three million dollars worth of work will help give us the substantiation we need to order replacement water which we expect to have to take place next summer.

We have another new situation just south of the Ontario Airport. This is the Ontario Airport up here where I am sure all of you have landed one time or another - with the 10 freeway right across here. South of the airport this was the dairy preserve. Four hundred thousand dairy animals in this area for the last 50 years and there was very little water production through there. We took some samples and found some PCB a while back. Then the Chino basin water master found a lot of PCB through its sampling program. It turns out we have a very large plume of PCB in the middle of the dairy preserve which does not make any sense until you look at Ontario Airport's two surface waters, Cucamonga Creek and Chino Creek that could have transported this matter down into this area. We have a well known PRP's who spent a lot of time in Ontario Airport. We are working with GE and other cleanups. Working with Lockheed and other clean-ups. Very cooperative groups. Others have been less cooperative in the past. But we are working with these PRP's to come up with a strategy to deal with this. We have a lot of information on all the discharge points from Boeing, Aerojet, DOD which has not been very cooperative as you know. GE is one of the most cooperative groups around, Lockheed the same. All surface kinds of things, surface swamps, ditches that go right into Cucamonga Creek, the materials, the PCB's, the solvents that are probably carried in the creek where they percolated down within two miles down into the ground water over 50 years. And so now we have the plume that results from that.

We also have 40 million gallons per day of desalting that is taking place at the south end of this plume. The Chino one and the Chino two desalters from the Chino basin of the Inland Empire Utilities Agency and some of the other agencies that are producing about 40 million gallons per day of municipal water, cleaning up water that has been contaminated by 50 years of dairy operations and another 100 years of irrigated agriculture. This plume is headed right for these facilities so the Chino basin water master and the desaltery authority have spent a lot of time working with us to come up with a strategy to clean up this plume and to encourage the PRP's to get on this pretty quickly. The water master has provided consult help to us to come up with clean-up strategies, costs which is like \$445 million over 75 years to deal with this plume - it is a very serious problem. The consultants have designed a clean-up strategy and they have done a

clean-up modeling for us -- see these red spots in the middle here; one year after clean-up is instituted five years later a lot of that mass is gone. We have a lot of information to give to the PRP's to help them move along towards coming up with a solution which we think is going to be put in well head treatment on the desalter wells. The plumes there are the least expensive alternative and we think this is going to be something that will be low cost to them, relatively low cost and we are meeting with them next week to kick this off.

We have another enforcement action which is a really good success story. You notice that we are focusing on enforcement, enforcement and enforcement and will do good science next but our third enforcement is that GE, which had a flat iron plant for 55 years at a site in Ontario high concentration of TCE and hexavalent chrome. From discharge from the site they now have a mile and a half plume and again 400 feet of ground water. Very deep, expensive to drill wells, expensive to pump this material up and you know it's a huge plume. But since 1996 they have cleaned up almost 2 billion gallons of water from this plume and they have a long ways to go but this is a pretty good success story with GE. This is the kind of impact that they have on the community. In the inside of a park they have a couple of wells in a transitional neighborhood from residential to commercial this is the clean-up facility. Very little impact on the community inside and the clean-up tanks for GE.

Now moving into another topic, in 2004 for those members who were on the Board at that time, we brought a basin plan amendment to you for a complete re-write of the Santa Ana Basin plan which included new water quality objectives for every single ground water basin in our region. We brought it to you with no objections from anybody, consensus; it was an amazing situation that comes from the water agencies and the waste water discharges in the region, working together to come up with a well thought out and well supported study that allowed objectives to be validated and more importantly gave us up to the minute real time ground water monitoring for the entire region. No one else has got this. We can tell you what our groundwater quality is anywhere in the region at essentially in any one of the aquifers and multiple aquifer locations. We did it for the historical period from 1954 to 73 which is the State policy for setting water quality objectives -- it's the quality of water that occurred at that time but that's what the water quality objective should be. Then we did a measurement for the 20 year period ending in 1997. However, as part of the basin plan amendment we also said that were going to re-do this every five years. Now from our old basins came information set up in the early 70's which didn't really have a good handle on which way water was flowing in some of the basins; there just wasn't much information but you can see that some of these basins have been completely revised in terms of their orientation alignment and we have the benefit of hundreds of wells being drilled and all that information and so we are able to model the effects of the basin very carefully. One of the things that we brought to you in 2004 were maximum benefit objectives. For instance in the Chino basin, objectives were modified from the 1973 levels to allow for the use of re-cycled water as part of the integrated water supply plan for this entire basin. So the objectives were changed by about 25 milligrams per liter that are allowed the use of re-cycled water in the basin and 50 million dollars worth of recharge facilities which are already done. They built them in response to this integrated water supply plan and the revised objectives. These basins

allow the capture of a huge amount of storm water and for the use of re-cycled water within the basin, a very valuable water supply strategy for the basin. But here is where the good science comes in. We took years to develop the approach on how this was done. Mass historical, we did this thing over 20 years which allowed for the dampening of any hydrologic effects. So if you had a wet year and you did water quality measurements the water does not look artificially good because of the wet year. Or a dry period the same way, so we took those out and we did it for both historical and the current period and that was six years ago, it ended in 1997. And so now we have a brand new measurement of water quality using tens of thousands of data points throughout the region. These are our historic measurements of water quality, calculations of water quality for both salts and for nitrogen. As I said tens of thousands of data points is a huge data base that is managed by SAWPA whom of all you know. This is the Santa Ana Water Shed Data Management System. Many, many look up tables for each data point; all different kinds of information but not only the raw data but a large number of QA/QC checks to make sure that all the data that are used in this analysis are valid, is good information. Sometimes you sample and the results you get just don't make sense and we should not be using that information if it gives us bad results. And then any data that don't meet both the statistical analysis and the standard methods analysis is rejected.

We had to have at least three data points from any one well or that well was not used and we took a large number of steps to deal with sampling error, analytical error, the hydrologic effects that we talked about and any hydro-geologic properties that got in the way. And so we developed water quality contours based on good data of TDS and nitrate. And we also took into account the aquifer characteristics. Orange County has two layers, Chino Basin has three different layers, Bunker Hill has two layers; this is the San Bernardino area and each determination of water quality has to account for how much of the concentration of any constituent is in each of the layers and it does vary. The upper layer in the Chino Basin is going to have a lot of effects from irrigated agricultural and dairies and the lower layers won't. But to get the quality in the basin you have to integrate all those layers. And then we have point statistics and just for the six year period we had 22 different digital maps that came from this and for the original work that was done for the basin we had 200 maps that were used. And we generated volume weighed estimates of water quality for all of the water quality zones in the basin. This is just an example of what these digital maps look like. Our entire region is broken up into 400 by 400 foot meter grids. And so each one of these grids is handled separately for the water quality analysis and then each grid is computed separately and this is that what each one of the little 400 by 400 foot grids looks like. So this is the kind of rigorous scientific approach to water quality. We just don't go out and sample three wells in a basin, average the results of those three wells together and then call that the quality of the basin because it is not. This is a much more valid approach. We develop 20 year time series histories for each well and then we have our new water quality data which is different for both salts and for nitrates which is different from the information that was generated six years ago. Now this table is not for you to look at other than to show you at the top that we have the objectives, the historical ambient, the objectives, the ambient from 1997, the ambient from 2003 and how much assimilative capacity is in each basin. And from the famous State Board Rancho Cabero decision the assimilative capacity is an indication of what

kind of discharge limits we can set in waste discharge limits for any given proposed discharge. We did the same for nitrogen and then we have comparison tables from 1997 and 2003 to see what kind of changes we have had in water quality over the six years.

So anyway, those are some of the things we are doing down in Region 8. We have a lot of other stuff going on but I just focused on enforcement and the modeling that is being done for water quality and for this little talk.

Chair Doduc: Thank you very much. Any questions, comments? Jerry, I know you had a lot of questions on the scientific part.

Jerry Secundy: There were one or two equations that may have slipped by me so - Black & Decker. Why such a different approach compared to some of the other dischargers?

Mr. Thibeault: We don't know - it's a huge liability - the cost to clean up that basin I think will be something in the range of many hundred million dollars over 75 to 100 years probably. It's going to be a long, long process. Part of the problem with the Black & Decker situation is that a predecessor company brought West Coast Loading back in 1957 or 8ish - late 50's. It was Kwikset Locks. Kwikset Locks brought this company. Kwikset Locks was then absorbed by American Hardware and Kwikset Locks was dissolved. American Hardware was absorbed by Emhart Industries and then Emhart Industries was absorbed by Black & Decker. Over 55 years. And now Emhart Industries is being dissolved as fast as they can do it back in Connecticut and we are involved with that too. But they don't think that they are responsible even though we have a corporate succession to be them into it and they have... well first of all they told us that they weren't responsible for the site although they had all the historical documents... you know the assumption agreements and the corporate records and everything else but it's just hard to understand why they are taking this approach other than it's a very, very big financial proposition.

Jerry Secundy: It goes back to caveat emptor. So let the buyer beware. I mean being involved with that before with other companies - when you purchase a company that has environmental liability you purchase the environmental liability. So the law is very clear there. So...

Mr. Thibeault: They went through the very same thing for Leviathan Mine with Arco and Anaconda and Arco paid the settlement for...

Jerry Secundy: Having been 30 years with Arco I remember it painfully. (laugh) Thank you very much. Excellent presentation.

ATTACHMENT 6



Elinda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

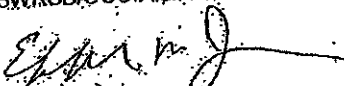
Office of Chief Counsel

1001 J Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 • FAX (916) 341-5199 • <http://www.swrcbboards.ca.gov>



Arnold Schwarzenegger
Governor

TO: SWRCB/OCC File A-1824

FROM: 
Elizabeth Miller Jennings
Staff Counsel IV
OFFICE OF CHIEF COUNSEL

DATE: May 11, 2007

SUBJECT: SUMMARY OF CONVERSATIONS BETWEEN MEMBERS OF ADVISORY
TEAM OR CURRENT STATE WATER BOARD MEMBERS AND PERSONS
NOT ON THE ADVISORY TEAM OR BOARD MEMBERS

This memorandum describes all oral communications that interviewees reported during interviews. It does not include confidential communications between and among current State Water Resources Control Board (State Water Board) members and Advisory Team members. It does, however, include any conversations whereby any parties or other persons may have relayed communications through an intermediary, including a prior State Water Board member.

No conversations to report

Art Baggett
Wendilyn Futa
James Herink
Charlie Hoppin
Jim Matighan
Fran Spivy-Weber
Gary Wolff

Jon Bishop:

1. Oral communication within approximately the last year: At an MCC¹ meeting, Gerard Thibeault mentioned that there was an enforcement order issued at the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) and that he hoped the State Water Board would provide assistance. No memory of what type of enforcement order and what help needed. No memory of any response. No personal communication with Mr. Thibeault. Those present included Executive Officers from various regional water boards and Celeste Cantu, then Executive Director. (At the time, Mr. Bishop was Executive Officer for the Los Angeles Water Board.)

¹ MCC is the Management Coordinating Committee, which consists of Executive Officers of regional water boards and State Water Board executive managers. MCC meets several times a year.

California Environmental Protection Agency

Recycled Paper

May 11, 2007

2. Oral communication within the last year: At an MCC meeting, Mr. Thibeault mentioned that Walt Pettit was going to serve as hearing officer regarding perchlorate contamination in Rialto. Other Executive Officers were present.

Tam Doduc:

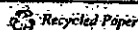
1. Oral communication May 19, 2006: At the May 19, 2006 Santa Ana Water Board meeting, Ms. Doduc was present (as a visiting liaison from the State Water Board). An item was on the agenda regarding perchlorate in Rialto. In the hall earlier, some members of an environmental justice group approached her, said they were there for that item, and were happy it was on the agenda. Later, the Board meeting ended because of lack of a quorum, and the item never came up. There were many people in the hallway—she remembers Penny Newman and Sujatha Jahagirdar. She does not remember responding, other than greeting them.
2. Oral communication on February 5, 2007: Ms. Doduc called Carol Beswick (chair of the Santa Ana Water Board) to say that the State Water Board was taking the matter up on its own motion. There was no conversation about the case, limited to a "heads up" that the State Water Board was sending its letter of that date.
3. Attended briefing of Linda Adams (California Environmental Protection Agency (Cal/EPA) Secretary) March 1, 2007, prior to her confirmation. No recall of discussion.
4. Oral communication early March 2007: Conversation with Dorothy Rice, when Dorothy said that Penny Newman called Ms. Rice and told her that the second week of April would be better for the hearing. Ms. Doduc instructed Ms. Rice that this was an improper ex parte communication and ignored the request.

While Ms. Doduc apparently referred to communications from or to a District Attorney at the prehearing conference, she has no memory of such a conversation and states that she likely misspoke.

Tom Howard:

1. Oral communications at MCC meetings over last year: It was likely that Jerry Thibeault mentioned the Rialto perchlorate matter at some of these meetings, mostly in the context of it being time-consuming and taking away from other cases. Also at MCC, there was some discussion about an agreement whereby Goodrich would pay \$4 million, and that Emhart/Black & Decker/Kwikset Locks were not part of the agreement. At MCC, present were Regional Board Executive Officers and State Board management—no Board members. Mr. Howard does not remember responding.
2. Oral communication, no date: James Giannopoulos (Division of Water Quality engineer) may have mentioned Rialto perchlorate during a State Water Board management meeting. Mr. Howard believes there was a powerpoint presentation shown by someone.

California Environmental Protection Agency



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3. Oral communications regarding approving Cleanup and Abatement Account money for Rialto, approximately 2002 and May 2006. Mr. Howard likely briefed then-Board members about the propriety of giving money for what is basically a long-term cleanup. Board members and State Board staff members likely were present.
4. Oral communication approximately early 2006: Conversation with Celeste Canu about Barry Groveman pushing the State Water Board to take action, and something about Senator Neil Soto and her son. Mr. Howard only vaguely remembers speaking to Celeste about requests for the State Water Board to do something.

Elizabeth Jennings:

1. March 1, 2007: Participated in briefing Linda Adams for her confirmation. I described the information that was in the public notice of the pre-hearing conference. I explained that I could not say anything that was not public; that neither Ms. Doduc nor I could be there if there were discussion about the site; and that if she had specific questions about the site, she should talk to Kurt Berchtold (Santa Ana Water Board staff) after Ms. Doduc and I left the room. I described the notice of public hearing that had been issued by the State Board. Maureen Gersen (Department of Toxic Substances Control (DTSC) Director) started to discuss options for site remediation. I interrupted, saying that the State Water Board would hold a quasi-judicial hearing and we could not discuss possible outcomes at all. Others there were Tam Doduc, Maureen Gersen, CalEPA management staff, and James Giannopoulos.
2. Oral communications: Davin Diaz called in early February 2007 about adding his name to the email list. I told him all communications must be by email and to all parties. Jorge Leon came to my office and asked if we had received the Advocacy Team's submission on March 27, 2007. I told him all communications must be by email and to all parties. Scott Sommers called me on April 16, 2007 and asked about responding to certain letters. I told him I would not respond and that all communications must be by email and to all parties.

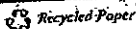
Michael Lauffer:

Oral communication (about August 8, 2006): Spoke by telephone to Nettie Sablehouse (Senate Rules Committee staff) to explain that Santa Ana Water Board members should not be asked in confirmation hearings about the Rialto issues. Three members had been ordered to appear at the request of Senator Soto.

Karen O'Haire:

1. Possible oral communication, a few years ago: May have called Santa Ana Water Board and asked for agenda packages and hearing tapes. Would have spoken to support staff only.
2. Oral communication July 14, 2006: Bob Wyatt called and said that petitioners in A-1732 et seq would be responding to July 13, 2006 letter. Reminded him that phone calls would not be allowed.

California Environmental Protection Agency



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3. Possible oral communication about November 2006: May have called Kurt Berchtold to ask whether Resolution RA-2006-0079 was a draft or had been issued. Kurt said it was a draft, had not other conversation.
4. Oral communication about mid-February 2007: Davin Diaz called and asked that his name be added to list of persons receiving email correspondence. No further conversation.
5. Oral communication about April 12, 2007: Jorge Leon left a voicemail message asking where boxes from Rialto should go. Karen did not return the call.

Dorothy Rice:

1. Oral communication about early March 2006: Penny Newman called on Ms. Rice's cell phone before Dorothy had begun working for State Water Board but after she had accepted the position. Ms. Newman said she hoped the hearing (on A-1824) would be after the noticed date in March. Dorothy replied that she knew nothing about a hearing and would inquire and get back to her. Ms. Rice reported the call to Ms. Doduc. Ms. Doduc said she should not speak to Ms. Newman or anyone else and explained strict ex parte rules. Ms. Rice did not return the call.
2. Possible oral communications during DTSC management meetings. Ms. Rice only vaguely knew that there was a contamination issue and some DTSC involvement. No specific memory of conversations.

ATTACHMENT 7

From: Craig M. Wilson
To: Alex Mayer
Date: Fri, Jul 26, 2002 3:15 PM
Subject: Fwd: FYI Corr Track Doc #556

Make sure art sees.

From: Rosi Martinez
To: Craig M. Wilson
Date: Fri, Jul 26, 2002 12:08 PM
Subject: FYI Corr Track Doc #556

The attached letter is was sent from California State Senator, Neil Soto, regarding the requests made by Goodrich corporation and Kwikset Corporation that the SWRCB place a stay on the effects of the SAR/WQCB Executive Officers Order No. R8-2002-0054. Please distribute to Board Members if appropriate. Thank you.

Rosi Martinez
SWRCB-Executive Office
1001 I Street, Floor 25
Sacramento, CA 95814
916/341-5625
FAX: 916/341-5621
Email: marinez@swrcb.ca.gov

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of ways to reduce demand and cut energy costs, see: www.swrcb.ca.gov.

From: Betsy Jennings
To: Jorge Leon
Date: Tue, Sep 17, 2002, 9:53 AM
Subject: Perchlorate

From the clips, it looks like maybe Region 8 withdrew with GAO to Kwilset and Goodrich?

cc: Karen O'Haire

Betsy Jennings - Re: Perchlorate

From: Jorge Leon
To: Jennings, Betsy
Date: Tue, Sep 17, 2002 10:17 AM
Subject: Re: Perchlorate

After a 10 hour hearing, the Board decided to rescind the CAO issued by the EO to Kwikel and Goodrich. They directed staff to, instead, issue 13267 letters to "all responsible parties." End of this phase. Start of new phase. Kagen, you're soooooo lucky.

>>> Betsy Jennings 09/17/02 10:53 AM >>>
From the clips, it looks like maybe Region 8 withdrew with CAO to Kwikel and Goodrich?

CC: O'Haire, Karen

From: Betsy Jennings
To: Leon, Jorge
Date: Tue, Sep 17, 2002 10:53 AM
Subject: Re: Perchlorate

Karen: Why don't you ask the petitioners to withdraw their petitions.

>>> Jorge Leon 09/17/02 10:17AM >>>

After a 10 hour hearing, the Board decided to rescind the CAO issued by the EO to Kwikset and Goodrich. They directed staff to, instead, issue 13267 letters to "all responsible parties." End of this phase. Start of new phase. Karen, you're sooooo lucky.

>>> Betsy Jennings 09/17/02 09:53AM >>>

From the clips, it looks like maybe Region 8 withdrew wth CAO to Kwikset and Goodrich?

CC: O'Hare, Karen

Betsy Jennings - Re: Region 8 matter

From: Betsy Jennings
To: Leon, Jorge; OGC WQ Atty's, EXECPost, EXECDomain@waterboards.ca.gov
Date: 10/6/2005 11:26 AM
Subject: Re: Region 8 matter
CC: Wyeis, Philip

I would prefer that neither Karen nor I work on this so that we maintain separation in the event of a petition. If someone else from my unit helps, please let me know.
Betsy

>>> Jorge Leon 10/06/05 11:23 AM >>>
Hi. I'm looking for a volunteer to provide very short term assistance to Ted Cobb in a Region 8 matter. The commitment should not require more than a brief amount of your time next week (week of 10/10).

Background: Reg 8 has issued a CAO in the perchorate investigation to Emhart and Black & Decker. We are separating functions. Phil and I are working with the staff on the prosecution team. Ted has been working with the Board Chair on the advisory team.

Here's the task: We need someone to review a draft Notice of Hearing and to confer with our Board Chair to make sure it is acceptable. That is: Once you and the Chair approve the draft Notice, the Reg 8 staff will take care of mailing, etc. and Ted will be back on 10/17 to take over all remaining duties and responsibilities of advising the Chair and the Board.

Please let me know if you're able to help out. Thanks.

NOTE: NEW EMAIL: jleon@waterboards.ca.gov
Jorge A. Leon
Senior Staff Counsel
SWRCB - OGC
1001 J St., Sacramento, CA 95814
(916) 341-5180; fax: 341-5199

From: Jorge Leon
To: Karen O'Haire
Date: Thu, Jan 19, 2006 10:07 AM
Subject: public outreach

probably the most significant effort is the public advisory committee that was created in November to permit citizen participation and involvement in the implementation of an agreement that we reached with Goodrich. (You've received two petitions on this, from APE and from Emhart - the latter was dismissed as late). We are now talking about expanding the committee to include Emhart's activities. Let me know what else you need.

Jorge A. Leon
Senior Staff Counsel
SWRCB - OGC
1004 I St., Sacramento, CA 95814
(916) 341-5180; fax: 341-5199
jleon@waterboards.ca.gov

From: Karen O'Haire
To: Leon, Jorge
Date: Thu, Jan 19, 2006 4:09 PM
Subject: Re: public outreach

thankst

>>> Jorge Leon 1/19/2006 10:07:17 AM >>>
probably the most significant effort is the public advisory committee that was created in November to permit citizen participation and involvement in the implementation of an agreement that we reached with Goodrich. (You've received two petitions on this, from ARE and from Emhart - the latter was dismissed as late). We are now talking about expanding the committee to include Emhart's activities. Let me know what else you need.

Jorge A. Leon
Senior Staff Counsel
SWRCB - OCC
1001 I St., Sacramento, CA 95834
(916) 341-5100, fax: 341-5199
jleon@waterboards.ca.gov

From: "Luch, Marilyn" <MLuch@CalEPA.ca.gov>
To: "Deb Bourgeois" <dbourgeois@waterboards.ca.gov>
Date: 8/7/2006 8:59:48 AM
Subject: RE: Perchlorate Briefing for Secretary Adams

Deb,
Thanks for the info. I'll mention it to Linda this morning and get back to you regarding scheduling.

Thanks,
Marilyn

----- Original Message -----

From: Deborah Bourgeois [mailto:DBourgeois@waterboards.ca.gov]
Sent: Monday, August 07, 2006 8:51 AM
To: Luch, Marilyn
Cc: Joiner, Ellajay
Subject: Perchlorate Briefing for Secretary Adams

Good morning. Linda mentioned wanting a perchlorate briefing to Tam. We will be available whenever it is a convenient time for Linda. Just let us know. Thanks.

Deborah Bourgeois
Assistant to Board Chair
State Water Resources Control Board
(916) 341-5611
dbourgeois@waterboards.ca.gov

CC: "Joiner, Ellajay" <EJoiner@CALEPA.ca.gov>

8/31
No Response
from Agency

Michael Lauffer - Re: Fwd: Senate rules

From: Michael Lauffer
To: Wyels, Phillip
Date: 8/8/2006 10:12 AM
Subject: Re: Fwd: Senate rules
CC: Cobb, Ted; Leon, Jorge

A couple things: I spoke with Nettie and made clear to her that this is the middle of a tangled, adversarial proceeding where board member bias and e-mails involving Sen. Soto have already been a point of contention and basis for bias claims. As a result and without discussing any of the particulars of the cases (since I advised her that I would be advising the SWRCB in any adjudication of the matter), I respectfully suggested that these discussions would not be productive and in fact could be counterproductive. She suggested that counsel first try to discuss this with Senator Soto's staff (Roger L?) because only Senator Soto can withdraw the request to SRC to bring the members in.

For purposes of this discussion, I think the attorney has to be Ted Cobb. He's the attorney advising the Santa Ana Board Members in the Rialto matter.

-mami

Michael A. M. Lauffer, Chief Counsel
Office of the Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814-2826

Phone: 916.341.5183
Facsimile: 916.341.5199
Internet: mlauffer@waterboards.ca.gov

>>> Phillip Wyels 8/8/2006 10:03 AM >>>
Michael, if I'm available all day, but I would only be able to represent the prosecution's view of things. We should get them in to see staff, unless completely unnecessary.

>>> Jorge Leon 08/08/06 8:41 AM >>>
How'd you like to go with me to the Senate Rules meeting on August 16 at 1:30? Carole, Mary and Debbie are all now being required to appear, at the request of Sen. Neil Soto

Jorge A. Leon
Senior Staff Counsel
SWRCB - OGC
1001 I St., Sacramento, CA 95814
(916) 341-5180; fax: 341-5199
jleon@waterboards.ca.gov

>>> Gerard Thibault 8/7/2006 8:14 PM >>>
Jorge...See the attached message from Carole. Looks like something is up with their confirmation and Neil. Have you heard anything about this?

Gerard J. Thibault, Executive Officer
Santa Ana Regional Board
3737 Main Street, Suite 500
Riverside, CA 92501

file://C:\Documents%20and%20Settings\Staff\Local%20Settings\Temp\GW100009.HTM 4/11/2007

Phone: 951-782-3284
Fax: 951-686-8016
gulfcault@waterboards.ca.gov
www.waterboards.ca.gov/sanfrancisco

Michael Lauffer - Re: Santa Ana Board Members

From: Michael Lauffer
To: Cobb, Ted; Egel, Rob
Date: 8/9/2006 12:09 PM
Subject: Re: Santa Ana Board Members

Rob,

Ted will have to provide you the information. He is the attorney advising the regional water board members in this proceeding. You also need to be careful not relay or serve as a conduit to anyone in Exec (including State Water Board members) for the information you receive from Ted.

Maui

Michael A.M. Lauffer, Chief Counsel
Office of the Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814-2828

Phone: 916.341.5183
Facsimile: 916.341.5199
Internet: milauffer@waterboards.ca.gov

>>> Rob Egel 8/9/2006 12:08:17 PM >>>

I did not hear back from Dennis and will harass him today. My intent is to bring one of you on the phone when I get a hold of him, but just in case no one is available, can one of you send me a brief paragraph on what the issue is that we think that Soto is concerned about. I understand it is perchlorate contamination in Rialto and I understand that the company - Emhardt - is fighting the State and Regional Board's efforts to take action. Can you fill me in on whether there are specific issues that Soto believes we have not addressed or specific actions we have not taken? Can you provide a few more facts as to what is going on with this site. Thanks, Rob

From: Michael Lauffer
To: gthibeault@waterboards.ca.gov; Rogers@waterboards.ca.gov
Date: 8/10/2006 2:24:34 PM
Subject: Re: Request to Participate by Phone for Perchlorate Briefing for Gary Wolff

I just spoke with Celeste. We will make arrangements for staff advising the State Water Board to handle Gary's briefing on perchlorate issues. Short of videotaping the briefing to show that nothing untoward or pertaining to the perchlorate petitions was discussed it is best to have the briefing handled by State Water Board advisory staff.

I recognize the intent of the briefing would only be to discuss the Santa Ana Water Board's approach to perchlorate generally; there have already been too many allegations of inappropriate contacts. Even when the allegations are baseless, it is better to avoid them.

-mami

Michael A.M. Lauffer, Chief Counsel
Office of the Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814-2828

Phone: 916.341.5183
Facsimile: 916.341.5199
Internet: mlauffer@waterboards.ca.gov

>>> Gerard Thibeault 08/10/06 2:43 PM >>>

Hey Kathy... Our contact person for the Gary Wolff briefing will be Ann Sturdivant, and she may be assisted by Kamron Sarem. I would also suggest that you include our staff counsel, Jorge Leon, on the call, because of the issues with all of the ongoing litigation and the request we have in to the state board to hold a hearing on this matter. I will also cc this to the OGC folks who may need to step in and provide direction to us, because of the litigation stuff.

p.s. Be sure to change to cc contact for my EO from Catherine to Felipa Carrillo.

Gerard J. Thibeault, Executive Officer
Santa Ana Regional Board
3737 Main Street, Suite 500
Riverside, CA 92501
Phone: 951-782-3284
Fax: 951-666-8016
gthibeault@waterboards.ca.gov
www.waterboards.ca.gov/santaana

>>> Kathy Rogers 8/10/2006 1:47 PM >>>

Celeste would like to brief Gary Wolff tomorrow morning at 10 AM re: Perchlorate issues, but you looked busy on your calendar. Can you have one of you staff call in?

Celeste told Gary that perchlorate in your Region is a big one (an understatement) and is the reason the Rules Committee has requested the appearance of the board members from RB B. He naturally wants to hear more about his topic.

Lisa Douglas, Gary's assistant, is trying to set-up this meeting with Gary, Celeste, Tom, and James

Giannopoulos will be sitting in this briefing. Please let me know who from your office will call in. Thanks,
Kathy.

CC:

ksaremi@post.region8@waterboards.ca.gov, JLeon.HQ02.SecDom1@waterboards.ca.gov, asturdian@post.region8@waterboards.ca.gov, P.Wyels@waterboards.ca.gov, T.Cobb@waterboards.ca.gov

Karen O'Haire - Fwd: Petition update

Page 1

From: Karen O'Haire
To: Cobb, Ted
Date: Mon, Dec 4, 2006 10:34 AM
Subject: Fwd: Petition update

FYI. I would like to discuss this please. Thanks Karen

>>> Betsy Jennings 12/17/2006 1:02 PM >>>
Surfrider (A-1772 & A-1773): Response and record due 12/20

Emhart and Goodrich (A-1797 & A-1797a): I think we agreed you would be doing a dismissal. It may be okay to combine stay and merits, but do you know when the hearing was supposed to be? If that is not a problem, I want a dismissal memo by the end of the month. If it is only the stay at first, that's OK.

From: Erik Spless
To: Jorge Leon; Ted Cobb
Date: 1/22/2007 2:10:43 PM
Subject: Imminent Perchlorate Lawsuit by Goodrich

Pete Duchesneau called me to inquire about how to arrange for service of a lawsuit he's planning to file on behalf of Goodrich. At this point, he's going to name only the Regional Board, Jerry, and Walt as respondents. He's "planning" to file in Riverside Superior Court. And he was evasive when I asked whether he will be seeking extraordinary relief, which presumably means he is.

I told him that I am representing only Walt and that he could send me a copy of the petition/complaint with a notice and acknowledgement that I would pass on to the appropriate DAG for acceptance of service on behalf of Walt. As for the other potential respondents, I told him that for the Regional Board, he should contact Ted, and for Jerry, he should contact Jorge to make arrangements for service and I gave him phone numbers for each.

Let me know if questions.

CC: Betsy Jennings; Gerard Thibault; Philip Wyels; Walt Pettit

From: Erik Spiess
To: Jorge Leon; Ted Cobb
Date: 3/22/2007 4:27:51 PM
Subject: Imminent Perchlorate Lawsuit by Goodrich-- part 2

I talked to Rich Magasin and AGO coordination should go through him for now. (213-647-2009) until he figures out which DAG(s) to assign to our clients. Accordingly, he requests that we all immediately notify him of any advance notifications we receive from Goodrich about a TRO hearing. Meantime, I've promised to get preliminary materials about the matter to Rich today.

CC: Betsy Jennings; Gerard Thibault; Philip Wyles; Walt Petit



California Regional Water Quality Control Board Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Sacramento, California 95817-3737
Phone (916) 742-4130 • FAX (916) 742-6184 • TDD (916) 742-7221
www.waterboards.ca.gov/sarwa

Arnold Schuman, Director

January 31, 2007

EMAIL AND U.S. MAIL

Mr. Tom Howard
Acting Executive Director
State Water Resources Control Board
1904 T Street, 22nd Floor (95814)
P.O. Box 300
Sacramento, CA 95812-0300
thoward@waterboards.ca.gov

Santa Ana Regional Water Quality
Control Board
c/o Ms. Carol Deswick, Chair
3737 Main Street, Suite 500
Riverside, CA 92501-3348
chdeswick@earthlink.net

Dear Mr. Howard and Members of the Santa Ana Regional Water Quality Control Board:

RIALTO AREA PERCHLORATE CONTAMINATION; RESIGNATION AND TERMINATION OF PROCEEDINGS

I have carefully reviewed the January 30, 2007 letter from Acting Executive Director Howard to Messrs. Duchesneau, Wyall and Meeder rejecting the petitions by Goodrich Corporation and Enthal Industries, Inc., et al., of the Santa Ana Regional Water Quality Control Board Resolution (No. RB 2006-0079) appointing me as Deputy Executive Officer/Hearing Officer in this matter. The letter opines that the Resolution appears inappropriately broad, and recommends that my duties be restricted to holding a hearing and making a recommendation to the Regional Board for final action.

The recommendations in the letter would presumably result in substantial changes to Resolution No. RB 2006-0079, which defines the assignment I agreed to undertake. The disagreement between the State Board staff and the Regional Board is not likely to be clearly resolved soon, and a useful result is unlikely absent resolution. I am unwilling to proceed in accordance with the recommendations in the January 30 letter and to contend with any further resulting delay of the proceedings I have set in motion.

Therefore, please be advised that I hereby resign as Deputy Executive Officer/Hearing Officer and rescind all orders and determinations I have made to date in this case.

Walter S. Petri
Walter Petri
Hearing Officer

cc: See next page.

California Environmental Protection Agency

Mr. Tom Howard
Santa Ana Regional Board Members

-2-

January 31, 2007

cc: [via email only]


Mr. Gerard Thibeault, Executive Officer
Santa Ana Regional Water Quality
Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3359

Jorge Leon, Esq.
Office of Enforcement
State Water Resources Control Board
1001 J Street, 16th Floor
P.O. Box 100
Sacramento, CA 95812-0100

Theodore A. Cobb, Esq.
Erik Spless, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 J Street, 16th Floor
P.O. Box 100
Sacramento, CA 95812-0100

Perchlorate Email Subscription List

California Environmental Protection Agency

 Recycled Paper

Betsy Jennings - Fwd: Region 8 perchlorate hearing

Page 1

From: Tom Howard
To: Thibeault, Gerard
Date: 1/31/2007 6:43:41 PM
Subject: Fwd: Region 8 perchlorate hearing

bad news.

Betsy Jennings - ccaej RIALTO-AREA PERCHLORATE CONTAMINATION

From: "Davin Diaz" <davin.d@ccaej.org>
To: <Howard@waterboards.ca.gov>
Date: 7/13/2007 5:07 PM
Subject: ccaej RIALTO-AREA PERCHLORATE CONTAMINATION
CC: <BJennings@waterboards.ca.gov>

Mr. Howard, please consider the attached letter in all matters regarding the Rialto Area Perchlorate Contamination Cleanup.
Thank you.

Davin Diaz,
Director
San Bernardino Office

Center for Community Action
and Environmental Justice
255 North D Street, Suite 402
San Bernardino, CA 92401
p. 909-381-8863
f. 909-381-8893
davin.d@ccaej.org
www.ccaej.org

Betsy Jennings - rialto playhouse and county building

From: "Davin Diaz" <davin.d@ccaej.org>
To: <Bjennings@waterboards.ca.gov>
Date: 2/13/2007 5:18 PM
Subject: rialto playhouse and county building

If you are interested have the hearing in the Rialto Playhouse you should try Bob Owen, Rialto City Attorney (909) 890-9027. The people at the playhouse told me that to reserve the theatre you should go thru Rialto Parks and Recreation at (909) 820-2612, but Bob would be able to expedite it quicker. San Bernardino County's Building in Rialto is also good. Bob Paige in the Supervisor Gonzalez's office is the one you should talk to. You can reach him at (909) 387-4565.

Davin Diaz
Director
San Bernardino Office

Center for Community Action
and Environmental Justice
255 North "D" Street, Suite 402
San Bernardino, CA 92401
p. 909-381-8883
f. 909-381-8893
davin.d@ccaej.org
www.ccaej.org

Betsy Jennings - Re: ccaej RIALTO-AREA PERCHLORATE CONTAMINATION

From: Betsy Jennings
To: Diaz, Davin
Date: 2/14/2007 9:25 AM
Subject: Re: ccaej RIALTO-AREA PERCHLORATE CONTAMINATION
CC: Perchlorate

Mr. Diaz:
I received the attached letter from you. Please note that if your group wishes to participate as a party, you should participate in the pre-hearing conference that was noticed yesterday. (The notice is attached also to this email.) In addition, it is imperative that any emails you send you must send to the entire email list to which this email is copied. Finally, any letter mailed hard copy should be copied to the Regional Water Board and to the Potentially Responsible Parties, pursuant to our regulations. If you would like to be included in the list who will receive emailed correspondence, please let me know.

Elizabeth (Betsy) Miller Jennings
Staff Counsel IV
State Water Resources Control Board
1001 J Street, 22nd floor
Sacramento, CA 95814
phone: 916-341-5175
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>>> "Davin Diaz" <davin.d@ccaaj.org> 2/13/2007 5:05:35 PM >>>
Mr. Howard, please consider the attached letter in all matters regarding the Rialto Area Perchlorate Contamination Cleanup.
Thank you.

Davin Diaz
Director
San Bernardino Office:

Center for Community Action
and Environmental Justice
255 North "D" Street, Suite 402
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Center for Community Action and Environmental Justice

Centro de Acción Comunitaria y Justicia Ambiental

San Bernardino Office
255 North D Street, Suite 402
San Bernardino, CA 92401
(909) 381-8883

February 13, 2007

Mr. Tom Howard
Acting Executive Director
State Water Resources Control Board
1001 J Street
PO BOX 100
Sacramento, CA 95814

RE: RIALTO-AREA PERCHLORATE CONTAMINATION: OWN-MOTION REVIEW
SWRCB/OCC FILE A-1824

Dear Mr. Howard:

The Center for Community Action and Environmental Justice (CCAIEJ) respectfully requests that any hearing regarding the Rialto-Area Perchlorate Contamination take place in Rialto City. The residents of the Rialto Area have waited ten long years to see a decision made on this issue, and therefore have a right to participate in any meetings and hearings deciding how to proceed with perchlorate cleanup in their community. CCAIEJ completely understands the gravity of the situation, but fears that the State Water Resource Control Board (State Board) might rush to make a decision and set a hearing date in March. To allow for a proper assessment of the situation to ensure that no more delays occur, CCAIEJ would feel comfortable with a hearing date set for April 20, 2007.

In addition to the hearing location to be set in Rialto City, we request that the State Board issue a final cleanup and abatement order based on the Santa Ana Regional Water Quality Control Board's (SARWQCB) Draft Amended Cleanup and Abatement Order No. RS-2005-0053 for Goodrich Corporation, Ryo Spectaculars, Inc., and Kwikset Locks, Inc., Emhart Industries, Inc., Kwikset Corporation, and Black & Decker Inc., 160-Acre Property Located in the City of Rialto, San Bernardino County, 10/27/96. (CAO), with the following additions:

1. That the CAO be amended to require that polluters reimburse the residents of Rialto directly for costs incurred to date through "perchlorate surcharges" and/or rate increases;
2. The CAO be amended to include mandatory penalties of \$10,000 per day for polluters failing to meet the cleanup deadlines and requirements set in the CAO;
3. The CAO be amended to require polluters to use the best available technology to remove ALL perchlorate from the groundwater.

Furthermore, CCAIEJ and Environmental California (Community Group) respectfully request joint Designated Party status in any meetings and hearings regarding how to proceed with cleanup of Rialto Perchlorate Contamination.

The Community Group submits this request for three reasons:

1. The residents of Rialto and Colton are the damaged party—they are the individuals who have had to drink perchlorate contaminated water. More than any other party, they have the right to participate in any procedure that would decide the fate of cleanup of the perchlorate and TCE contamination in their community. The Community Group will represent the interests of the community more effectively than any of the parties that might be granted designated party status.
2. The Community Group will focus comments to proposed remediation requirements contained in a Cleanup and Abatement order. The Community Group played a significant role in shaping the CAO and therefore requests an official role in shaping any order that the State Board may issue.
3. Unlike other parties who have financial and administrative interests, the Community Group's interest is simply to protect the health of residents; as such, they are best suited to advocate for policies and procedures free of the strings of moderation.

THE RIALTO AND COLTON RESIDENTS MUST HAVE A SEAT AT THAT TABLE

The Rialto/Colton communities' interest is to protect the health of their families. Their voice must be heard in any procedure dealing with Rialto perchlorate contamination. As Jess Vasquez, resident of Colton states, "Perchlorate is a great threat to our children, both and unborn, and our government sits on their hands and does not take action to remove the menace. The sources of the contamination are well known and producers have been identified. Why are we waiting to act? Our most cherished assets, our children, are threatened with this poison in our water."

The Community Group has members from within these communities and has worked and spoken with hundreds of Rialto/Colton residents. They all agree that the Community Group can represent their interests with more accuracy than any other possible Designated Party. Listed below are statements made by Rialto/Colton residents in support of the Community Groups' request to become a Designated Party.

Marena Deischer (Rialto):

I am... being charged a [perchlorate] surcharge to have drinking water. This is on top of the regular bill for usage... I believe that the [Rialto] City has had long enough to make decisions on how to clean up the water. I also believe the CCAEJ would do a better job of making these decisions and move faster. We need to be a Designated Party.

Janel Ortiz (Rialto):

I've been a Rialto resident for 21 years. I strongly oppose the City and/or Water Board's ability to represent my best interests... The City and Water Board do not have my best interest at hand. It is my opinion... that CCAEJ represent me and the community of Rialto simply because they continue doing an extraordinary job at keeping the residents and community of Rialto abreast of our drinking water issues and the actions of the Water Board... we need CCAEJ to be our voice.

Victoria Misquezu (Senior at Rialto High School):

I have lived in the area since I was a little girl, it is my home... CCAEI is trying to protect us and our homes. I strongly believe that it is in our best interest to allow CCAEI to speak up for us. This wonderful organization is not in it to make a profit; they are doing this because they have big hearts and truly care about our rights as human beings. I am scared to think that I have been here for years and I could potentially have some type of health problem.

Celia Zelaya (Rialto):

Prior to CCAEI's involvement, Rialto City never explained to us how big the problem really is, in fact I didn't know the water had even been contaminated because they never provided any information in Spanish. CCAEI has involved the community in every step they have taken by providing information in English and Spanish. CCAEI has brought the community together and should be a Designated Party.

THE COMMUNITY GROUP HAS DRIVEN THE CLEANUP PROCESS.

The Community Group has insisted and continues to insist that any agreement and/or order between the SARWQCB and any dischargers must contain several key PRINCIPLES:

1. Cleanup and abatement orders must hold dischargers jointly and severally liable;
2. Drinking Water shall be treated using the best available technology to below detectable levels;
3. Immediate interim measures to stop the further spread of the perchlorate plume;
4. Replacement water be available for all perchlorate contaminated wells until cleanup is complete;
5. That the provision of water replacement for contaminated wells should include wells with any level of perchlorate
6. Implementation of a long-term cleanup plan for the region financed by responsible dischargers;
7. Reimbursement for impacted residents, water utilities, and state agencies for costs incurred to date;
8. Outline specific milestones, timelines and deadlines for each interim and long-term remediation measure. At a minimum, orders should establish a deadline for the implementation of interim measures to stop the spread of the plume, provision of replacement water, reimbursement to community members for costs incurred and formulation of a long-term cleanup plan for the basin;
9. Mandatory \$10,000/day penalties for dischargers failing to comply with any order and/or agreement.

These principles have been presented to the Water Board in numerous shapes (public comments, petitions, Community Cleanup Plans, and proposed policies) and at various times in the past two years. Although considerable progress has been made, the advocacy of these principles had been met with resistance by SARWQCB and staff, and to a small degree the four impacted water providers.

For example, on November 16, 2005, the Community Group requested that the Remedial Investigation Order by Consent No. R8-2005-0121 For Goodrich Corporation (Consent Order) must contain the PRINCIPLES listed above. Instead, the SARWQCB, with support from Rialto and Colton Cities, adopted the Consent Order, as recommended by board staff, which exempted Goodrich from any cleanup and abatement orders on the grounds that they would do a groundwater investigation in the Rialto Area for ten months. This delayed the clean up effort by another year.

On April 18, 2006, the Community Group presented the Water Board with the "Community Cleanup Plan" that contained elements to implement all the PRINCIPLES outlined above.¹ The "Community Cleanup Plan" was not adopted by the water board, nor a policy based on it.

Although the "Community Cleanup Plan" was not adopted, the efforts made by the Community Groups have shaped the CAO. For example, the CAO holds Goodrich Corporation, Pyro Spectaculars, Inc., Kwikset Locks, Inc., Emhart Industries, Inc., Kwikset Corporation and Black & Decker Inc., jointly and severally liable for the perchlorate and TCE cleanup and abatement. The CAO also reflects many of the following PRINCIPLES:

1. By March 31, 2007, submit a proposed water replacement plan, including a time schedule for implementation, for the provision of, or payment for, uninterupted replacement water service, which may include wellhead treatment, to the West Valley Water District and the City of Rialto.

2. By March 31, 2007, submit a water replacement contingency plan. The water replacement contingency plan shall address the eleven municipal water supply wells cited in Finding 56 that contain perchlorate in concentrations that do not currently exceed the public health goal of 6 µg/L and WVWD No. 53, cited in Finding 60, that does not currently contain perchlorate.

3. After the Executive Officer determines that the lateral and vertical extent of perchlorate and TCE down gradient of the Property that is discharging, has been discharged, or threatens to be discharged by the Dischargers has been sufficiently defined, submit a feasibility study that evaluates effective long term remedial alternatives and includes a recommended long term remedial alternative. In accordance with State Water Resources Control Board Resolution No. 92-49, the recommended long term remedial alternative shall clean up and abate the effects of discharges in a manner that promotes attainment of either background water quality.

4. Within 30 days of the Executive Officer's approval of the feasibility study, submit a remedial action plan, including an implementation schedule, to cleanup or abate the effects of the perchlorate and TCE that is discharging, has been discharged, or threatens to be discharged by the Dischargers. The remedial action plan and schedule shall be subject to the approval of the Executive Officer. The Dischargers shall implement the remedial action plan as approved by the Executive Officer.

5. Within 30 days after notification by the Executive Officer that the West Valley Water District, the City of Rialto, the City of Colton or the State Water Resources Control Board have provided past costs incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions, the Dischargers shall submit a Reimbursement Plan for Past Costs for that agency, for the approval of the Executive Officer. The Reimbursement Plan for Past Costs shall include a schedule for providing complete cost reimbursement for past costs for that agency within 90 days from the Executive Officer's approval of the Reimbursement Plan for Past Costs.

6. By February 28, 2007, the Dischargers shall submit a Reimbursement Plan for Ongoing Costs for the approval of the Executive Officer. The Reimbursement Plan for Ongoing Costs shall include a plan and schedule for providing ongoing cost reimbursement to the West Valley Water District and the Cities of Rialto and Colton for costs incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. The Reimbursement Plan for Ongoing Costs shall be implemented following the approval of the Executive Officer.

It is evident that the Community Group has played, and continues to play, an active role in shaping the CAO and will make arguments in favor of remediation elements as outlined in our PRINCIPLES.

CONCLUSION

The Community Group strongly believes that the community most directly affected by perchlorate contamination has a right to participate in the decision-making process concerning the area's remediation.

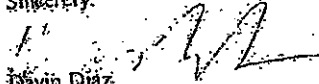
¹ In drafting the "Community Cleanup Plan," CCAEJ and EC consulted Rialto City, the Water Board, and an "outside" hydrogeologist.

The community's interest in the cleanup and abatement of perchlorate and TCE in the Rialto area is unique. Their interest in the cleanup is not administrative, nor is it purely financial. The residents of Rialto/Colton are not concerned with water rights and the disputes that can originate over them. The residents primarily use water for drinking, therefore their interest is not complicated by weighing the different uses of water such as irrigation and recreation in the decision making process. Simply put, the Rialto/Colton community's interest is protect the health of their families and their voice must be heard in any procedure that decides the fate of cleanup in the Rialto/Colton Area.

The Community Group has most affectively represented the Rialto/Colton residents' interest and request to continue do so as a Designated Party in any proceeding concerning the Rialto Area Perchlorate Contamination cleanup. The Community Group also requests that the hearing be set for April 20, 2007--to provide for adequate time for the State Water Resource Control Board to get the proper procedure established to prevent any future delays, and that the hearing must take place in Rialto.

If you have any questions or comments, please do not hesitate to contact me at 909-381-3883.

Sincerely,



David Diaz
PASE Director

cc: Betsy Jennings
Office of Chief Counsel
State Water Resources Control Board
1001 I Street
PO BOX 100
Sacramento, CA 95814

Betsy Jennings - RE: ccaej RIALTO-AREA PERCHLORATE CONTAMINATION

From: "Davin Diaz" <davin.d@ccaej.org>
To: "Betsy Jennings" <Bjennings@waterboards.ca.gov>
Date: 2/14/2007 9:57 AM
Subject: RE: ccaej RIALTO-AREA PERCHLORATE CONTAMINATION

Thanks Betsy, I believe that as I sent my letter over the net was roughly the same time the State Board sent out theirs, and at that time there was no pre-hearing conference. The reason I sent that letter yesterday was that under Petition 01, not hold a pre-hearing conference before establishing designated parties. I will definitely participate in the pre-hearing conference.

Davin Diaz
Director
San Bernardino Office

Center for Community Action
and Environmental Justice
255 North "D" Street, Suite 402
San Bernardino, CA 92401
p. 909-381-8883
f. 909-381-6693
davin.d@ccaej.org
www.ccaej.org

From: Betsy Jennings [mailto:bjennings@waterboards.ca.gov]
Sent: Wednesday, February 14, 2007 9:26 AM
To: davin.d@ccaej.org

Cc: mneeder@allenmatkins.com; wyatt@allenmatkins.com; bgroverman@earthlink.net; bruce.amig@goodrich.com; pduchesneau@manatt.com; CCarigan@mmbiaw.com; R.Hiete@mpglaw.com; s.alle@mpglaw.com; w.carter@mpglaw.com; julle.macedo@pillsburylaw.com; seoit.sommer@pillsburylaw.com; bzagon@reslawgrp.com; phunsucker@reslawgrp.com; emroz@resolutionlawgroup.com; rekin@thegallaghergroup.com; thloomfield@thegallaghergroup.com; Ann Sturdivant; Debi Ney; Erik Spiess; Gerard Thibeault; Jorge Leon; Kurt Berchtold; Robert Heib
Subject: Re: ccaej RIALTO-AREA PERCHLORATE CONTAMINATION

Mr. Diaz:
I received the attached letter from you. Please note that if your group wishes to participate as a party, you should participate in the pre-hearing conference that was noticed yesterday. (The notice is attached also to this email.) In addition, it is imperative that any emails you send you must send to the entire email list to which this email is copied. Finally, any letter mailed hard copy should be copied to the Regional Water Board and to the Potentially Responsible Parties, pursuant to our regulations. If you would like to be included in the list who will receive emailed correspondence, please let me know.

Elizabeth (Betsy) Miller Jennings
Staff Counsel IV
State Water Resources Control Board
1001 I Street, 22nd floor
Sacramento, CA 95834
phone: 916-341-5175
fax: 916-341-5199
cell: 916-799-5417
email: bjennings@waterboards.ca.gov

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>>> "Davin Diaz" <davin.d@ccaej.org> 2/13/2007 5:05:35 PM >>>
Mr. Howard, please consider the attached letter in all matters regarding the Blatto Area Perchlorate Contamination Cleanup.
Thank you.

Davin Diaz
Director
San Bernardino Office

Center for Community Action
and Environmental Justice
255 North "D" Street, Suite 402
San Bernardino, CA 92401
p: 909-381-8883
f: 909-381-8893
davin.d@ccaej.org
www.cccej.org

From: Tam M. Doduc
To: Michael Lauffer, Betsy Jennings, Karen O'Haire
Date: 2/8/2007 10:28:07 PM
Subject: Fw: Fwd: CT5246 Assignment - Perchlorate contamination /Inland Empire / SARWQCB

This was sent to me. I have not opened the attachment and did not previously see the letter.

Tam M. Doduc
State Water Resources Control Board
(916) 341-5611

From: Rob Egel
To: T.Doduc@waterboards.ca.gov
Date: 2/6/2007 9:37:15 PM
Subject: Fwd: CT5246 Assignment - Perchlorate contamination /Inland Empire / SARWQCB

Tam, as a follow up to the Governor's Office request for information re: Assembly Member Negrette McCloud and San Gabriel, we apparently received the attached fax yesterday afternoon from Assembly Member Negrette McCloud urging the State Board to get involved with the Rialto-Colton perchlorate contamination. Although the letter doesn't refer to San Gabriel, this may be the same issue as the Governor's Office was looking for. I apologize that I didn't catch it until today when we assigned it for a response. Rob

CC: THoward@waterboards.ca.gov

From: Erin Saenz
To: Arestad, Mille; Giannopoulos, James
Date: 2/8/2007 6:34:23 PM
Subject: CT5246 Assignment - Perchlorate contamination/Inland Empire / SARWQCB

Please provide a draft response to the attached letter to OLA 2/19/07. Thank you, Erin

Orig. date: 02/07/2007
Received: 02/07/2007

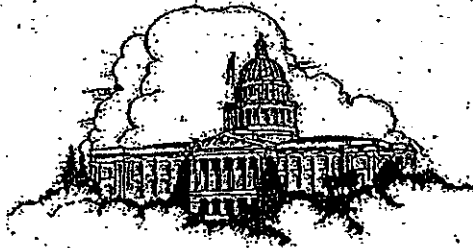
From: The Honorable Negrete McLeod and
The Honorable Carter, Assembly members,
California State Assembly 32nd and 62nd Districts
State Capitol, Sacramento, CA 95814

Ref: Folder 5246
Due: 02/19/2007
Status: PENDING
Title: FAX
Subject: Perchlorate Contamination of Inland Empire water.

Final Disposition:
OLA to DWQ/ Groundwater division for response.

Erin Saenz
Legislative Affairs 24th Floor
Phone: (916) 341-5251
E-mail: esaenz@waterboards.ca.gov
Water Resources Control Board

CC: Calliga, Lori; Egel, Rob



**Senator
Gloria Negrete McLeod**
32nd Senate District

FACSIMILE TRANSMISSION

Date: 2-7-93

Pages to follow including cover: 2

To: CHAIR Tom Dudgeon

Fax Number: 341-5252

From:

Senator Gloria Negrete McLeod

Terra Grantham

Brent Aboudata

Andrew Langley

Don Wilcox

Lucia Valencia

Regarding: Personnel Commission

Notes:

State Capitol, Sacramento, CA 95814
Phone: (916) 651-4032 Fax: (916) 445-0128

STATE CAPITOL
SACRAMENTO, CA 95834
PH (916) 400-7272

California State Senate

SENATOR
GLORIA NEGRETE MCLEOD
THIRTY-SECOND SENATE DISTRICT



Ms. Tam Dudge
Chair, State Water Resources Board
1001 I Street
Sacramento, CA 95814

February 7, 2007

Dear Chair Dudge:

We are writing with great concern about the ongoing perchlorate contamination of the Inland Empire's water supply. There have been on going discussions between the Santa Ana Regional Water Quality Control Board (SARWQCB), the members of the community and the polluters that had been overseen by the board's representative, a Hearing Officer, Walter Pettit. With Mr. Pettit's resignation, it is increasingly important for the State Water Control Board to get involved.

Perchlorate contamination is a matter of public health and safety. This protracted process has taken far too long while citizens of Rialto and Colton continue to suffer each day with contaminated perchlorate and the inaction of SARWQCB. The time has come for the State Water Control Board to step in, fulfill its mission and take firm action against the polluters to protect and ensure the health of these Californians. We strongly urge you to give this issue the attention it deserves and assign the appropriate fulltime staff to work with the polluters and our affected communities to reach a solution.

Thank you for your attention to this important matter. If there are any questions or concerns, please feel free to contact us at our offices.

Respectfully,

Gloria Negrete McLeod

Gloria Negrete McLeod
32nd Senate District
(916) 651-4032

Wilma Amoina Carter

Wilma Amoina Carter
62nd Assembly District
(916) 319-2062

Betsy Jennings - Re: ccaej RIALTO-AREA PERCHLORATE CONTAMINATION

From: Betsy Jennings
To: Diaz, Davin
Date: 2/14/2007 9:25 AM
Subject: Re: ccaej RIALTO-AREA PERCHLORATE CONTAMINATION
CC: Perchlorate

Mr. Diaz:
I received the attached letter from you. Please note that if your group wishes to participate as a party, you should participate in the pre-hearing conference that was noticed yesterday. (The notice is attached also to this email.) In addition, it is imperative that any emails you send you must send to the entire email list to which this email is copied. Finally, any letter mailed hard copy should be copied to the Regional Water Board and to the Potentially Responsible Parties, pursuant to our regulations. If you would like to be included in the list who will receive emailed correspondence, please let me know.

Elizabeth (Betsy) Miller Jennings
Staff Counsel IV
State Water Resources Control Board
1001 I Street, 22nd floor
Sacramento, CA 95811
phone: 916-341-5175
fax: 916-341-5199
cell: 916-799-5412
email: bjennings@waterboards.ca.gov

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>>> "Davin Diaz" <davin.d@ccaej.org> 2/13/2007 5:05:35 PM >>>
Mr. Howard, please consider the attached letter in all matters regarding the Rialto Area Perchlorate Contamination Cleanup.
Thank you.

Davin Diaz
Director
San Bernardino Office

Center for Community Action
and Environmental Justice
256 North "D" Street, Suite 402
San Bernardino, CA 92401
p. 909-381-8883
f. 909-381-8899
davin.d@ccaej.org
www.ccaej.org

From: Tam M. Dodge
To: alice.dowdin.calvillo@GOV.CA.GOV
Date: 2/17/2007 5:08:47 PM
Subject: Re: Fw: Rialto Water background

Alice, per your request, attached is a short fact sheet. As the hearing officer in this matter, I am subject to the ex parte prohibition, but will designate someone to provide additional details and brief you further as needed. Thanks.

-Tam.

Tam M. Dodge, P.E.
State Water Resources Control Board
(916) 341-5611

>>> <alice.dowdin.calvillo@gov.ca.gov> 2/17/2007 9:53 AM >>>
The residents in Rialto are now asking, via the press, that the Gov. declare a State of Emergency and supply them with clean drinking water. Remember this case when I was at DTSC. Please give me a status report from the Santa Ana regional board on the RP and cleanup and abatement orders. Do they need help? What is causing the delays here? Is DTSC involved, too?
This is time sensitive. Thanks, Tam.
Thanks,
Alice Dowdin Calvillo
Chief Deputy Cabinet Secretary
Governor Arnold Schwarzenegger

-----Original Message-----
From: Dan Dumoyer
To: Alice Dowdin Calvillo; Susan Kennedy; [REDACTED]
Sent: Sat Feb 17 09:49:57 2007
Subject: Fw: Rialto Water background

Before you do some history. D2.

-----Original Message-----
From: Henry Renteria@oes.ca.gov <Henry.Renteria@oes.ca.gov>
To: Dan Dumoyer <dan.dumoyer@gov.ca.gov>; Frank McCarton <frank.mccarton@oes.ca.gov>
Sent: Sat Feb 17 09:32:05 2007
Subject: Rialto Water background

Dan,
Here is some background info on the problem. This is an ongoing issue and battle between residents and the businesses.
If there is an immediate emergency need for water we can get it there.
I am still waiting to hear back from locals. *****

Background

The problem began back in the 1950's and 1960's when both companies owned and operated a weapons manufacturing plant in the northern part of Rialto that used massive quantities of rocket fuel.⁹ According to former employees at the plant, rocket fuel routinely leaked from the facility during operations and workers regularly disposed of rocket fuel in unlined pits behind the plant.¹⁰

Nestled near the foothills of the San Bernardino Mountains, the city had what local water officials described for decades as one of the purest drinking water supplies in the region. In the late 1990's, Rialto water officials discovered rocket fuel pollution in the city's drinking water supply up to 300 times safety recommendations issued in other states.¹¹ Despite their responsibility and years of negotiations, neither Goodrich Corp. nor Black & Decker have agreed to clean up the mess they have created.¹²

While the companies delay, many citizens of Rialto drink water that is polluted by rocket fuel. According to data supplied to local and state water officials, water from drinking water wells contaminated at up to three times the safety levels issued in other states is piped to homes in the city.¹³ At levels found in contaminated wells, perchlorate can lead to Attention Deficit Disorder, learning disabilities and decreased IQ.¹⁴ With several other wells unusable due to contamination, the drought-prone city teeters on the brink of running out of water. Residents have also been forced to pay water bill price hikes to pursue the polluters for clean water.¹⁵

The Santa Ana Regional Water Quality Control Board (Water Board) has the power to force Goodrich and Black & Decker to clean up their mess. Under the California Water Code, the Water Board can order both companies to fully clean up their pollution and provide the community with a safe water supply immediately, while the cleanup takes place.¹⁶ To protect the community, the Water Board should use these tools immediately. Environment California is working with the Center for Community Action and Environmental Justice and local water officials to convince the Water Board to stand up to the polluters and force Goodrich and Black & Decker to clean up their mess and provide the City of Rialto with an immediate supply of clean water.

On October 18th, 2006, the Santa Ana Water Board took the first step toward holding the Rialto polluters accountable and proposed a cleanup order against both Goodrich and Black & Decker that would:
 Stop the spread of perchlorate contamination throughout the region,
 Pay for full cleanup of all polluted Rialto wells and all contamination within the aquifer,
 Foot the bill for providing a safe, rocket-fuel free drinking water supply until cleanup is complete.

If adopted, the proposed order would also be the first order in the history of the California water boards to require that polluters reimburse taxpayers for all costs paid to date for stop-gap treatment measures. The proposed order marks the culmination of more than a year of advocacy by Environment California and our partner organization, the Center for Community Action and Environmental Justice, who together mobilized thousands of public comments to the board, recruited hundreds of residents to attend water board meetings, secured the support of state legislators and local decision-makers, released several research reports and garnered significant media visibility for the need for a strong cleanup order. The next step in the campaign, which Environment California and CCAEJ will focus on in the coming months, will be to ensure that the proposed order is adopted by the Santa Ana Regional Water Board and fully enforced and

ultimately that polluters are held accountable for returning clean water to Rialto.

The Water Board says it will decide whether to require strong cleanup measures and whether to require a safe alternative water supply for Rialto residents only after a year's delay.

On October 27, we delivered 1,000 petition signatures from local Rialto residents to the Water Board to immediately provide residents with a safe, secure supply of water. On Wednesday, November 16, the Board will decide whether to indefinitely delay any such order. Partnering with the Center for Community Action and Environmental Justice and several other local groups, Environment California Research & Policy Center will testify against any further delay.

Specifically, we ask the Santa Ana Water Board to order Goodrich Corp. and Black & Decker to provide a safe, secure water supply to the residents of Rialto by March 1, 2006, and order full cleanup of contamination by October 1, 2006.

Henry R. Repten
Director
Governor's Office of Emergency Services

(Message sent via BlackBerry)

CC: Howard, Tom; Jennings, Betsy; Lauffer, Michael; Rukkyser, William

Rialto Area Perchlorate Contamination Fact Sheet

What is the problem?

- The Rialto-Colton Groundwater Basin is a source of drinking water to tens of thousands of San Bernardino County residents. Groundwater contamination in this basin was discovered in 1997.
- Twenty-two municipal wells belonging to four water purveyors have been shut down due to the presence of perchlorate in the Rialto Groundwater Basin.
- Perchlorate removal systems have been installed on 10 of the 22 closed wells. Water rates have increased in Rialto to pay for ongoing treatment costs, which has raised environmental justice issues.
- Perchlorate and its salts are used in solid propellant for rockets, missiles, and fireworks, and elsewhere (e.g., production of matches, flares, pyrotechnics, ordnance, and explosives).
- Perchlorate interferes with iodide uptake by the thyroid gland and can decrease production of thyroid hormones, which are needed for prenatal and postnatal growth and development, as well as for normal metabolism and mental function in the adult.

Is there an imminent public health risk?

- There is no indication that any area residents are currently drinking water that could pose a threat.
- There is existing wellhead treatment and blending to ensure that drinking water delivered to residents meets the perchlorate drinking water public health goal (PHG) and action level set by the Office of Environmental Health Hazard Assessment (OEHA) and the Department of Public Health, respectively.
- A PHG is the level of a chemical contaminant in drinking water that, based upon currently available data, does not pose a significant risk to health. In March 2004, OEHA set PHG of 6 parts per billion (ppb) for perchlorate.

What has been done to date?

- Since 2002, the Santa Ana Regional Water Quality Control Board (Regional Water Board) has been conducting an investigation of groundwater contamination in the area. The focus of the investigation has been facilities located on a 160-acre site in Rialto.
- The Regional Water Board has issued investigation orders, cleanup and abatement orders, and entered into interim agreements with potentially responsible parties (PRPs) to facilitate installation of treatment systems.

- The State has already provided \$6 million to help the affected water utilities purchase water treatment equipment. One of the PRPs has provided an additional \$4 million.
- In February 2005, the Regional Water Board's Executive Officer issued a Cleanup and Abatement Order (CAO) and subsequent amendments naming a number of responsible parties (RPs). The RPs include Goodrich, Emhart/Black & Decker, and Pyro Spectaculats.
- The named RPs petitioned the Regional Water Board to conduct a hearing to review the CAO. The Regional Water Board scheduled a hearing for October 2006, but the process was delayed by challenges from the RPs.
- Other steps taken by the Regional Water Board to proceed with the hearing have also been challenged in petitions filed by the various RPs.
- In light of the various objections and appeals, and the need to take action in an expeditious manner, the State Water Resources Control Board (State Water Board) on February 5, 2007, announced that it will review this matter on its own motion.

What actions will the State Water Board take?

- An evidentiary hearing will be conducted by the State Water Board to determine whether to amend or reissue the Cleanup and Abatement Order for the investigation and remediation of perchlorate in the Rialto area, or take such other action the State Water Board deems appropriate.
- On February 22, 2007, the State Water Board's hearing officer will conduct a pre-hearing conference to discuss the scope of the hearing, the designation of parties, and any other appropriate procedural issues.
- The evidentiary hearing will be held in the community of Rialto at the earliest possible date. [Note: the State Water Board anticipates that the hearing will commence by the end of March and continue into April.]
- The results of this hearing will determine which party (s) is/are responsible for the perchlorate contamination and will pay for cleanup and replacement water to the extent necessary.
- The hearings are part of the State Water Board's quasi-judicial functions and will be akin to a trial with the board member/hearing officer's role akin to that of a judge. The State Water Board will not be setting policy, but determining fact.

Betsy Jennings - FW: SWRCB/OCC FILE A-1824

From: "Marie Montoya" <MMontoya@reslawgrp.com>
To: <bjennings@waterboards.ca.gov>
Date: 2/27/2007 8:52 AM
Subject: FW: SWRCB/OCC FILE A-1824

Dear Ms. Jennings: Per Ms. O'Haire's out of the office reply, I am forwarding my below request to your attention. Is there a form Subpoena you can send me other than the Federal and State Court Subpoena that will satisfy the requirements for the State Water Board?

From: Marie Montoya
Sent: Monday, February 26, 2007 6:07 PM
To: Karen O'Haire
Subject: SWRCB/OCC FILE A-1824

Dear Ms. O'Haire: Will you please send me copies of form Subpoenas appropriate for this matter both for appearance with documents and without. I would much appreciate the assistance. Thank you.

Very truly yours,

Marie Montoya
Legal Assistant
Resolution Law Group, P.C.
3717 Mt. Diablo Blvd., Suite 200
Lafayette, CA 94549
Ph: (925) 299-5113
Fax: (925) 284-0070
e-mail: mmontoya@reslawgrp.com

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From: Rob Egel
To: Betsy Jennings; James Giannopoulos
Date: 3/1/2007 1:50:07 PM
Subject: Re: briefing for Linda Adams on perchlorate

Attached is the fact sheet for Linda. I have shown in track changes the additional two sentences to reflect DTSC's activities in the area. I recognize that it is a bit incongruent to the document, but DTSC has asked to include a mention of their activities at the DeJoya site. If you are OK with it, accept changes and print it out. I am also in a meeting from 2:00-3:00. Rob

>>> Betsy Jennings 3/1/2007 1:35 PM >>>

I will be in a briefing with Charlie starting at 2. At this point, I assume I will give Linda the existing fact sheet. Betsy

>>> Rob Egel 3/1/2007 11:34 AM >>>

Betsy and James, attached is the draft fact sheet. I am waiting for DTSC's input and then will re-route through OCC and then finalize for Tom. I hope to have a final before the meeting.

FYI, I have also attached the fact sheet from OEHHA/State Water Board/DTSC on perchlorate generally.
Rob

>>> Tom Howard 3/1/2007 11:19 AM >>>

The meeting is from 3-4 in 2540.

Attendees should be James Giannopoulos and Betsy Jennings. James should provide maps if possible of (1) a California map showing perchlorate pollution sites and (2) a map of the Riello area showing pollution plumes.

It would be preferable if Rob gives these two attendees the issue papers for Linda so they can hand to her during the briefing.

Kurt, please be available for a phone call if necessary to provide Linda with local perspective. I do not know if it will be necessary. I do not think James is involved in the hearing so he can participate with Kurt but Betsy will have to leave.

Rob will be coordinating this so direct all phone calls to him.

CC: Michael Lauffer; Tom Howard

STATE WATER BOARD

WATER QUALITY

Issue: Perchlorate Contaminated Groundwater in Rialto/Colton

Background:

Since 2002, the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) has been conducting an investigation of groundwater contamination in the area of the City of Rialto. The focus of the investigation has been facilities located on a 160-acre site in Rialto. In 2005, the Santa Ana Water Board Executive Officer issued a Cleanup and Abatement Order. The order provided that it would not require any specific activities until after the Santa Ana Water Board conducted an evidentiary hearing on responsibility and cleanup requirements. On October 27, 2006, the Executive Officer proposed amending the order and naming additional responsible parties.

The Cleanup and Abatement Order and proposed amendments are the subject of challenges in petitions filed by various entities named as responsible parties. (Among these are Kwikset, Black & Decker and Goodrich, and Pyro Spectaculars). The parties responsible for perchlorate contamination must pay for the cleanup in Rialto/Colton and the extra costs of providing acceptable water. In light of the various objections and appeals, and the need to take action in an expeditious manner, the State Water Resources Control Board (State Water Board) notified the parties on February 5, 2007 that it would review this matter "at the earliest possible date."

The State Water Board Chair will act as the hearing officer, and will conduct an evidentiary hearing in Rialto on March 28-30 and April 4-5 to determine whether to amend or reissue the Cleanup and Abatement Order requiring the investigation and remediation of perchlorate in the Rialto area, or to take such other action the State Water Board deems appropriate. The results of this hearing will determine which party(s) is/are responsible for the perchlorate contamination and will pay for cleanup and replacement water to the extent necessary. The hearings are part of the State Water Board's quasi-judicial functions and will be akin to a trial with the board member/hearing officer's role akin to that of a judge. The State Water Board will NOT be setting policy, but determining fact.

Practical effects in Rialto/Colton presently include the non-use of some wells and the use of other with necessary treatment equipment (to remove perchlorate) installed at the well head. Water users currently pay surcharges because of the extra costs incurred by the municipal water district and the water company in the area. This issue has attracted considerable and extended attention from local media, residents and local elected officials. The area includes many lower socio-economic residents and members of minorities thereby raising Environmental Justice issues.

ISSUE SUMMARY

Questions/Answer

1. What are the State Water Board and Regional Water Board Doing to Protect the Health of the Citizens of Rialto?

- The citizens of Rialto are receiving safe, potable drinking water that meets all the relevant health criteria. Where a public drinking water well has been adversely impacted by perchlorate, the Santa Ana Water Board and the Department of Health Service working with local water officials have had the well shut down. Some wellhead treatment has been put in place to assure safe drinking water.

The focus of the Santa Ana Water Board's effort has been on protecting the ground water resource, so that the area can continue to rely on its local aquifers as a source of drinking water. The Santa Ana Water Board has issued investigation and cleanup orders to a number of parties. Most responsible parties are complying with Santa Ana Water Board orders. The Cleanup and Abatement Order that is subject to State Water Board review is the primary exception. In that regard, the Santa Ana Water Board has faced significant legal challenges. The State Water Board has just begun its review and is commencing a hearing later this month.

2. Why Did the State Water Board Decide to Take This Issue Up On Its Own Motion?

- While the Santa Ana Water Board had been making progress on the Rialto-area perchlorate investigations, responsible parties had used expensive, time-consuming legal maneuvers to avoid an evidentiary hearing assigning responsibility for cleanup. The potentially responsible parties had alleged bias by the Santa Ana Water Board members and raised procedural challenges to an alternate hearing process the Santa Ana Water Board considered. In the interest of efficiency and to avoid further delays, the State Water Board decided to review and consider the Cleanup and Abatement Order on its motion.

3. When Will the State Board Make a Decision?

- A decision is likely this summer. The State Water Board anticipates five days of evidentiary hearings from March 28-30 and April 4-5. After the evidentiary hearings, the parties will submit final, closing briefs sometime in April or early May. The State Water Board's Hearing Officer, Tam Doduc, will then prepare a formal recommendation to the other State Water Board members that will be considered at a public meeting later this spring or summer.

ISSUE SUMMARY

Status

- Tam Doduc, Chair of the State Water Resources Control Board will conduct an evidentiary hearing in Rialto on March 28-30 and April 4-5 to determine whether to amend or reissue the Cleanup and Abatement Order requiring the investigation and remediation of perchlorate in the Rialto area, or to take such other action the State Water Board deems appropriate. The results of this hearing will determine which party(s) is/are responsible for the perchlorate contamination and will pay for cleanup and replacement water to the extent necessary.

Office of Environmental Health Hazard Assessment
Department of Toxic Substances Control
State Water Resources Control Board

Perchlorate

Significant Issue

Perchlorate, a chemical component of rocket fuels, roadside flares, fireworks and Chilean fertilizer, has been detected in more than 525 public drinking water wells in California. A number of these wells have been taken out of service or are being treated. The Colorado River also contains detectable levels of perchlorate, originating from a former perchlorate manufacturing facility in Henderson, NV. In addition to California, 32 other states have found perchlorate in their drinking water. The general U.S. population is also exposed to perchlorate in food, because various foods grown with perchlorate-contaminated water can accumulate the chemical.

Perchlorate inhibits the uptake of iodide into the thyroid gland, which may lead to decreased thyroid function, posing a particular problem for pregnant women, their fetuses, and infants.

Background/Discussion

High perchlorate concentrations were detected in groundwater beneath the Aerojet facility in Rancho Cordova dating back to the 1950s. In 1996, the U.S. Environmental Protection Agency (U.S. EPA) reported that low concentrations of perchlorate created a risk to public health. In 1997, a new analytical method lowered the detection limit for perchlorate in drinking water from 400 parts per billion (ppb) down to 4 ppb. Within a short time, perchlorate was discovered in groundwater at or near several California plants that provided and tested rockets for the U.S. military. It is likely that past product- and waste-management methods allowed large releases of perchlorate into drinking water aquifers and the Colorado River. The Regional Water Quality Control Boards and the Department of Toxic Substances Control (DTSC) have been investigating industrial facilities, military sites and other possible sources. It is too early to tell what total cleanup costs will be.

Intense efforts have been mounted in California and other states to determine safe levels of perchlorate exposure and develop drinking water standards. In 2004, California became the first state to develop a Public Health Goal (PHG) for the contaminant when the Office of Environmental Health Hazard Assessment (OEHHHA) published a PHG of 6 ppb. The Department of Health Services (DHS) currently is proposing a state Maximum Contaminant Level of 6 ppb. Massachusetts has set a state MCL of 2 ppb, while New Jersey has proposed an MCL of 5 ppb. Several other states have drinking water guidelines ranging from 1 to 18 ppb. U.S. EPA has developed a non-regulatory drinking water number of 24.5 ppb, but unlike the various state numbers, the federal level does not account for probable exposure to perchlorate through food.

Question/Answer:

What steps has Cal/EPA taken in response to a major new federal study of perchlorate's effect on the thyroid?

A U.S. Centers for Disease Control and Prevention (CDC) study published in October 2006 found an association between relatively low perchlorate exposure levels and changes in thyroid hormones in women with low iodide excretion. Several environmental groups have cited the study as a major reason for their recent request for OEHHHA to initiate an early review of its 2004 PHG. OEHHHA recently completed a thorough assessment and reanalysis of the CDC data, and replicated the CDC's findings. OEHHHA has also discussed its analyses with the lead author of the CDC study.

OEHHHA believes it would be premature to initiate an early review of the PHG for perchlorate because it needs further clarification on key issues concerning the significance of perchlorate exposures. The CDC is

February 16, 2007

currently conducting a follow-up study in which it is analyzing data from the two-thirds of the volunteers in its nationwide survey whose samples were not included as part of the 2006 CDC study. (That study only analyzed perchlorate in one-third of the samples.) OEHHA will be in a better position to interpret the results of the original findings after this confirmatory study is completed.

Further inquiry into questions raised by the CDC study and other new data on perchlorate will help ensure the highest quality of OEHHA's upcoming 2009 review of the perchlorate PHG, which is mandated by state law.

What steps has Cal/EPA taken to address cleanup of perchlorate in groundwater?

- o DTSC and the Water Boards have aggressively pursued investigation and cleanup at over 35 facilities. In a number of cases the Water Boards have required the responsible parties to provide alternate water supply or treated water. These include significant sites in Morgan Hill, Redlands, Riverside, Rialto-Colton, Hollister, Santa Clara and Rancho Cordova. The Water Board initiated the first perchlorate remediation in the country at the Aerojet facility in Rancho Cordova in 1997.
- o The Water Boards, DTSC, and U.S. EPA have targeted areas where a number of public supply wells exceed the perchlorate PHG in order to identify sources and responsible parties. Each agency has investigated a number of these areas. Cal/EPA, DTSC, and the Water Boards developed a prioritization protocol with the Department of Defense and have implemented investigations of facilities not already under cleanup.
- o The State Water Board has provided direct aid in the form of State Water Board Cleanup and Abatement Account funds and Proposition 50 bond funds for water treatment at the well-head prior to distribution and use in the Rialto-Colton area, where 20 public supply wells had been taken out of service.

Status:

- o OEHHA staff scientists are maintaining regular contact with CDC scientists and risk assessors throughout the United States on matters pertaining to perchlorate.
- o Cal/EPA has established a federal and state agency monthly roundtable discussion addressing all aspects of perchlorate in California, including standard setting, sampling and assessment technologies, investigation approaches, and treatment technologies to ensure all agencies involved are well informed and coordinate activities.
- o Perchlorate levels in the Colorado River have fallen well below 6 ppb due to continued cleanup and contamination control activities. This alleviates the concern over the Colorado River as a drinking water source, but questions remain over the perchlorate uptake in plants when the water is used for agricultural irrigation.
- o Several major sites of perchlorate releases (such as Rialto/Colton, Morgan Hill, and Rancho Cordova) will require monitoring and cleanup activities for decades.
- o Public drinking water supplies have been monitored for perchlorate for several years, with heavily contaminated wells being taken out of service or the water treated to remove perchlorate. However, the cost burden for water treatment is significant, and removal of wells from service has decreased available water supplies, which might prove a particular problem in the event of a prolonged drought.
- o A major and ongoing effort of the Water Boards is to identify responsible parties. Once identified, Water Boards can and do require responsible parties to provide replacement water or to treat perchlorate-contaminated water as a part of the cleanup process.
- o Private drinking water wells, which are not regulated in California, continue to be a source of perchlorate exposure (and a potential health risk) for certain rural populations. In Morgan Hill, the Central Coast Water Board required Olin to provide replacement water to owners of private wells exceeding the perchlorate PHG.

February 16, 2007

From: "John Van Vlear" <JV@vclaw.com>
To: "Karen O'Haire" <KOHaire@waterboards.ca.gov>
Date: 3/8/2007 4:46:41 PM
Subject: RE: Rialto Recording Proceedings?

Hey thanks, great detailed answer.

John Van Vlear

-----Original Message-----

From: Karen O'Haire [mailto:KOHaire@waterboards.ca.gov]
Sent: Thursday, March 08, 2007 4:24 PM
To: John Van Vlear
Cc: Betsy Jennings; James Herink; Michael Lauffer
Subject: Re: Rialto Recording Proceedings?

Mr. Van Vlear, Any person attending the hearing has the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera. A person would only be restricted from recording the hearing if the hearing officer found that the recording constituted a persistent disruption of the hearing due to noise, illumination, or obstruction of view. California Government Code section 47124.1. The State Water Board has not yet determined whether it will record the hearing using a video recorder.

Karen A. O'Haire
Sr. Staff Counsel
State Water Resources Control Board
1001 J Street
Sacramento, Ca. 95812

telephone: (916) 341-5179
fax: (916) 341-5199
e-mail: kohaire@waterboards.ca.gov

>>> "John Van Vlear" <JV@vclaw.com> 3/5/2007 3:42 PM >>>
Is there anything prohibiting (or I guess restricting) a member of the public or the media from video recording (just a guy in the back with a video camera on a tripod) the State Water Board hearings starting March 28th? I presume the State is not going to do so, correct?

JVV

John E. Van Vlear, Esq., R.E.A.
Voss, Cook & Thel LLP
695 Dove Street, Suite 450
Newport Beach, CA 92660
(949) 435-4338
JV@VCTLaw.com

From: Dorothy Rice
To: Zwarts, Patty
Date: Mon, Mar 26, 2007 1:50 PM
Subject: Re: lunch??

Wednesday would be great! thanks Patty.

>>> "Zwarts, Patty" <PattyZ@CALEPA.ca.gov> 3/26/2007 1:46 PM >>>
Dorothy

I would love to and it was nice to see you this morning. I am pretty full this week but I am open this wed. Does that work? We just had a meeting with Gov. Wilson about the Rialto-Coulton cleanup and he wants Linda to take the site cleanup away from the SWRCB. And give it to DTSC. Oh boy. Linda wants to talk to SWRCB.

Patty

Sent from my BlackBerry Wireless Handheld

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Dorothy Rice <DRice@waterboards.ca.gov>
To: Zwarts, Patty
Sent: Mon, Mar 26, 12:02:38, 2007
Subject: lunch??

Patty - I was wondering if you have time for lunch one day this week - it would be great to catch up and get your perspective on water board priorities. Let me know if any day is good for you - thanks!

From: Bonnie Hard
To: Lanich, Steve
Date: 4/6/2007 3:45:01 PM
Subject: Re: FW: Congressional Field Hearing on Perchlorate & Groundwater

Mr. Lanich,

I wanted to make sure you knew that Mr. Baggett cannot attend, however, Phil Wyels from our Office of Chief Counsel will be there. Thank you, Bonnie.

>>> "Lanich, Steve" <Steve.Lanich@mail.house.gov> 4/3/2007 9:27:07 AM >>>
Bonnie - I'm forwarding to you the e-mail I sent to Mr. Baggett last Friday.

If you could help us determine whether Mr. Baggett could testify at our subcommittee hearing next Tuesday in Pomona, I would sincerely appreciate that.

If he's not able to testify, could you recommend someone else at the SWRCB who might be appropriate? As I noted in my original e-mail to Mr. Baggett, we were not able to secure a witness from the San Joaquin Regional Board.

Thanks for your help.

Steve Lanich

Staff Director

Subcommittee on Water and Power

Committee on Natural Resources

1822 Longworth Bldg.

U.S. House of Representatives

Washington, D.C. 20515

202 225-8334 (office)

202 225-8043 (direct)

703 333-5251 (home)

703 907-3679 (cell)

<<http://resourcescommittee.house.gov>> <http://resourcescommittee.house.gov>

Other e-mail: [redacted] <mailto:[redacted]>

From: Lanich, Steve
Sent: Friday, March 30, 2007 3:53 PM
To: 'abaggett@waterboards.ca.gov'

Subject: Congressional Field Hearing on Perchlorate & Groundwater.

Dear Mr. Baggett:

Robert DeLoach of the Cucamonga Valley Water District suggested I contact you.

The House Subcommittee on Water and Power has scheduled a hearing on April 10 in Pomona to consider perchlorate contamination of groundwater supplies in that area. I have attached the official hearing notice for your information. The Subcommittee is chaired by Rep. Grace Napolitano. We also expect Reps. Joe Baca and Hilda Solis to attend the hearing.

We have assembled what I think is an excellent witness lineup, but we lack a witness who can help the subcommittee understand the legal and regulatory framework under which perchlorate is considered. We contacted the Santa Ana Regional Board, but Mr. Thibeault will be out of the country April 10, and other representatives of the Regional Board are apparently consumed with PRP depositions and the like, and will not be available to testify.

Robert DeLoach suggested I contact you to inquire if you would be available as a witness for this hearing.

Other witnesses include SAWPA, local water supply agencies, the City of Rialto, the Center for Community Action and Environmental Justice, and the Metropolitan Water Dist. of Southern California.

It would be of great assistance to our subcommittee if you were able to appear as a witness on behalf of the SWRGB. I look forward to hearing from you.

Thank you for your consideration.

Steve Lanich

Staff Director

Subcommittee on Water and Power

Committee on Natural Resources

1522 Longworth Bldg.

U.S. House of Representatives

Washington, D.C. 20515

202 225-8331 (office)

202 225-6043 (direct)

703 333-5251 (home)

703.307-3879 (cell)

<http://resourcescommittee.house.gov> <<http://resourcescommittee.house.gov>>

Other e-mail: [REDACTED] <mailto:[REDACTED]>

From: Ted Cobb
To: Berchick, Kurt; Tibbault, Gerard
Date: 7/19/2007 2:34:11 PM
Subject: Re: AB 1127 (Carter)

Jerry Tibbault should make the call on this one.

Ted Cobb
Assistant Chief Counsel
State Water Resources Control Board
(415) 311-5711

>> [out] Call on 7/19/2007 2:40:53 PM <>

This bill was recently amended to apply to the City of Reno drinking standards and percolate. Let us know if you want to do anything other than read it. Thanks.

Lore Gallego
Legislative Analyst
Office of Legislative Affairs
(775) 335-5030

CC: Bahcock, Lisa; Bohanowski, David; Bishop, Jonathan; Cain, Stephen; Gallego, Lore; Galardo, Leuter; Giannopoulos, James; Laufer, Michael; O'Hara, Karen

ALLEN MATKINS LECK GAMBLE & MALLORY LLP
ROBERT D. WYATT (SBN 73240)
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Three Embarcadero Center, 12th Floor
San Francisco, California 94111
Telephone: (415) 837-1515
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Attorneys for Petitioner
EMHART INDUSTRIES, INC.

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
SANTA ANA REGION

In the Matter of Cleanup and Abatement Order
No. R8-2005-0053

PETITION FOR REVIEW

Emhart Industries, Inc. ("EII" or "Petitioner") hereby files this petition for review and request for a hearing by the State Water Resources Control Board ("State Board") of that certain Cleanup and Abatement Order No. R8-2005-0053 ("Order") issued by the Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region, ("Regional Board") on February 28, 2005, as served on EII on March 2, 2005. This petition for review is filed pursuant to the United States Constitution, the California Constitution, Water Code § 13320 and 23 CCR §§ 2050 et. seq. A copy of the Order and letter of transmittal are attached hereto as Exhibit A.

Petitioner does not seek a stay of the Order at this time for the reason that the Order does not require Petitioner to perform any action at this time. Petitioner reserves its right to seek a stay of the Order by the State Board in the event the Executive Officer or the Regional Board order Petitioner to perform some specific action in the future.

Petitioner requests that State Board action on this petition be HELD IN ABEYANCE pending further action by the Regional Board. The Order, which requires no action by Petitioner, notices a hearing for August 18 and 19, 2005, before the Regional Board. Further, this date, Petitioner has requested a formal adjudicatory hearing before the Regional Board on the factual and legal assertions set forth in the Order. (Exhibit B.)

I. Name and Address of Petitioner

Petitioner Emhart Industries, Inc., a Connecticut corporation, filed for dissolution on February 28, 2002, and is in the process of winding up its affairs. Petitioner can be contacted through its counsel of record.

II. The Regional Board Action for Which This Petition For Review is Sought

The Regional Board action for which this petition is filed is the issuance of a document labeled "Cleanup and Abatement Order No. R8-2005-0053" dated February 28, 2005 and served on Petitioner on March 2, 2005 by the Executive Officer.

III. The Date the Regional Board Acted

The date of the Regional Board Executive Officer's issuance of the Order is February 28, 2005.

IV. Statement of the Reasons the Action is Inappropriate and Improper

- A. The Order is barred by the doctrine of collateral estoppel and res judicata by virtue of Regional Board Resolution No. R8-2003-0070 dated May 16, 2003 in the matter of Cleanup and Abatement Order No. R8-2002-0051.
- B. The Executive Officer failed to comply with the claims requirement of the Connecticut Business Corporations Code Act § 33-887.
- C. The "findings of fact" set forth the February 28, 2005 Order are contrary to the evidence based upon a preponderance of the evidence in the record.
- D. Emhart Industries, Inc. is not a "corporate successor" to the alleged liabilities of West Coast Loading Corporation and/or of Kwikset Locks Inc.
- E. Water Code § 13304 may not be applied retroactively to parties which ceased to exist prior to the statute's enactment.
- F. The Order is arbitrary and capricious in that it seeks to impose upon a single entity cleanup and abatement and alternative water supply obligations for actions or failures to act by multiple parties as evidenced by the Regional Board's administrative record.
- G. Petitioner does not now have nor has it ever had a possessory interest in the property which is the subject of the Order and thus has no right, power or duty to conduct the actions contemplated but not yet required by the Order.

H. The Order is not a § 13304 action at all in that on its face it requires no action be taken by Petitioner.

J. Further proceedings under the Order are subject to a plea of abatement and stay in that the gravamen of the Order, i.e., (a) whether West Coast Loading Corporation ("WCLC") discharged potassium perchlorate to waters of the state, and, if so, (b) whether Petitioner is a "successor" to WCLC for such alleged liability are presently the subject of litigation, including consolidated cases pending in the U.S. District Court, Central District of California, Eastern Division, in Riverside, California. (*City of Rialto v. U. S. Department of Defense, et al.*, Case No. 04cv00079.)

K. On February 10, 2005, Petitioner provided Regional Board staff a Field Investigation Report prepared by ENVIRON International at the request of USEPA and in consultation with Regional Board staff which concludes the former WCLC facility is not a source of potassium perchlorate contamination in the Rialto/Colton groundwater basin.

L. The Regional Board has not conducted an evidentiary hearing on the allegations set forth in the Order

V. Petitioner is Aggrieved.

Petitioner is aggrieved for the reasons set forth in paragraphs III and IV above.

VI. Petitioner's Requested Action by the State Board.

Petitioner respectfully requests that the State Board provide an evidentiary hearing on the Order pursuant to the United States Constitution, the California Constitution, Water Code § 13320, 23 CCR § 648 et seq. and Government Code § 11400 et. seq., after full opportunity for discovery, and rescind the Order. This petition for review and request for hearing may be held in abeyance by the State Board pending further proceedings and actions, if any, by the Executive Officer or the Regional Board.

VII. Statement of Points and Authorities.

Petitioner will provide a detailed statement of points and authorities in the event the Executive Officer or the Regional Board take further action which necessitate Petitioner requesting the State Board to convert this petition to active status.

VIII. List of Interested Persons.

A list of "interested persons" is attached to the Order attached here to as Exhibit A.

IX. Statement of Transmittal of Petition to the Regional Board.

A copy of this petition has been transmitted to the Executive Officer of the Regional Board on March 30, 2005.

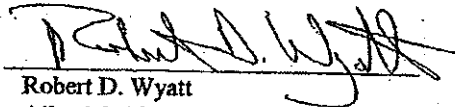
X. Request to Regional Board for Preparation of the Administrative Record.

By copy of this petition to the Executive Officer of the Regional Board, Petitioner hereby requests the preparation of the administrative record herein.

Respectfully submitted,

Date: March 30, 2005

by:



Robert D. Wyatt
Allen Matkins Leck Gamble & Mallory
Attorneys for Petitioner Emhart Industries

cc: Gerard J. Thibeault, Executive Officer, RWQCB, Region 8
Jorge A. Leon, Esq., OCC, SWRCB



California Regional Water Quality Control Board
Santa Ana Region



Alan C. Lloyd, Ph.D.
Agency Secretary

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 - FAX (951) 781-6288
<http://www.waterboards.ca.gov/santaana>

Arnold Schwarzenegger
Governor

February 28, 2005

Mr. Robert D. Wyatt
Allen Matkins Leck Gamble & Mallory LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074

Ms. Linda H. Biagioni
Vice President, Emhart Industries, Inc.
Vice President for Environmental Affairs, Black & Decker Corporation
701 East Joppa Road
Towson, MD 21286

CLEANUP AND ABATEMENT ORDER NO. R8-2005-0053

Dear Mr. Wyatt and Ms. Biagioni:

Enclosed is Cleanup and Abatement Order No. R8-2005-0053 issued to Emhart Industries, Inc. and Black & Decker (U.S.), Inc. The Order is issued under the Executive Officer's delegated authority and is in effect upon issuance. The Order is being issued at this time in order to preserve the Regional Board's claim against Emhart Industries, Inc., which filed for dissolution and caused notice to be published on March 12, 2002. Under Connecticut statutes, in order to remain valid, a proceeding to enforce the claim must be initiated within three years of publication of the dissolution notice. That deadline is March 12, 2005. The issuance of this Order constitutes the commencement of the required action.

In the event that Emhart and Black & Decker desire to be heard on the Order, a hearing before the Regional Board or a Hearing Panel composed of members of the Board is scheduled for August 18 and 19, 2005. Note that the Order does not include specific deadlines at this point; rather, the first deadline will be set by future action of the Board. A detailed hearing notice will be issued at a later date. The currently scheduled hearing commencement date is intended to allow the parties time to complete currently scheduled depositions of witnesses familiar with West Coast Loading Corporation activities and documents and time to notice and hold any further depositions that may be conducted relative to this proceeding. The hearing commencement date is subject to change.

California Environmental Protection Agency



EXHIBIT A

Mr. Wyatt and Ms. Biagioni

- 2 -

February 28, 2005

If you have any questions regarding this matter, please contact Kurt Berchtold, Assistant Executive Officer, at (951) 782-3286 or Jorge Leon, Senior Staff Counsel, at (916) 341-5180.

Sincerely,



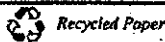
Gerard J. Thibeault
Executive Officer

Enclosure: Cleanup and Abatement Order No. R8-2005-0053

cc (w/ enclosure):

Regional Board
Jorge Leon, SWRCB - OCC
Phil Wyels, SWRCB - OCC
Marilyn Levin, Deputy Attorney General
Gary Tavetian, Deputy Attorney General
Inland Empire Perchlorate Regulatory Task Force Members (mailing list attached)

California Environmental Protection Agency



California Regional Water Quality Control Board
Santa Ana Region

Cleanup and Abatement Order No. R8-2005-0053

for
Emhart Industries, Inc.
and
Black & Decker (U.S.), Inc.

Corporate Successors of the
West Coast Loading Corporation

Formerly Located on the 160-Acre Property Bounded Approximately by
Casa Grande Park Avenue on the North, Locust Avenue on the East,
the Extension of Alder Avenue on the West, and
the Extension of Summit Avenue on the South,
City of Rialto, San Bernardino County

The California Regional Water Quality Control Board, Santa Ana Region
(hereinafter Regional Board), finds that:

1. In February 1951, Kwikset Locks, Inc. (KLI), a manufacturer of household door locks, formed the West Coast Loading Corporation (WCLC).
2. During 1951 and 1952, WCLC (as a subsidiary of KLI) constructed a manufacturing plant on 160 acres of property, consisting of the southwest quarter of Section 21, Township 1 North, Range 5 West, San Bernardino Base and Meridian in the City of Rialto, County of San Bernardino, State of California. From 1951 to 1957, WCLC (as a subsidiary of KLI) wholly owned and occupied this property.
3. During the period from 1952 to 1957, WCLC used the 160-acre property for the manufacture of explosive cartridges, photoflash cartridges, flares, ground burst simulators, and other incendiary devices. WCLC manufactured many of these products under subcontract to KLI for use by the military, under KLI's contract with the U.S. Government. WCLC also processed chemicals at the Rialto site for use by other government contractors in the manufacture of solid rocket propellant. WCLC also processed chemicals for the manufacture of flares and other products containing perchlorate for non-defense purposes.
4. From 1952 (or earlier) to 1957, various chemicals were delivered, stored, and used for WCLC's manufacturing activities at the 160-acre site. The

chemicals that were used, stored, and processed at WCLC during their occupancy of the site included ammonium perchlorate, potassium perchlorate, potassium chlorate, aluminum, iron oxide, and various compounds of nitrate, lead, and barium.

5. WCLC's records indicate that very large amounts of perchlorate salts were handled at the facility. For example, a purchase order dated September 2, 1955, and delivery confirmations show that 47,000 pounds of potassium perchlorate were purchased from Western Electrochemical Co., Henderson, Nevada, and delivered to Rialto for use by WCLC.
6. As a further example, invoices and purchase orders, dated March 8, 1957, indicate that Grand Central Rocket Company received 43,250 pounds of ammonium perchlorate from WCLC after WCLC processed (i.e., dried) the ammonium perchlorate to a moisture content of 0.03% or less. The purchase orders state that Grand Central Rocket Company had supplied the material to WCLC. These business records for the work done under contract with Grand Central Rocket Company demonstrate that the handling, drying, and storage of very large amounts of perchlorate salts occurred at the WCLC site. The stringent requirements for low moisture are specific to the requirements for use of ammonium perchlorate as an oxidizer in the manufacture of solid propellant materials. Grand Central Rocket Company was in the business of manufacturing solid rocket propellant for use in military weapons systems during 1957, concurrent with the date of the purchase orders and the WCLC invoices for the 43,250 pounds of ammonium perchlorate.
7. WCLC's records included "standard operating procedures" (SOPs) for processing potassium perchlorate for use in WCLC products. WCLC's SOPs for the drying of potassium perchlorate state that potassium perchlorate powder was moved from barrels to uncovered trays, and then screened to remove lumps. The open trays were then moved to an oven in a different building using a hand-truck. Sacks were then filled with potassium perchlorate and stored indoors after drying was complete.
8. WCLC documents and testimony from former WCLC employees establish a multi-step process for the manufacture of photoflash cartridges, including drying, screening, a second round of drying, weighing, mixing, and loading. Each of these steps involved the handling, processing and/or movement of potassium perchlorate in order to mix photoflash powder. The drying, screening, weighing, mixing, and loading all took place in different rooms. WCLC documents further reveal that approximately 4%, by weight, of the perchlorate used to make photoflash cartridges was expected to be lost during the manufacturing process. WCLC documents

show that WCLC used about 50,000 pounds of perchlorate for the manufacture of photoflash cartridges during the period from 1952 to 1957.

9. It is reasonable to conclude that some spillage would have occurred during the handling, drying, screening, weighing, mixing, loading, transporting, and storage of ammonium perchlorate and potassium perchlorate at WCLC. Also, given the very fine nature of the dried, screened perchlorate powder, it is reasonable to conclude that the process of transporting perchlorate from room to room and the physical movement of the perchlorate powder during the drying, screening, weighing, mixing, and loading processes would result in the mobilization of perchlorate powder into the air, and subsequent deposition onto floors, walls, ceilings, and other surfaces.
10. This conclusion is supported by numerous pages throughout the SOPs and the "standard non-operating procedures" for chemical handling at the WCLC facility, which include requirements for sweeping up spilled powder, wiping spillage with wet rags, and wet-mopping of spills and powder deposited on various surfaces during processing. These written procedures include specific instructions for cleaning up spills of chemicals from tabletops, floors and sink areas, and disposing of soiled rags, towels, filters and cups into "slop crocks" that were stored in the WCLC work rooms and magazines ("igloos" or "bunkers"). The site janitor's job included sweeping the buildings, burning of scrap and explosive materials, and disposal of trash and metal cans at WCLC's on-site dump.
11. It is reasonable to conclude that the extensive written procedures were developed because spillage and surface accumulation of chemical products, including perchlorate salts, was expected to occur, and routinely did occur, during processing of those products at the WCLC facility. Testimony and WCLC documents reveal that the spillage and/or accumulation of perchlorate salts on equipment, walls, floors, and ceilings led to at least one significant explosion. Testimony of former employees of WCLC that was provided during depositions that were conducted beginning in 2004, verifies that, in the buildings that were used by WCLC for weighing, screening, drying, mixing and loading perchlorate salts, the equipment, floors, walls, and ceilings were washed with rags and water-wet mops to remove chemical dust at least 4 times per shift, as specified in the SOPs.
12. Testimony of former WCLC employees also indicates that the mops used for cleaning the chemical residue were rinsed with water in buckets, and the contents of the buckets were dumped onto the bare ground outside of the buildings. Based on the use of perchlorate salts in these buildings, the

water that was routinely dumped on the ground would have contained perchlorate. Further testimony from WCLC employees indicates that the metal trays that were used by WCLC employees for the screening and drying of perchlorate were taken outdoors to be cleaned. The residual perchlorate salts that remained on the trays were rinsed from the trays onto the bare ground, using a faucet and water hose.

13. It is also reasonable to conclude, and former WCLC employees have testified, that during the period from 1952 to 1957, WCLC stored and disposed of chemical-soiled rags, cans, and other wastes at the site, as directed by WCLC's written procedures. This conclusion is based upon WCLC's records and the testimony of former WCLC employees, as well as staff's collective knowledge and experience in the oversight of investigation and cleanup activities at numerous industrial sites throughout the Santa Ana Region where chemicals, including perchlorate salts, were used during the 1950s and 1960s. Standard industrial practices at such facilities in the 1950s and 1960s typically resulted in some spillage and on-site disposal of chemical products. Testimony from former WCLC employees indicates that WCLC operated an on-site laundry, used for the washing of the soiled rags. Since the 160-acre site was not sewerred, any disposal of chemicals to sinks, drains, and floor drains would have entered on-site septic systems and gone to groundwater. The laundry drain apparently discharged directly onto the bare ground.
14. According to WCLC's "Safety Regulations for Handling Azides, Styphnates, and Similar Explosives," (dated January 3, 1954 and approved by WCLC's Executive Vice-President and General Manager, Gerald D. Linke), the used sponges and cleaning rags, cleaning water and other waste liquids generated from operations, including mixing photoflash powder containing perchlorate, were to be "taken to the disposal pit south of the plant site and drained into the ground."
15. In addition to the explosives and incendiary devices that were manufactured and the large amounts of perchlorate salts that were stored and handled at the site, WCLC owned "igloos" on adjacent land located southwest of the 160-acre property. WCLC leased space in the igloos to other parties, and also reserved space in the igloos for shared use by WCLC, expressly for the storage of explosives. Many explosives are known to contain perchlorate salts, so it is reasonable to conclude that perchlorate salts were stored in the igloos by WCLC.
16. The following findings explain the corporate history of WCLC, and specifically describe the direct successorship from WCLC to Emhart Industries, Inc., and Black & Decker (U.S.), Inc.:

- a. On July 1, 1957, American Hardware Corporation (AHC), a Connecticut corporation, acquired KLI and its subsidiaries, including WCLC. While numerous documents regarding corporate transfers and mergers involving these entities have been uncovered during the investigation of this matter, a June 1957 agreement between AHC and KLI has not been produced by Emhart Industries, Inc. That document may shed additional light on the precise nature of the acquisition of KLI by AHC. However, numerous other contemporaneous documents have been uncovered and assist in understanding the legal effect of the transaction.
- b. On July 3, 1957, WCLC was merged with KLI. According to a July 1, 1957 KLI Board of Directors resolution, quoted in KLI's Certificate of Ownership filed with the State of California, KLI assumed "all the liabilities and obligations" of WCLC, and "shall be liable therefor in the same manner as if it had itself incurred such liabilities and obligations." KLI remained under the control of AHC.
- c. On July 19, 1957, KLI sold the 160-acre Rialto property to B.F. Goodrich. KLI ceased its manufacturing activities in Rialto, but continued operating as a "division" of AHC, doing business in Anaheim, California, producing Kwikset's well-known product line of household door locks.
- d. On June 30, 1958, KLI was dissolved. AHC assumed the liabilities of KLI and WCLC, and continued producing the Kwikset product line at the former KLI Anaheim facility.
- e. IRS Form 7004, "Application for Automatic Extension of Time," was submitted to the IRS on behalf of KLI by C. K. Nelson, Assistant Treasurer, on September 15, 1958. This document contains KLI's stated reason for the requested extension: "The corporation was merged with another corporation as of June 30, 1958." (emphasis added).
- f. IRS Form 843, "Claim," dated November 28, 1961, was submitted on behalf of "KLI, Transferor" and "American Hardware Corporation, Transferor." In Schedule A, the following statement is contained in the second paragraph:

"Kwikset Locks, Incorporated was substantially a wholly-owned subsidiary of American Hardware Corporation as of January 1, 1958. On June 30, 1958, Kwikset Locks, Inc. was dissolved. All the

assets and liabilities were transferred to the parent corporation,
and operations were continued as Kwikset Division of the American
Hardware Corporation." (emphasis added).

- g. AHC merged with Emhart Manufacturing Company, a Delaware Corporation, in April 1964. The surviving corporation in the merger was AHC, under a new corporate name, "Emhart Corporation," as of June 30, 1964.
 - h. Emhart Corporation became Emhart Industries, Inc., on May 4, 1976.
 - i. Kwikset Corporation was incorporated in California in 1985 as a wholly-owned subsidiary of Emhart Industries, Inc., and was capitalized using the net assets of the Kwikset Division of Emhart Industries, Inc.
 - j. Emhart Industries, Inc., was acquired by Black & Decker (U.S.), Inc., a subsidiary of the Black & Decker Corporation, in 1989.
 - k. Emhart Industries, Inc., is in the process of winding up its business and affairs, having filed a Certificate of Dissolution in the State of Connecticut in 2002.
 - l. AHC's purchase of KLI was more than a mere stock purchase and assumption of known liabilities only, as Emhart has claimed. It constitutes a complete merger. The documents noted above in e. and f., contemporaneously prepared at or around the time of the 1957 AHC acquisition, demonstrate that KLI and AHC understood and believed the 1957 purchase of KLI to be a "merger," with the result that AHC assumed all of KLI's liabilities both known and unknown. In addition, a Kwikset Corporation publication, entitled "Kwikset A Black & Decker Company Employee Handbook," contains the following quotation:

"In 1957, Kwikset Locks, Inc. merged with the American Hardware Corporation of New Britain, Connecticut and subsequently became known as the Kwikset Division." Moreover, the Black & Decker website, as it appeared in 2002, indicated under "Company History" that KLI was merged into AHC. Notably, during the investigation of this matter in 2002, and shortly after this fact was pointed out to Kwikset's and Emhart's representatives, the website was changed to remove this statement.
16. Black & Decker (U.S.), Inc., by virtue of its status as parent corporation of Emhart and having received the stock of Emhart upon dissolution, is a legal successor to Emhart's and WCLC's liabilities under this order.

17. Emhart Industries, Inc., and Black & Decker (U.S.), Inc., are the corporate successors of WCLC and KLI, and are legally liable for discharges of pollutants caused by WCLC and KLI. WCLC and KLI, and their legal successors, have caused or permitted, or are causing or permitting, waste, i.e., perchlorate, to be discharged to waters of the state, and have created, or threaten to create, a condition of pollution or nuisance.
18. Perchlorate salts are highly soluble and dissociate in water to form perchlorate ions. There are currently no state or federal drinking water standards for perchlorate. However, the California Department of Health Services (DHS) has established a drinking water Action Level (AL) for perchlorate of 6 parts per billion (ppb). An AL is a temporary safe drinking water level that is based on limited studies that have been performed. Perchlorate is currently present in the Rialto, Riverside - B, and Chino North Groundwater Management Zones. The West Valley Water District, the Fontana Water Company, and the Cities of Rialto and Colton had limited or ceased the use of 20 municipal water supply wells that exceeded the AL for perchlorate (several of these wells have been put back into operation after having perchlorate treatment systems installed).
19. Municipal water supply wells in the Rialto, Riverside - B, and Chino North Groundwater Management Zones have been, or are likely to be, affected by the perchlorate pollution in these basins. Regional Board staff is currently attempting to identify all parties that may have discharged perchlorate in this area.
20. The beneficial uses of the Rialto, Riverside - B, and Chino North Groundwater Management Zones include:
 - A. Municipal and domestic supply,
 - B. Agricultural supply,
 - C. Industrial service supply, and
 - D. Industrial process supply.
21. California Water Code Section 13304 allows the Regional Board to recover reasonable expenses from responsible parties for overseeing cleanup and abatement activities. It is the Regional Board's intent to recover such costs for regulatory oversight work conducted in accordance with this order.
22. This enforcement action is being taken by a regulatory agency to enforce a water quality law. Such action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section

21000, et seq.) in accordance with Section 15321, Article 19, Division 3, Title 14, California Code of Regulations.

23. A soil and groundwater investigation is necessary to define the vertical and lateral extent of the perchlorate that is discharging, has been discharged, or threatens to be discharged, from the former WCLC facility and from the former WCLC igloos (bunkers).
24. It is appropriate to order Emhart Industries, Inc., and Black & Decker (U.S.), Inc., to clean up and abate the effects of the discharge of perchlorate from property that was formerly owned and controlled by their corporate predecessors, WCLC and KLI.
25. The former 160-acre WCLC property now consists of numerous separate parcels, with multiple landowners. Since 1964, continuing through the present, various tenants involved in pyrotechnics have occupied portions of the site.
26. Orders have been issued to former tenants or former owners of the 160-acre parcel and the adjacent property where WCLC's igloos (bunkers) were located. Additional orders may be issued, if Regional Board staff obtains additional information indicating that other specific tenants or owners have also discharged perchlorate that is present in the groundwater.

IT IS HEREBY ORDERED THAT, pursuant to Section 13304, Article 1, Chapter 5, Division 7, of the California Water Code, Emhart Industries, Inc., and Black & Decker (U.S.), Inc., shall cleanup and abate the effects of the discharges at the Rialto properties as follows:

1. Prepare and submit a work plan and time schedule to define the lateral and vertical extent of the perchlorate that is discharging, has been discharged, or threatens to be discharged, from the former WCLC facility and from the former WCLC igloos (bunkers). The work plan, subject to the approval of the Executive Officer, shall be implemented in accordance with a time schedule approved by the Executive Officer. The due date for this work plan and time schedule will be established by future action of the Regional Board.
2. Prepare and implement any additional work plans that the Executive Officer deems necessary to sufficiently characterize the lateral and vertical extent of perchlorate that is discharging, has been discharged, or threatens to be discharged, from the former WCLC facility and from the

February 28, 2005

former WCLC igloos (bunkers). The work plans, subject to the approval of the Executive Officer, shall be implemented in accordance with time schedules approved by the Executive Officer.

3. After the Executive Officer determines that the lateral and vertical extent of perchlorate that is discharging, has been discharged, or threatens to be discharged from the former WCLC facility and bunkers has been sufficiently defined, submit a detailed remedial action plan, including an implementation schedule, to cleanup or abate the effects of the perchlorate that is discharging, has been discharged, or threatens to be discharged, from the former WCLC facility and bunkers. The remedial action plan shall provide for replacement water service, which may include wellhead treatment, for any water supply wells determined by the Executive Officer, based on investigations conducted pursuant to Items 1 and 2, above, to be affected by the discharges. The remedial action plan and implementation schedule shall be submitted within 60 days of the Executive Officer's notification to Emhart Industries, Inc., and Black & Decker (U.S.), Inc., that the definition of the extent of perchlorate is sufficiently complete to initiate cleanup or abatement activities. The remedial action plan and schedule shall be subject to approval by the Executive Officer.
4. Implement the remedial action plan in 3. , above, as approved by the Executive Officer.

This Order is issued under the Executive Officer's delegated authority to issue a Cleanup and Abatement Order.


Gerard J. Thibeault
Executive Officer

February 28, 2005

Allen Matkins Leck Gamble & Mallory LLP

attorneys at law

Allen Matkins

Three Embarcadero Center 12th Floor San Francisco California 94111-4074
telephone. 415 837 1515 facsimile. 415 837 1516 www.allenmatkins.com

writer, Robert D. Wyatt t. 415 273 7420

file number, E2602-005/SF639474.01 e. rwyatt@allenmatkins.com

March 30, 2005

**VIA FACSIMILE AND
FIRST CLASS MAIL**

Gerard J. Thibeault
Executive Officer
California Regional Water Quality Control Board
Santa Ana Region
3737 Main St., Suite 500
Riverside, CA 92501-3339

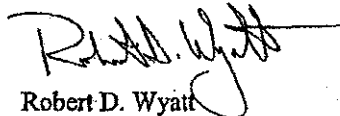
Re: Cleanup and Abatement Order No. R8-2005-0053
Request for Evidentiary Hearing by Respondent Emhart Industries, Inc.

Dear Mr. Thibeault:

On behalf of our client, Emhart Industries, Inc. ("EII"), respondent in the above-referenced matter, we hereby request an evidentiary hearing on the above-referenced order pursuant to the United States Constitution, the California Constitution, 23 CCR §§ 648 et. seq., and California Government Code §§ 11400 et seq.

Your letter to the undersigned dated February 28, 2005, transmitting the referenced Order, sets a hearing before the Regional Board for August 18 and 19, 2005. Because the appeal taken in *Kwikset Corporation v. California Regional Water Quality Control Board, Santa Ana Region*, is now pending before the Court of Appeals, we request that all further action on the above-referenced CAO be suspended until the appellate decision is announced given that said decision may have a dispositive effect on the Order issued to EII. Such a procedure may allow both Emhart and the Regional Board to conserve litigation resources.

Very truly yours,


Robert D. Wyatt

RDW:wj

cc: Jorge A. Leon, Esq.

1900
S. 1000
S. 1000

EXHIBIT 4



California Regional Water Quality Control Board
Santa Ana Region



Alan C. Lloyd, Ph.D.
Agency Secretary

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 - FAX (951) 781-6288 - TTY (951) 782-3221
<http://www.waterboards.ca.gov/santaana>

Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING
(Date of Notice: October 17, 2005)

For Regional Board review of

Cleanup and Abatement Order No. R8-2005-0053
Issued to

Emhart Industries, Inc.
Black & Decker (U.S.), Inc.

A hearing before the Regional Board, or a Panel thereof, will be held on May 17 and 18, 2006 for review of Cleanup and Abatement Order No. R8-2005-0053 ("the CAO") issued to Emhart Industries, Inc., and Black & Decker (U.S.), Inc. (collectively, "B&D Entities"). An agenda announcement for the hearing in this matter will specify the hearing location(s) and start time(s). The agenda announcement will be sent to the parties and to any person requesting notice and will be available to the public on the Regional Board's website prior to the hearing.

The issues before the Board are: (1) Whether there exists legally adequate evidence to support a finding of perchlorate discharge, within the meaning of Water Code Section 13304, by West Coast Loading Corporation and (2) Whether each of the named B&D Entities is properly included in the CAO as a discharger or a legal successor of a discharger.

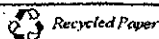
The Regional Board proceedings in this matter are subject to regulations in Title 23, California Code of Regulations (CCR) Sections 648, et seq.

PARTIES AND INTERESTED PERSONS

The Regional Board staff comprising the Staff Advocacy Team (described below) and the B&D Entities are the currently Designated Parties to this proceeding, pursuant to Title 23, CCR, Section 648.1(a). The order of proceeding for the hearing is: (1) Staff Advocacy Team; (2) B & D Entities; (3) other interested persons. Time limits for presentation, as well as requests to provide rebuttal or closing arguments, will be considered at the final Prehearing Conference.

Only Designated Parties will have these rights:
to call and examine witnesses;
to introduce exhibits;

California Environmental Protection Agency



to cross-examine opposing witnesses;
to impeach any witness; and
to rebut the evidence against him or her.

All other persons wishing to testify or provide comments are Interested Persons. All Designated Parties and Interested Persons may speak at the Regional Board hearing and are expected to orally summarize their written materials.

Any person may request status as a Designated Party for purposes of this hearing by submitting such request in writing to the Regional Board no later than October 31, 2005. The request must set forth the basis for status as a Designated Party and, in particular, how the person is directly affected by the discharge. Objections to requests for Designated Party status must be submitted in writing to the Regional Board no later than November 3, 2005.

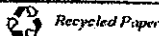
SEPARATION OF REGIONAL BOARD STAFF FUNCTIONS

This matter involves highly controversial issues. Issues similar to those presented in this matter involving the B&D Entities are also the subject of ongoing litigation in federal courts. Accordingly, it is necessary to separate the functions of staff members presenting evidence for consideration by the Regional Board from those of staff members providing legal and technical advice to the Regional Board. Assigning responsibility for advising the Regional Board members to staff other than those who will present testimony in support of the CAO is intended to assure the fairness and impartiality of the Regional Board's proceedings. The Regional Board staff participating in the proceedings will be separated into two groups.

Staff Advocacy Team: One group will serve a "prosecutorial" function in the proceedings and assume responsibility for presenting evidence to the Regional Board supporting the CAO. Members of the Staff Advocacy Team will be treated, for purposes of the present matter, like other parties who come before the Regional Board throughout the proceedings. They shall have no contact with Regional Board members or with members of the Advisory Team on matters relating to the proceedings, except where those contacts are consistent with the limitations on *ex parte* contacts that apply to all other parties. For purposes of this Notice, an "ex parte contact" is any written or oral communication relating to the CAO between a member of the Advocacy Team and a Regional Board member or a Staff Advisory Team member, unless the communication is copied to all other parties to the proceedings (if written) or made in the presence of all other parties and interested persons (if oral). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted.

Members of the Staff Advocacy Team are: Gerard J. Thibeault, Executive Officer; Kurt Berchtold, Assistant Executive Officer; Robert Holub, Supervising Water Resource Control Engineer; Ann Sturdivant, Senior Engineering Geologist; Kamron Saremi, Water Resource Control Engineer; Debi Ney, Associate

California Environmental Protection Agency



Government Program Analyst; Jorge A. Leon, Senior Staff Counsel, State Water Resources Control Board, Office of Chief Counsel; and Phillip Wyels, Assistant Chief Counsel, State Water Resources Control Board, Office of the Chief Counsel. Mr. Leon, who regularly advises the Regional Board at its public meetings, has been assisting the Staff Advocacy Team. Accordingly, he has not in the past nor will he provide advice to the Regional Board in connection to this matter.

Staff Advisory Team: This group will assist the Regional Board members in matters such as evaluating requests for Designated Party status, enforcing deadlines and other limitations on submissions and exhibits, and preparing for and conducting the proceedings. The Advisory Team will also provide advice to the Regional Board members at the hearing and in their deliberations on the evidence presented in the proceedings.

Members of the Advisory Team are: Joanne Schneider, Environmental Program Manager; Ted Cobb, Assistant Chief Counsel, State Water Resources Control Board, Office of the Chief Counsel; and John Broderick, Engineering Geologist.

SCHEDULE PRIOR TO HEARING

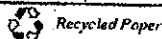
PREHEARING CONFERENCE

A Prehearing Conference will be held on November 4, 2005, at 10 a.m. in the office of the Regional Board to address any motions or requests that are timely submitted. Any requests for Designated Party status will be decided at this time. Requests for modification of the schedule contained herein will be decided at this time. Any request for modification of the schedule must be filed on or before October 28, 2005. Any such request filed after that date must be accompanied by a declaration indicating that the information on which the request is based was not available on or before that date and why the information was not available. Additionally, the amount of time to be allocated to each Designated Party during the hearing will be decided at this time. The prehearing conference will be conducted by Ted Cobb. Anyone unable to attend the conference in person should contact Mr. Cobb in advance of the conference to arrange alternative attendance procedures.

EXCHANGE OF EVIDENCE, DESIGNATION OF WITNESSES AND CAO REVISIONS

By December 9, 2005, the Designated Parties shall exchange all evidence upon which they intend to rely in support of their respective positions. A copy of all exhibits, documents, photographs and other material must be provided to each of the other Designated Parties. Additionally, each Designated Party shall submit a list of all witnesses, including expert witnesses, who may be called by that Party at the hearing.

California Environmental Protection Agency



Interested Persons shall submit any written comments by the deadline indicated above. Written comments submitted after the deadline will not be accepted and will not be incorporated into the administrative record over the objection of any Designated Party where there is a showing of prejudice to any party, or where the Interested Person fails to show good cause for failure to comply with the deadline.

WHERE TO SEND CORRESPONDENCE, REQUESTS AND OTHER SUBMISSIONS

All written submissions, including evidence, testimony, comments, requests for Designated Party status, and procedural objections or motions must be sent to each of the following addressees. Hard copies of all testimony, evidence, comments or other written documents must be submitted. Eight copies of all items to be presented to the Regional Board must be submitted to Catherine Ehrenfeld at the address below.

Any Designated Party or Interested Person submitting any motion, objection, evidence, testimony, brief or other correspondence to the Advisory Team must provide copies of the materials to all Designated Parties.

ITEMS ADDRESSED TO THE STAFF ADVISORY TEAM:

Ted Cobb, Assistant Chief Counsel
SWRCB
1001 I Street, P.O. Box 100
Sacramento, CA 95812
tcobb@waterboards.ca.gov
(916) 341-5171

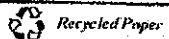
AND

Joanne Schneider, Environmental Program Manager
California Regional Water Quality Control Board, Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501
jschneider@waterboards.ca.gov
(951) 782-3287

AND

Catherine Ehrenfeld, Executive Assistant
California Regional Water Quality Control Board, Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501
cehrenfeld@waterboards.ca.gov
(951) 782-3285

California Environmental Protection Agency



ITEMS ADDRESSED TO THE STAFF ADVOCACY TEAM:

Jorge A. Leon, Senior Staff Counsel
SWRCB, Office of Chief Counsel
1001 I Street, P.O. Box 100
Sacramento, CA 95812
jleon@waterboards.ca.gov
(916) 341-5180

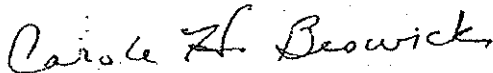
AND

Kurt Berchtold, Assistant Executive Officer
California Regional Water Quality Control Board, Santa Ana Region
3737 Main Street, Suite 500
Santa Ana, CA 92501
kberchtold@waterboards.ca.gov
(951) 782-3286

ITEMS ADDRESSED TO THE B&D ENTITIES:

Robert D. Wyatt, Esq.
Allen Matkins Leck Gamble & Mallory LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074
rwytatt@allenmatkins.com
(415) 273-7420

This Notice and the deadlines may be revised by the Regional Board. Any questions or comments regarding this Notice should be addressed to Ted Cobb, Assistant Chief Counsel.



Carole H. Beswick
Chair

cc: Attached Mailing List
Regional Board

California Environmental Protection Agency





California Regional Water Quality Control Board
Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

January 31, 2007

EMAIL AND U.S. MAIL

Mr. Tom Howard
Acting Executive Director
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
thoward@waterboards.ca.gov

Santa Ana Regional Water Quality
Control Board
c/o Ms. Carole Beswick, Chair
3737 Main Street, Suite 500
Riverside, CA 92501-3348
chbeswick@earthlink.net


Dear Mr. Howard and Members of the Santa Ana Regional Water Quality Control Board:

RIALTO-AREA PERCHLORATE CONTAMINATION; RESIGNATION AND TERMINATION OF PROCEEDINGS

I have carefully reviewed the January 30, 2007 letter from Acting Executive Director Howard to Messrs. Duchesneau, Wyatt and Meeder rejecting the petitions by Goodrich Corporation and Emhart Industries, Inc., et al., of the Santa Ana Regional Water Quality Control Board Resolution (No. R8-2006-0079) appointing me as Deputy Executive Officer/Hearing Officer in this matter. The letter opines that the Resolution "appears inappropriately broad," and recommends that my duties be restricted to holding a hearing and making a recommendation to the Regional Board for final action.

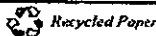
The recommendations in the letter would presumably result in substantial changes to Resolution No. R8-2006-0079, which defines the assignment I agreed to undertake. The disagreement between the State Board staff and the Regional Board is not likely to be clearly resolved soon, and a useful result is unlikely absent resolution. I am unwilling to proceed in accordance with the recommendations in the January 30 letter and to contend with any further resulting delay of the proceedings I have set in motion.

Therefore, please be advised that I hereby resign as Deputy Executive Officer/Hearing Officer and rescind all orders and determinations I have made to date in this case.


Walter Pettit
Hearing Officer

cc: See next page

California Environmental Protection Agency



Mr. Tom Howard
Santa Ana Regional Board Members.

- 2 -

January 31, 2007

cc: [via email only]

Mr. Gerard Thibeault, Executive Officer
Santa Ana Regional Water Quality
Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

Jorge Leon, Esq.
Office of Enforcement
State Water Resources Control Board
1001 I Street, 16th Floor
P.O. Box 100
Sacramento, CA 95812-0100

Theodore A. Cobb, Esq.
Erik Spiess, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 16th Floor
P.O. Box 100
Sacramento, CA 95812-0100

Perchlorate Email Subscription List

California Environmental Protection Agency

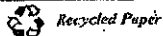


EXHIBIT 5

ALLEN MATKINS LECK GAMBLE & MALLORY LLP
ROBERT D. WYATT (SBN 73240)
JAMES L. MEEDER (SBN 62114)
HENRY LERNER (SBN 077166)
Three Embarcadero Center, 12th Floor
San Francisco, California 94111
Telephone: (415) 837-1515
Facsimile: (415) 837-1516

Attorneys for Petitioner
BLACK & DECKER (U.S.), INC..

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of Cleanup and Abatement Order
No. R8-2005-0053

PETITION FOR REVIEW

Black & Decker (U.S.), Inc. ("Petitioner") hereby files this petition for review and request for a hearing by the State Water Resources Control Board ("State Board") of that certain Cleanup and Abatement Order No. R8-2005-0053 ("Order") issued by the Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region, ("Regional Board") on February 28, 2005, as served on Petitioner on March 2, 2005. This petition for review is filed pursuant to the United States Constitution, the California Constitution, Water Code § 13320 and 23 CCR §§ 2050 et. seq. A copy of the Order and letter of transmittal are attached hereto as Exhibit A.

Petitioner does not seek a stay of the Order at this time for the reason that the Order does not require Petitioner to perform any action at this time.

Petitioner reserves its right to seek a stay of the Order by the State Board in the event the Executive Officer or the Regional Board itself orders Petitioner to perform some specific action in the future.

I. Name and Address of Petitioner

Petitioner can be contacted through its counsel of record.

II. The Regional Board Action for Which This Petition For Review is Sought

The Regional Board action for which this petition is filed is the issuance of a document labeled "Cleanup and Abatement Order No. R8-2005-0053" dated February 28, 2005 and served on Petitioner on March 2, 2005 by the Executive Officer.

III. The Date the Regional Board Acted

The date of the Regional Board Executive Officer's issuance of the Order is February 28, 2005.

IV. Statement of the Reasons the Action is Inappropriate and Improper

A. The Order is barred by the doctrine of collateral estoppel and res judicata by virtue of Regional Board Resolution No. R8-2003-0070 dated May 16, 2003 in the matter of Cleanup and Abatement Order No. R8-2002-0051.

B. As regards separate petitioner Emhart Industries, Inc., the Executive Officer failed to comply with the claims requirement of the Connecticut Business Corporations Code Act § 33-887.

C. The "findings of fact" set forth the February 28, 2005 Order are contrary to the evidence based upon a preponderance of the evidence in the record.

D. Black & Decker (U.S.), Inc. is not a "corporate successor" to the alleged liabilities of West Coast Loading Corporation and/or of Kwikset Locks Inc and/or Emhart Industries, Inc.

E. Water Code § 13304 may not be applied retroactively to parties which ceased to exist prior to the statute's enactment.

F. The Order is arbitrary and capricious in that it seeks to impose upon a single entity cleanup and abatement and alternative water supply obligations for actions or failures to act by multiple parties as evidenced by the Regional Board's administrative record.

G. Petitioner does not now have nor has it ever had a possessory interest in the property which is the subject of the Order and thus has no right, power or duty to conduct the actions contemplated but not yet required by the Order.

H. The Order is not a § 13304 action at all in that on its face it requires no action be taken by Petitioner.

J. The Order is subject to a Plea in Abatement in that the gravamen of the Order, i.e., (a) whether West Coast Loading Corporation ("WCLC") discharged potassium perchlorate to waters of the state, and, if so, (b) whether petitioner is a "successor" to WCLC for such alleged liability are presently the subject of litigation, including consolidated cases pending in the U.S. District Court, Central District of California, Eastern Division, in Riverside, California. (*City of Rialto v. U. S. Department of Defense, et al.*, Case No. 04cv00079.)

K. On February 10, 2005, Emhart Industries, Inc. provided Regional Board staff a Field Investigation Report prepared by ENVIRON International at the request of USEPA and in consultation with Regional Board staff which concludes the former WCLC facility is not a source of potassium perchlorate contamination in the Rialto/Colton groundwater basin.

L. The Regional Board has not conducted an evidentiary hearing on the allegations set forth in the Order.

V. Petitioner is Aggrieved.

Petitioner is aggrieved for the reasons set forth in paragraphs III and IV above.

VI. Petitioner's Requested Action by the State Board.

Petitioner respectfully requests that the State Board provide an evidentiary hearing on the Order pursuant to the United States Constitution, the California Constitution, Water Code § 13320, 23 CCR § 648 et seq. and Government Code § 11400 et. seq., after full opportunity for discovery, and rescind the Order. This petition for review and request for hearing is requested to be held in abeyance by the State Board pending further actions, if any, by the Executive Officer or the Regional Board.

VII. Statement of Points and Authorities.

Petitioner will provide a detailed statement of points and authorities in the event the Executive Officer or the Regional Board take further action which necessitate Petitioner requesting the State Board to convert this petition to active status.

VIII. List of Interested Persons.

A list of "interested persons" is attached to the Order attached here to as Exhibit A.

IX. Statement of Transmittal of Petition to the Regional Board.

A copy of this petition has been transmitted to the Executive Officer of the Regional Board on March 30, 2005.

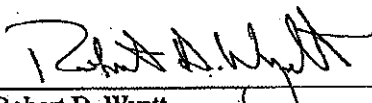
X. Request to Regional Board for Preparation of the Administrative Record.

By copy of this petition to the Executive Officer of the Regional Board, Petitioner hereby requests the preparation of the administrative record herein.

Respectfully submitted,

Date: March 30, 2005

by:


Robert D. Wyatt
Allen Matkins Leck Gamble & Mallory
Attorneys for Petitioner Emhart Industries

cc: Gerard J. Thibault, Executive Officer, RWQCB, Region 8
Jorge A. Leon, Esq., OCC, SWRCB



California Regional Water Quality Control Board
Santa Ana Region



Alan C. Lloyd, Ph.D.
Agency Secretary

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 - FAX (951) 781-6288
<http://www.waterboards.ca.gov/santaana>

Arnold Schwarzenegger
Governor

February 28, 2005

Mr. Robert D. Wyatt
Allen Matkins Leck Gamble & Mallory LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074

Ms. Linda H. Biagioni
Vice President, Emhart Industries, Inc.
Vice President for Environmental Affairs, Black & Decker Corporation
701 East Joppa Road
Towson, MD 21286

CLEANUP AND ABATEMENT ORDER NO. R8-2005-0053

Dear Mr. Wyatt and Ms. Biagioni:

Enclosed is Cleanup and Abatement Order No. R8-2005-0053 issued to Emhart Industries, Inc. and Black & Decker (U.S.), Inc. The Order is issued under the Executive Officer's delegated authority and is in effect upon issuance. The Order is being issued at this time in order to preserve the Regional Board's claim against Emhart Industries, Inc., which filed for dissolution and caused notice to be published on March 12, 2002. Under Connecticut statutes, in order to remain valid, a proceeding to enforce the claim must be initiated within three years of publication of the dissolution notice. That deadline is March 12, 2005. The issuance of this Order constitutes the commencement of the required action.

In the event that Emhart and Black & Decker desire to be heard on the Order, a hearing before the Regional Board or a Hearing Panel composed of members of the Board is scheduled for August 18 and 19, 2005. Note that the Order does not include specific deadlines at this point; rather, the first deadline will be set by future action of the Board. A detailed hearing notice will be issued at a later date. The currently scheduled hearing commencement date is intended to allow the parties time to complete currently scheduled depositions of witnesses familiar with West Coast Loading Corporation activities and documents and time to notice and hold any further depositions that may be conducted relative to this proceeding. The hearing commencement date is subject to change.

California Environmental Protection Agency



EXHIBIT A

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Mr. Wyatt and Ms. Biagioni

- 2 -

February 28, 2005

If you have any questions regarding this matter, please contact Kurt Berchtold, Assistant Executive Officer, at (951) 782-3286 or Jorge Leon, Senior Staff Counsel, at (916) 341-5180.

Sincerely,



Gerard J. Thibeault
Executive Officer

Enclosure: Cleanup and Abatement Order No. R8-2005-0053

cc (w/ enclosure):

Regional Board

Jorge Leon, SWRCB - OCC

Phil Wyels, SWRCB - OCC

Marilyn Levin, Deputy Attorney General

Gary Tavetian, Deputy Attorney General

Inland Empire Perchlorate Regulatory Task Force Members (mailing list attached)

California Environmental Protection Agency



California Regional Water Quality Control Board
Santa Ana Region

Cleanup and Abatement Order No. R8-2005-0053

for
Emhart Industries, Inc.
and
Black & Decker (U.S.), Inc.

Corporate Successors of the
West Coast Loading Corporation

Formerly Located on the 160-Acre Property Bounded Approximately by
Casa Grande Park Avenue on the North, Locust Avenue on the East,
the Extension of Alder Avenue on the West, and
the Extension of Summit Avenue on the South,
City of Rialto, San Bernardino County

The California Regional Water Quality Control Board, Santa Ana Region
(hereinafter Regional Board), finds that:

1. In February 1951, Kwikset Locks, Inc. (KLI), a manufacturer of household door locks, formed the West Coast Loading Corporation (WCLC).
2. During 1951 and 1952, WCLC (as a subsidiary of KLI) constructed a manufacturing plant on 160 acres of property, consisting of the southwest quarter of Section 21, Township 1 North, Range 5 West, San Bernardino Base and Meridian in the City of Rialto, County of San Bernardino, State of California. From 1951 to 1957, WCLC (as a subsidiary of KLI) wholly owned and occupied this property.
3. During the period from 1952 to 1957, WCLC used the 160-acre property for the manufacture of explosive cartridges, photoflash cartridges, flares, ground burst simulators, and other incendiary devices. WCLC manufactured many of these products under subcontract to KLI for use by the military, under KLI's contract with the U.S. Government. WCLC also processed chemicals at the Rialto site for use by other government contractors in the manufacture of solid rocket propellant. WCLC also processed chemicals for the manufacture of flares and other products containing perchlorate for non-defense purposes.
4. From 1952 (or earlier) to 1957, various chemicals were delivered, stored, and used for WCLC's manufacturing activities at the 160-acre site. The

chemicals that were used, stored, and processed at WCLC during their occupancy of the site included ammonium perchlorate, potassium perchlorate, potassium chlorate, aluminum, iron oxide, and various compounds of nitrate, lead, and barium.

5. WCLC's records indicate that very large amounts of perchlorate salts were handled at the facility. For example, a purchase order dated September 2, 1955; and delivery confirmations show that 47,000 pounds of potassium perchlorate were purchased from Western Electrochemical Co., Henderson, Nevada, and delivered to Rialto for use by WCLC.
6. As a further example, invoices and purchase orders, dated March 8, 1957, indicate that Grand Central Rocket Company received 43,250 pounds of ammonium perchlorate from WCLC after WCLC processed (i.e., dried) the ammonium perchlorate to a moisture content of 0.03% or less. The purchase orders state that Grand Central Rocket Company had supplied the material to WCLC. These business records for the work done under contract with Grand Central Rocket Company demonstrate that the handling, drying, and storage of very large amounts of perchlorate salts occurred at the WCLC site. The stringent requirements for low moisture are specific to the requirements for use of ammonium perchlorate as an oxidizer in the manufacture of solid propellant materials. Grand Central Rocket Company was in the business of manufacturing solid rocket propellant for use in military weapons systems during 1957, concurrent with the date of the purchase orders and the WCLC invoices for the 43,250 pounds of ammonium perchlorate.
7. WCLC's records included "standard operating procedures" (SOPs) for processing potassium perchlorate for use in WCLC products. WCLC's SOPs for the drying of potassium perchlorate state that potassium perchlorate powder was moved from barrels to uncovered trays, and then screened to remove lumps. The open trays were then moved to an oven in a different building using a hand-truck. Sacks were then filled with potassium perchlorate and stored indoors after drying was complete.
8. WCLC documents and testimony from former WCLC employees establish a multi-step process for the manufacture of photoflash cartridges, including drying, screening, a second round of drying, weighing, mixing, and loading. Each of these steps involved the handling, processing and/or movement of potassium perchlorate in order to mix photoflash powder. The drying, screening, weighing, mixing, and loading all took place in different rooms. WCLC documents further reveal that approximately 4%, by weight, of the perchlorate used to make photoflash cartridges was expected to be lost during the manufacturing process. WCLC documents

show that WCLC used about 50,000 pounds of perchlorate for the manufacture of photoflash cartridges during the period from 1952 to 1957.

9. It is reasonable to conclude that some spillage would have occurred during the handling, drying, screening, weighing, mixing, loading, transporting, and storage of ammonium perchlorate and potassium perchlorate at WCLC. Also, given the very fine nature of the dried, screened perchlorate powder, it is reasonable to conclude that the process of transporting perchlorate from room to room and the physical movement of the perchlorate powder during the drying, screening, weighing, mixing, and loading processes would result in the mobilization of perchlorate powder into the air, and subsequent deposition onto floors, walls, ceilings, and other surfaces.
10. This conclusion is supported by numerous pages throughout the SOPs and the "standard non-operating procedures" for chemical handling at the WCLC facility, which include requirements for sweeping up spilled powder, wiping spillage with wet rags, and wet-mopping of spills and powder deposited on various surfaces during processing. These written procedures include specific instructions for cleaning up spills of chemicals from tabletops, floors and sink areas, and disposing of soiled rags, towels, filters and cups into "slop crocks" that were stored in the WCLC work rooms and magazines ("igloos" or "bunkers"). The site janitor's job included sweeping the buildings, burning of scrap and explosive materials, and disposal of trash and metal cans at WCLC's on-site dump.
11. It is reasonable to conclude that the extensive written procedures were developed because spillage and surface accumulation of chemical products, including perchlorate salts, was expected to occur, and routinely did occur, during processing of those products at the WCLC facility. Testimony and WCLC documents reveal that the spillage and/or accumulation of perchlorate salts on equipment, walls, floors, and ceilings led to at least one significant explosion. Testimony of former employees of WCLC that was provided during depositions that were conducted beginning in 2004, verifies that, in the buildings that were used by WCLC for weighing, screening, drying, mixing and loading perchlorate salts, the equipment, floors, walls, and ceilings were washed with rags and water-wet mops to remove chemical dust at least 4 times per shift, as specified in the SOPs.
12. Testimony of former WCLC employees also indicates that the mops used for cleaning the chemical residue were rinsed with water in buckets, and the contents of the buckets were dumped onto the bare ground outside of the buildings. Based on the use of perchlorate salts in these buildings, the

water that was routinely dumped on the ground would have contained perchlorate. Further testimony from WCLC employees indicates that the metal trays that were used by WCLC employees for the screening and drying of perchlorate were taken outdoors to be cleaned. The residual perchlorate salts that remained on the trays were rinsed from the trays onto the bare ground, using a faucet and water hose.

13. It is also reasonable to conclude, and former WCLC employees have testified, that during the period from 1952 to 1957, WCLC stored and disposed of chemical-soiled rags, cans, and other wastes at the site, as directed by WCLC's written procedures. This conclusion is based upon WCLC's records and the testimony of former WCLC employees, as well as staff's collective knowledge and experience in the oversight of investigation and cleanup activities at numerous industrial sites throughout the Santa Ana Region where chemicals, including perchlorate salts, were used during the 1950s and 1960s. Standard industrial practices at such facilities in the 1950s and 1960s typically resulted in some spillage and on-site disposal of chemical products. Testimony from former WCLC employees indicates that WCLC operated an on-site laundry, used for the washing of the soiled rags. Since the 160-acre site was not sewered, any disposal of chemicals to sinks, drains, and floor drains would have entered on-site septic systems and gone to groundwater. The laundry drain apparently discharged directly onto the bare ground.
14. According to WCLC's "Safety Regulations for Handling Azides, Styphnates, and Similar Explosives," (dated January 3, 1954 and approved by WCLC's Executive Vice-President and General Manager, Gerald D. Linke), the used sponges and cleaning rags, cleaning water and other waste liquids generated from operations, including mixing photoflash powder containing perchlorate, were to be "taken to the disposal pit south of the plant site and drained into the ground."
15. In addition to the explosives and incendiary devices that were manufactured and the large amounts of perchlorate salts that were stored and handled at the site, WCLC owned "igloos" on adjacent land located southwest of the 160-acre property. WCLC leased space in the igloos to other parties, and also reserved space in the igloos for shared use by WCLC, expressly for the storage of explosives. Many explosives are known to contain perchlorate salts, so it is reasonable to conclude that perchlorate salts were stored in the igloos by WCLC.
16. The following findings explain the corporate history of WCLC, and specifically describe the direct successorship from WCLC to Emhart Industries, Inc., and Black & Decker (U.S.), Inc.:

- a. On July 1, 1957, American Hardware Corporation (AHC), a Connecticut corporation, acquired KLI and its subsidiaries, including WCLC. While numerous documents regarding corporate transfers and mergers involving these entities have been uncovered during the investigation of this matter, a June 1957 agreement between AHC and KLI has not been produced by Emhart Industries, Inc. That document may shed additional light on the precise nature of the acquisition of KLI by AHC. However, numerous other contemporaneous documents have been uncovered and assist in understanding the legal effect of the transaction.
- b. On July 3, 1957, WCLC was merged with KLI. According to a July 1, 1957 KLI Board of Directors resolution, quoted in KLI's Certificate of Ownership filed with the State of California, KLI assumed "all the liabilities and obligations" of WCLC, and "shall be liable therefor in the same manner as if it had itself incurred such liabilities and obligations." KLI remained under the control of AHC.
- c. On July 19, 1957, KLI sold the 160-acre Rialto property to B.F. Goodrich. KLI ceased its manufacturing activities in Rialto, but continued operating as a "division" of AHC, doing business in Anaheim, California, producing Kwikset's well-known product line of household door locks.
- d. On June 30, 1958, KLI was dissolved. AHC assumed the liabilities of KLI and WCLC, and continued producing the Kwikset product line at the former KLI Anaheim facility.
- e. IRS Form 7004, "Application for Automatic Extension of Time," was submitted to the IRS on behalf of KLI by C. K. Nelson, Assistant Treasurer, on September 15, 1958. This document contains KLI's stated reason for the requested extension: "The corporation was merged with another corporation as of June 30, 1958." (emphasis added).
- f. IRS Form 843, "Claim," dated November 28, 1961, was submitted on behalf of "KLI, Transferor" and "American Hardware Corporation, Transferor." In Schedule A, the following statement is contained in the second paragraph:

"Kwikset Locks, Incorporated was substantially a wholly-owned subsidiary of American Hardware Corporation as of January 1, 1958. On June 30, 1958, Kwikset Locks, Inc. was dissolved. All the

assets and liabilities were transferred to the parent corporation, and operations were continued as Kwikset Division of the American Hardware Corporation." (emphasis added).

- g. AHC merged with Emhart Manufacturing Company, a Delaware Corporation, in April 1964. The surviving corporation in the merger was AHC, under a new corporate name, "Emhart Corporation," as of June 30, 1964.
 - h. Emhart Corporation became Emhart Industries, Inc., on May 4, 1976.
 - i. Kwikset Corporation was incorporated in California in 1985 as a wholly-owned subsidiary of Emhart Industries, Inc., and was capitalized using the net assets of the Kwikset Division of Emhart Industries, Inc.
 - j. Emhart Industries, Inc., was acquired by Black & Decker (U.S.), Inc., a subsidiary of the Black & Decker Corporation, in 1989.
 - k. Emhart Industries, Inc., is in the process of winding up its business and affairs, having filed a Certificate of Dissolution in the State of Connecticut in 2002.
 - l. AHC's purchase of KLI was more than a mere stock purchase and assumption of known liabilities only, as Emhart has claimed. It constitutes a complete merger. The documents noted above in e. and f., contemporaneously prepared at or around the time of the 1957 AHC acquisition, demonstrate that KLI and AHC understood and believed the 1957 purchase of KLI to be a "merger," with the result that AHC assumed all of KLI's liabilities both known and unknown. In addition, a Kwikset Corporation publication, entitled "Kwikset A Black & Decker Company Employee Handbook," contains the following quotation:

"In 1957, Kwikset Locks, Inc. merged with the American Hardware Corporation of New Britain, Connecticut and subsequently became known as the Kwikset Division." Moreover, the Black & Decker website, as it appeared in 2002, indicated under "Company History" that KLI was merged into AHC. Notably, during the investigation of this matter in 2002, and shortly after this fact was pointed out to Kwikset's and Emhart's representatives, the website was changed to remove this statement.
16. Black & Decker (U.S.), Inc., by virtue of its status as parent corporation of Emhart and having received the stock of Emhart upon dissolution, is a legal successor to Emhart's and WCLC's liabilities under this order.

17. Emhart Industries, Inc., and Black & Decker (U.S.), Inc., are the corporate successors of WCLC and KLI, and are legally liable for discharges of pollutants caused by WCLC and KLI. WCLC and KLI, and their legal successors, have caused or permitted, or are causing or permitting, waste, i.e., perchlorate, to be discharged to waters of the state, and have created, or threaten to create, a condition of pollution or nuisance.
18. Perchlorate salts are highly soluble and dissociate in water to form perchlorate ions. There are currently no state or federal drinking water standards for perchlorate. However, the California Department of Health Services (DHS) has established a drinking water Action Level (AL) for perchlorate of 6 parts per billion (ppb). An AL is a temporary safe drinking water level that is based on limited studies that have been performed. Perchlorate is currently present in the Rialto, Riverside - B, and Chino North Groundwater Management Zones. The West Valley Water District, the Fontana Water Company, and the Cities of Rialto and Colton had limited or ceased the use of 20 municipal water supply wells that exceeded the AL for perchlorate (several of these wells have been put back into operation after having perchlorate treatment systems installed).
19. Municipal water supply wells in the Rialto, Riverside - B, and Chino North Groundwater Management Zones have been, or are likely to be, affected by the perchlorate pollution in these basins. Regional Board staff is currently attempting to identify all parties that may have discharged perchlorate in this area.
20. The beneficial uses of the Rialto, Riverside - B, and Chino North Groundwater Management Zones include:
 - A. Municipal and domestic supply,
 - B. Agricultural supply,
 - C. Industrial service supply, and
 - D. Industrial process supply.
21. California Water Code Section 13304 allows the Regional Board to recover reasonable expenses from responsible parties for overseeing cleanup and abatement activities. It is the Regional Board's intent to recover such costs for regulatory oversight work conducted in accordance with this order.
22. This enforcement action is being taken by a regulatory agency to enforce a water quality law. Such action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section

21000, et seq.) in accordance with Section 15321, Article 19, Division 3, Title 14, California Code of Regulations.

23. A soil and groundwater investigation is necessary to define the vertical and lateral extent of the perchlorate that is discharging, has been discharged, or threatens to be discharged, from the former WCLC facility and from the former WCLC igloos (bunkers).
24. It is appropriate to order Emhart Industries, Inc., and Black & Decker (U.S.), Inc., to clean up and abate the effects of the discharge of perchlorate from property that was formerly owned and controlled by their corporate predecessors, WCLC and KLI.
25. The former 160-acre WCLC property now consists of numerous separate parcels, with multiple landowners. Since 1964, continuing through the present, various tenants involved in pyrotechnics have occupied portions of the site.
26. Orders have been issued to former tenants or former owners of the 160-acre parcel and the adjacent property where WCLC's igloos (bunkers) were located. Additional orders may be issued, if Regional Board staff obtains additional information indicating that other specific tenants or owners have also discharged perchlorate that is present in the groundwater.

IT IS HEREBY ORDERED THAT, pursuant to Section 13304, Article 1, Chapter 5, Division 7, of the California Water Code, Emhart Industries, Inc., and Black & Decker (U.S.), Inc., shall cleanup and abate the effects of the discharges at the Rialto properties as follows:

1. Prepare and submit a work plan and time schedule to define the lateral and vertical extent of the perchlorate that is discharging, has been discharged, or threatens to be discharged, from the former WCLC facility and from the former WCLC igloos (bunkers). The work plan, subject to the approval of the Executive Officer, shall be implemented in accordance with a time schedule approved by the Executive Officer. The due date for this work plan and time schedule will be established by future action of the Regional Board.
2. Prepare and implement any additional work plans that the Executive Officer deems necessary to sufficiently characterize the lateral and vertical extent of perchlorate that is discharging, has been discharged, or threatens to be discharged, from the former WCLC facility and from the

February 28, 2005

former WCLC igloos (bunkers). The work plans, subject to the approval of the Executive Officer, shall be implemented in accordance with time schedules approved by the Executive Officer.

3. After the Executive Officer determines that the lateral and vertical extent of perchlorate that is discharging, has been discharged, or threatens to be discharged from the former WCLC facility and bunkers has been sufficiently defined, submit a detailed remedial action plan, including an implementation schedule, to cleanup or abate the effects of the perchlorate that is discharging, has been discharged, or threatens to be discharged, from the former WCLC facility and bunkers. The remedial action plan shall provide for replacement water service, which may include wellhead treatment, for any water supply wells determined by the Executive Officer, based on investigations conducted pursuant to Items 1 and 2, above, to be affected by the discharges. The remedial action plan and implementation schedule shall be submitted within 60 days of the Executive Officer's notification to Emhart Industries, Inc., and Black & Decker (U.S.), Inc., that the definition of the extent of perchlorate is sufficiently complete to initiate cleanup or abatement activities. The remedial action plan and schedule shall be subject to approval by the Executive Officer.
4. Implement the remedial action plan in 3. , above, as approved by the Executive Officer.

This Order is issued under the Executive Officer's delegated authority to issue a Cleanup and Abatement Order.


Gerard J. Thibeault
Executive Officer

February 28, 2005

Allen Matkins Leck Gamble & Mallory LLP
attorneys at law

Allen Matkins

Three Embarcadero Center 12th Floor San Francisco California 94111-4074
telephone. 415 837 1515 facsimile. 415 837 1516 www.allenmatkins.com

w/Ret. Robert D. Wyatt t. 415 273 7420
file number. E2602-005/SF639493.01 e. rwyatt@allenmatkins.com

March 30, 2005

VIA FACSIMILE AND
FIRST CLASS MAIL

Gerard J. Thibeault
Executive Officer
California Regional Water Quality Control Board
Santa Ana Region
3737 Main St., Suite 500
Riverside, CA 92501-3339

Re: Cleanup and Abatement Order No. R8-2005-0053
Request for Evidentiary Hearing by Respondent Black & Decker (U.S.),
Inc.

Dear Mr. Thibeault:

On behalf of our client, Black & Decker (U.S.), Inc. respondent in the above-referenced matter, we hereby request an evidentiary hearing on the above-referenced Order pursuant to the United States Constitution, the California Constitution, 23 CCR §§ 648 et. seq., and California Government Code §§ 11400 et seq.

Your letter to the undersigned dated February 28, 2005, transmitting the referenced Order, sets a hearing before the Regional Board for August 18 and 19, 2005. Because the appeal taken in *Kwikset Corporation v. California Regional Water Quality Control Board, Santa Ana Region*, is now pending before the Court of Appeals, we request that all further action on the above-referenced CAO be suspended until the appellate decision is announced given that said decision may have a dispositive effect on the Order issued to Black & Decker (U.S.), Inc. Such a procedure may allow both our client and the Regional Board to conserve litigation resources.

Very truly yours,


Robert D. Wyatt

RDW:wj

cc: Jorge A. Leon, Esq.

San Francisco Century City Los Angeles Orange Cour

EXHIBIT B

536

EXHIBIT 6



Alan C. Lloyd, Ph.D.
Agency Secretary

State Water Resources Control Board

Office of Chief Counsel

1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 • FAX (916) 341-5199 • <http://www.waterboards.ca.gov>



Arnold Schwarzenegger
Governor

April 4, 2005

Robert D. Wyatt, Esq.
Allen Matkins Leck
Gamble & Mallory LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074

Dear Mr. Wyatt:

**PETITION OF EMHART INDUSTRIES, INC. (CLEANUP AND ABATEMENT ORDER NO. R8-2005-0053 FOR EMHART AND BLACK & DECKER), SANTA ANA WATER BOARD: ACKNOWLEDGMENT OF PETITION RECEIVED AND APPROVAL OF REQUEST TO BE HELD IN ABEYANCE
SWRCB/OCC FILE A-1693**

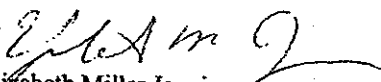
This will acknowledge receipt of the above petition on March 30, 2005. You have asked that the State Water Resources Control Board (State Water Board) hold the matter in abeyance for an unspecified period of time. We are happy to do so in hopes that the matter may be worked out between you and the Regional Water Quality Control Board (Regional Water Board). However, we will hold the matter in abeyance for no more than two years from the date the petition was filed. If, by that time, no resolution of the matter has taken place or the matter has not become the subject of an active dispute, the petition will be dismissed without prejudice.

Please note the significance of the phrase "without prejudice." If, after the petition is dismissed, an actual dispute arises between you and the Regional Water Board over the interpretation or enforcement of the underlying order, you may file a new petition with the State Water Board within 30 days of the date of the dispute. Any issues relevant to that dispute, including but not limited to those raised in this petition, will be considered at that time in the same manner as if the petition were filed for the first time.

If you have any questions, please call me at (916) 341-5175.

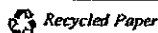
**IN ALL FUTURE CORRESPONDENCE, PLEASE REFER TO
SWRCB/OCC FILE A-1693**

Sincerely,


Elizabeth Miller Jennings
Senior Staff Counsel

cc: See next page

California Environmental Protection Agency



Robert D. Wyatt, Esq.

- 2 -

April 4, 2005

cc: Ms. Linda H. Biagioni
Emhart Industries, Inc.
701 E. Joppa Road
Towson, MD 21286

Mr. Gerard Thibeault [via email only]
Executive Officer
Santa Ana Regional Water Quality
Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

Mr. Kurt Berchtold [via email only]
Assistant Executive Officer
Santa Ana Regional Water Quality
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Jorge A. León, Esq. [via email only]
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100



State Water Resources Control Board



Alan C. Lloyd, Ph.D.
Agency Secretary

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Arnold Schwarzenegger
Governor

April 4, 2005

RECEIVED
APR 06 2005
BY:

Robert D. Wyatt, Esq.
Allen Matkins Leck
Gamble & Mallory LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074

Dear Mr. Wyatt:

PETITION OF BLACK & DECKER (U.S.), INC. (CLEANUP AND ABATEMENT ORDER NO. R8-2005-0053 FOR EMHART AND BLACK & DECKER), SANTA ANA WATER BOARD: ACKNOWLEDGMENT OF PETITION RECEIVED AND APPROVAL OF REQUEST TO BE HELD IN ABEYANCE
SWRCB/OCC FILE A-1693(a)

This will acknowledge receipt of the above petition on March 30, 2005. You have asked that the State Water Resources Control Board (State Water Board) hold the matter in abeyance for an unspecified period of time. We are happy to do so in hopes that the matter may be worked out between you and the Regional Water Quality Control Board (Regional Water Board). However, we will hold the matter in abeyance for no more than two years from the date the petition was filed. If, by that time, no resolution of the matter has taken place or the matter has not become the subject of an active dispute, the petition will be dismissed without prejudice.

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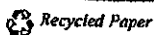
IN ALL FUTURE CORRESPONDENCE, PLEASE REFER TO
SWRCB/OCC FILE A-1693(a)

Sincerely,

Elizabeth Miller Jennings
Senior Staff Counsel

cc: See next page

California Environmental Protection Agency



Robert D. Wyatt, Esq.

- 2 -

April 4, 2005

cc: Ms. Linda H. Biagioni
Vice President for Environmental
Affairs, Black & Decker Corporation
701 E. Joppa Road
Towson, MD 21286

Mr. Gerard Thibeault [via email only]
Executive Officer
Santa Ana Regional Water Quality
Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

Mr. Kurt Berchtold [via email only]
Assistant Executive Officer
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Alan C. Lloyd, Ph.D.
Agency Secretary

State Water Resources Control Board

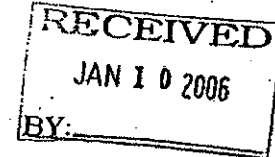
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Arnold Schwarzenegger
Governor

January 5, 2006

REVISED



Robert D. Wyatt, Esq.
Allen Matkins Leck Gamble & Mallory LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074

Dear Mr. Wyatt:

PETITION OF KWIKSET LOCKS, INC. (AMENDED CLEANUP AND ABATEMENT ORDER NO. R8-2005-0053 FOR KWIKSET LOCKS, ET AL.), SANTA ANA WATER BOARD: ACKNOWLEDGMENT OF PETITION RECEIVED AND APPROVAL OF REQUEST TO BE HELD IN ABEYANCE SWRCB/OCC FILE A-1732

This will acknowledge receipt of the above petition on December 29, 2005. You have asked that the State Water Resources Control Board (State Water Board) hold the matter in abeyance for an unspecified period of time. We are happy to do so in hopes that the matter may be worked out between you and the Regional Water Quality Control Board (Regional Water Board). However, we will hold the matter in abeyance for no more than two years from the date the petition was filed. If, by that time, no resolution of the matter has taken place or the matter has not become the subject of an active dispute, the petition will be dismissed without prejudice.

Please note the significance of the phrase "without prejudice." If, after the petition is dismissed, an actual dispute arises between you and the Regional Water Board over the interpretation or enforcement of the underlying order, you may file a new petition with the State Water Board within 30 days of the date of the dispute. Any issues relevant to that dispute, including but not limited to those raised in this petition, will be considered at that time in the same manner as if the petition were filed for the first time.

If you have any questions, please call me at (916) 341-5175.

**IN ALL FUTURE CORRESPONDENCE, PLEASE REFER TO
SWRCB/OCC FILE A-1732**

Sincerely,

Elizabeth Miller Jennings
Senior Staff Counsel

cc: See next page

California Environmental Protection Agency



Robert D. Wyatt, Esq.

- 2 -

January 5, 2006

cc: Ms. Linda H. Biagioni
Vice President, Emhart Industries, Inc.
Vice President for Environmental
Affairs, Black & Decker Corporation
701 East Joppa Road
Towson, MD. 21286

Ms. Lorraine M. Sedlak
Director, Health,
Safety and Environmental
Kwikset Corporation
19701 DaVinci
Lake Forest, CA 92610

Mr. Gerard Thibeault [via email only]
Executive Officer
Santa Ana Regional Water Quality
Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

Mr. Kurt Berchtold [via email only]
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Jorge León, Esq. [via email only]
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California Environmental Protection Agency





State Water Resources Control Board

Alan C. Lloyd, Ph.D.
Agency Secretary

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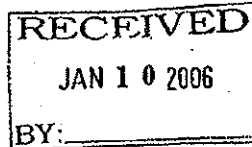


Arnold Schwarzenegger
Governor

January 5, 2006

REVISED

Robert D. Wyatt, Esq.
Allen Matkins Leck Gamble & Mallory LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074



Dear Mr. Wyatt:

PETITION OF BLACK & DECKER (U.S.), INC. (AMENDED CLEANUP AND ABATEMENT ORDER NO. R8-2005-0053 FOR KWIKSET LOCKS, ET AL.), SANTA ANA WATER BOARD: ACKNOWLEDGMENT OF PETITION RECEIVED AND APPROVAL OF REQUEST TO BE HELD IN ABEYANCE SWRCB/OCC FILE A-1732(d)

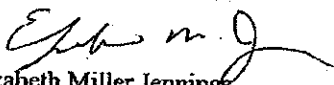
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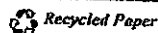
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SWRCB/OCC FILE A-1732(d)**

Sincerely,


Elizabeth Miller Jennings
Senior Staff Counsel

cc: See next page

California Environmental Protection Agency



Robert D. Wyatt, Esq.

- 2 -

January 5, 2006

cc: Ms. Linda H. Biagioni
Vice President, Emhart Industries, Inc.
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701 East Joppa Road
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Alan C. Lloyd, Ph.D.
Agency Secretary

State Water Resources Control Board

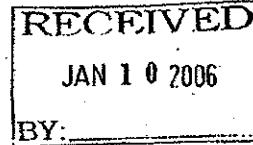
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(916) 341-5161 ♦ FAX (916) 341-5199 ♦ <http://www.waterboards.ca.gov>



Arnold Schwarzenegger
Governor

January 5, 2006

REVISED



Robert D. Wyatt, Esq.
Allen Matkins Leck Gamble & Mallory LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074

Dear Mr. Wyatt:

PETITION OF BLACK & DECKER INC. (AMENDED CLEANUP AND ABATEMENT ORDER NO. R8-2005-0053 FOR KWIKSET LOCKS, ET AL.), SANTA ANA WATER BOARD: ACKNOWLEDGMENT OF PETITION RECEIVED AND APPROVAL OF REQUEST TO BE HELD IN ABEYANCE SWRCB/OCC FILE A-1732(c)

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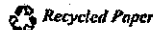
**IN ALL FUTURE CORRESPONDENCE, PLEASE REFER TO
SWRCB/OCC FILE A-1732(c)**

Sincerely,

Elizabeth Miller Jennings
Senior Staff Counsel

cc: See next page.

California Environmental Protection Agency



Robert D. Wyatt, Esq.

- 2 -

January 5, 2006

cc: Ms. Linda H. Biagioni
Vice President, Emhart Industries, Inc.
Vice President for Environmental
Affairs, Black & Decker Corporation
701 East Joppa Road
Towson, MD 21286

Ms. Lorraine M. Sedlak
Director, Health,
Safety and Environmental
Kwikset Corporation
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Mr. Gerard Thibeault [via email only]
Executive Officer
Santa Ana Regional Water Quality
Control Board
3737 Main Street, Suite 500
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Mr. Kurt Berchtold [via email only]
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3737 Main Street, Suite 500
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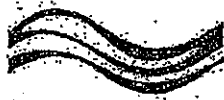
Jorge León, Esq. [via email only]
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

California Environmental Protection Agency

 Recycled Paper

546

EXHIBIT 7



STATE WATER BOARD

WORKSHOP
 Wednesday, November 2, 2005 - 10:00 a.m.
 Coastal Hearing Room - Second Floor
 Joe Selma Jr. / CALERA Building
 1001 J Street, Sacramento

REVISED (SEE ITEMS #2, #3 & DELETED #8)

PUBLIC FORUM

Any member of the public may address and ask questions of the Board relating to any matter within the State Water Board's jurisdiction provided the matter is not on the agenda, or pending before the California Water Boards. Presentations at the Public Forum will be limited to 5 minutes or otherwise at the discretion of the Chairman.

INFORMATIONAL ITEMS

1. Informational presentation by Gerard Thibeault, Santa Ana Water Board Executive Officer, on Regional Board Issues

- 2. Informational item on water quality issues associated with California Port operations.
- 3. Informational presentation by Michael Lauffer, Chief Counsel, regarding ex parte communications.

CONSENT AGENDA (Items 4-7)

FINANCIAL ASSISTANCE

- 4. Consideration of adoption of a State Revolving Fund Program reimbursement resolution
- 5. Consideration of a resolution adopting the Small Community Groundwater Grant Program Competitive Project 1151
- 6. Consideration of a resolution authorizing the San Francisco Bay Water Board's request for additional funding in the amount of \$400,000 from the State Water Pollution Cleanup and Abatement Account for the Gambonini Mine cleanup in Marin County.

WATER QUALITY

- 7. Consideration of a resolution authorizing the Executive Director to execute two grant agreements with the U.S. Department of Energy for regulatory oversight at sites in the San Francisco Bay Region

REGULAR AGENDA (Items 8-9)

WATER QUALITY

- 8. Consideration of a resolution adopting the California Ocean Plan Triennial Review and Work Plan 2005-2008 (Written comments are due by 5:00 p.m., November 4, 2005)
- 9. Consideration of a resolution approving an amendment to the Water Quality Control Plan for the San Diego Region to establish a total maximum daily load for total nitrogen and total phosphorus in Rainbow Creek

NOTICE OF PUBLIC HEARING

WATER QUALITY

B. Goods movement through California Ports

CLOSED SESSION ITEM

(Note: Closed Sessions are not open to the public)

LITIGATION

[This closed session is authorized under Government Code section 11126(e)(1)].
The Board will meet in closed session to discuss ongoing litigation in the case of *Yuba County Water Agency v. State Water Resources Control Board and consolidated cases* (San Joaquin County Superior Court, Case No. CV026505, previously Yuba County Superior Court Case Nos. YCSCCVPT 03-0000589, 03-000591, 03-0000627, 03-0000634 and 03-0000635).

The Board encourages submission of written comments. Unless otherwise specified, written comments must be received by 5:00 p.m., October 26, 2005 and will not be accepted after that time. Time limitations on presentations may be imposed.


See "Presentations to the Board" at <http://www.waterboards.ca.gov/board.html>. Agenda items will be electronically available after October 24, 2005.

Written comments on agenda items are to be addressed and submitted to Debbie Irvin, Clerk to the Board, either by email at din@waterboards.ca.gov; fax (916) 341-5620; or mail addressed to State Water Board, P.O. Box 100, Sacramento, California, 95842-0100. Please also indicate in the subject line, "COMMENT LETTER - 11/02/05 BOARD MEETING; and ITEM NUMBER". If you have questions about the agenda, contact Debbie Irvin via email or call (916) 341-5600. For a map to our building, see our web site at <http://www.calepa.ca.gov/EPA/Bldg/location.htm>.

All visitors are required to sign in and receive a badge prior to attending any meeting. Valid picture identification may be required due to the security level so please allow up to 15 minutes for this process. Individuals who require special accommodations are requested to contact Adrian Perez, Office of Employee Assistance, at (916) 341-5880.

It would be helpful if those wishing to present a Microsoft PowerPoint presentation during the meeting would provide either a CD or send an email at least two working days prior to the meeting.


An audio broadcast will be heard via the World Wide Web, at <http://www.calpa.ca.gov/Broadcast/>.




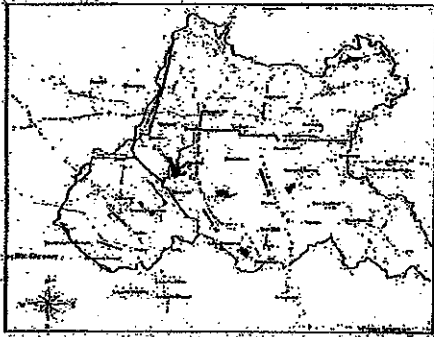

**Santa Ana Region
Region 8**

Gerard J. Thibeault
Executive Officer

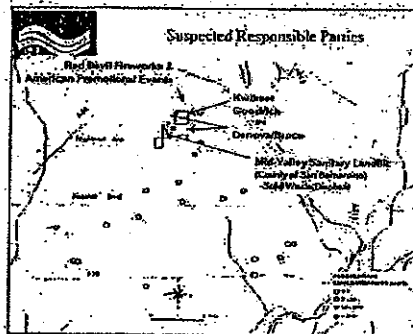
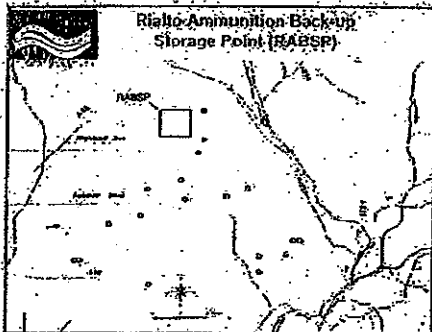
November 2, 2005

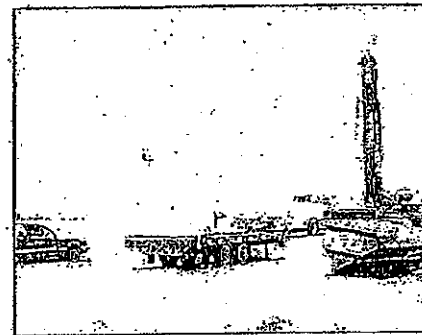
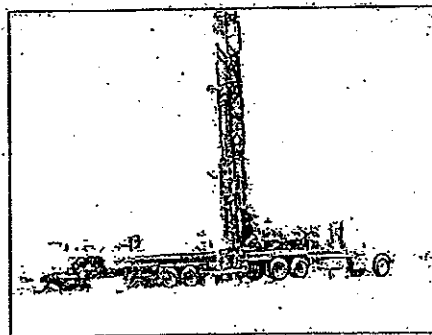
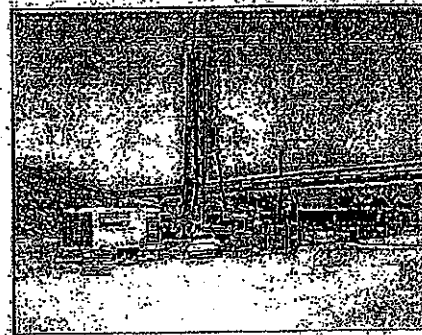
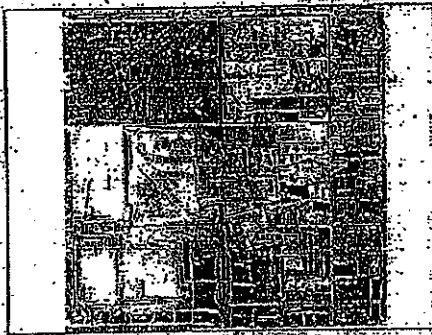
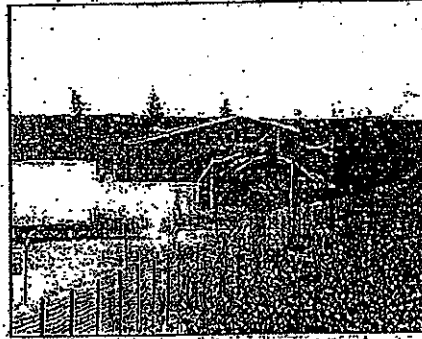
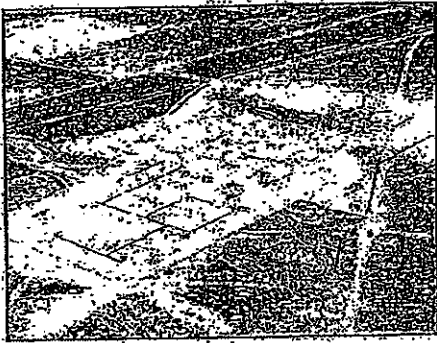


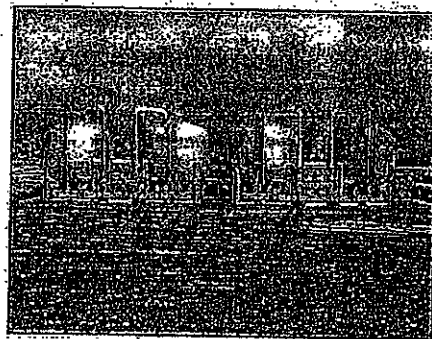
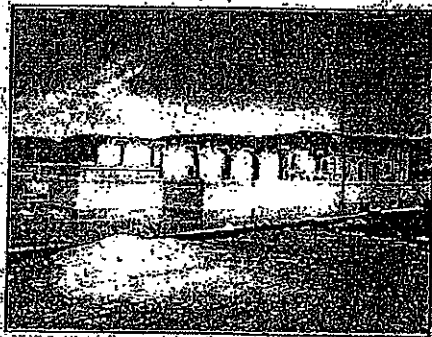
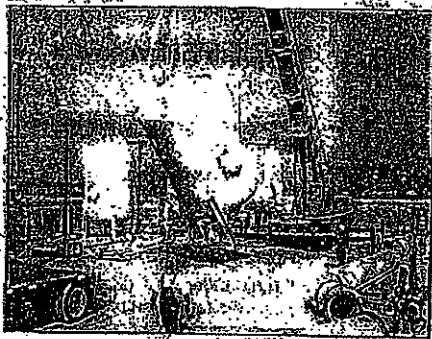
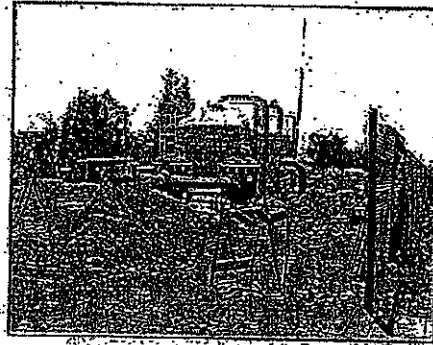
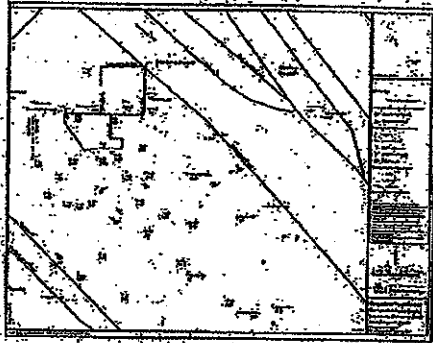
State of California
**Water Quality
Control Regions**

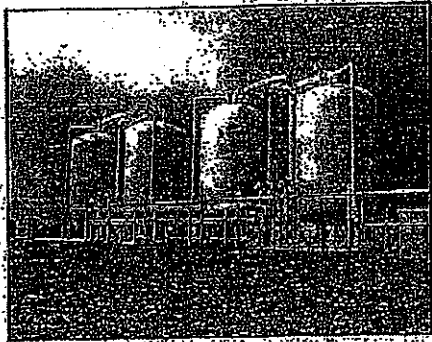




**Rialto/Colton
Perchlorate
Enforcement**









Current Enforcement

- Enhart (Black & Decker) Cleanup and Abatement Hearing scheduled for May
 - Discovery
 - Submittal of Evidence
 - Designation of Expert Witnesses
 - Briefing schedules

Enhart Enforcement

Separation of Functions

- Staff Prosecution Team
 - 3 Deputy Attorney General
 - OCG Deputy Chief Counsel Wyck
 - OCG Senior Staff Counsel Leon
 - EO & AEO
 - Technical Staff
- Board Advisory Team
 - OCG Deputy Chief Counsel Conr
 - Regional Board Technical Staff

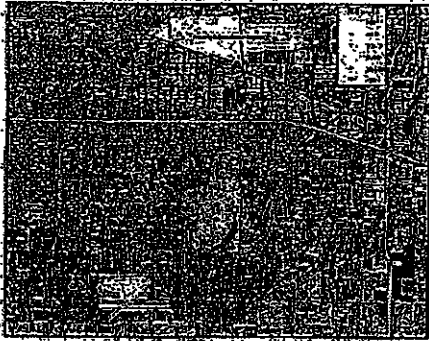
Goodrich Enforcement

- Consent order scheduled for Nov 16th in Riello
 - Site 8 wells and sampling
 - Each well = 700 feet deep
 - Weather multiple port completions
- Approximately \$250,000 per well
- \$100,000/month stipulated penalties for missing schedule

Goodrich Enforcement

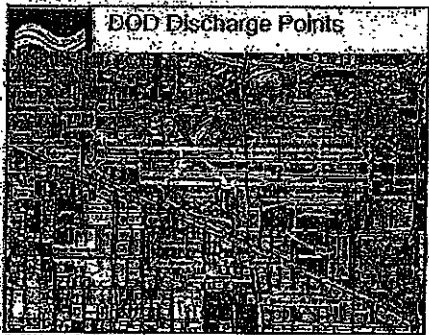
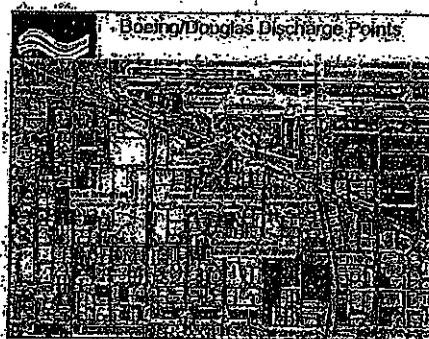
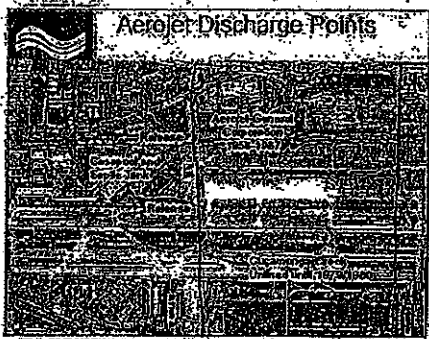
- Staff believes this work will generate data necessary for court substantiation of water replacement orders
- Citizens group petitioned for inclusion of water replacement order
- Full intention to issue water replacement order upon completion of science to substantiate requirement

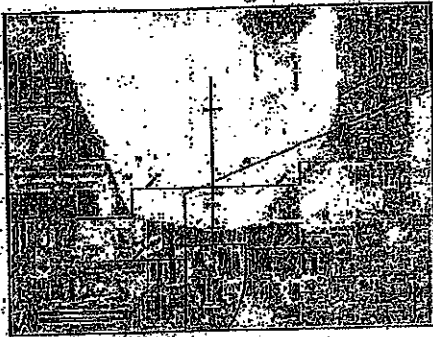
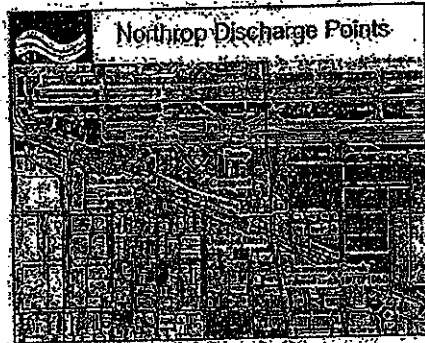
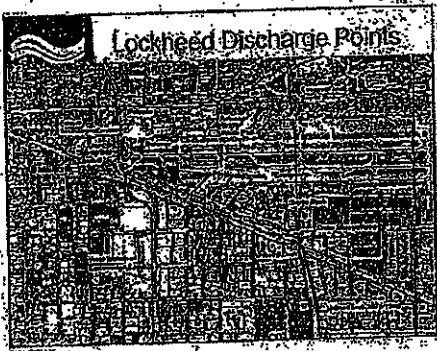
Ontario Airport TCE Enforcement



PRPs Identified

- Aerjet
- Boeing/Douglas
- DOD - Air Force, National Guard
- General Electric
- Lockheed
- Northrop





Present Value Cost to Clean up TCE Plume

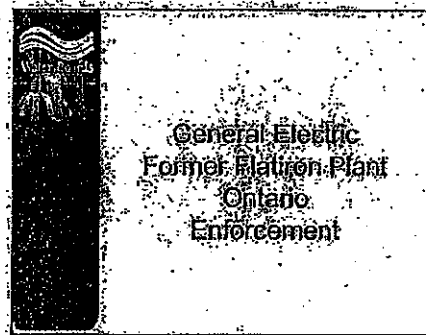
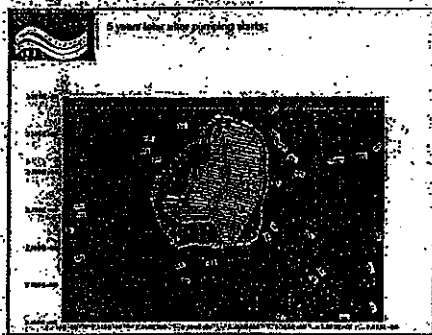
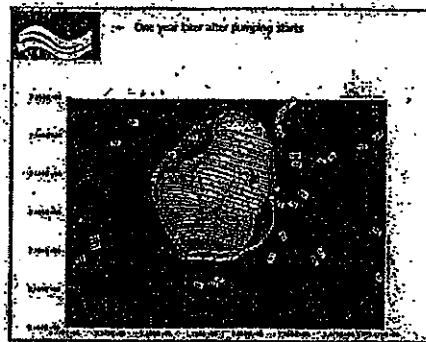
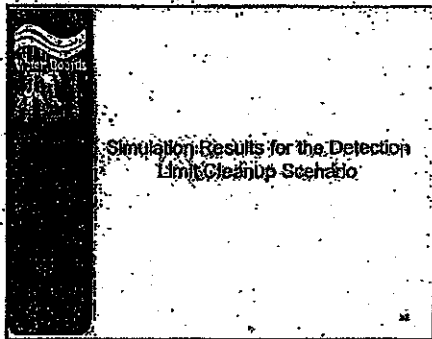
- Clean up period - 50 to 75 years
- Interest rate assumed at 5 percent
- Project is constructed in 2010
- Inflation rate at 3 percent

Present Value Cost to Clean up TCE Plume

- Present value in 2010 of clean up is about:
 - \$413 million for 50-year period
 - \$445 million for 75-year period

Reconnaissance-Level Cost Estimate

Item/Category	Proposed	Other Costs
Remedial Work	\$19,200,000	\$2,300,000
Construction Features	\$4,200,000	\$10,000
PAF (2010) (10%)	\$2,100,000	\$2,000,000
Remediation Features	\$5,300,000	\$10,000
Remediation Work	\$20,400,000	\$10,000,000
Subtotal	\$29,200,000	\$12,310,000
Contingency at 15%	\$7,000,000	0
Total	\$36,200,000	\$12,310,000




General Electric

- GE manufactured clothes irons at the site between 1927 and 1982
- Soil and groundwater investigations initiated in 1987, completed in 1993
- Significant concentrations of TCE (up to 4,400 ug/l) and hexavalent chromium (up to 1,600 ug/l) in groundwater

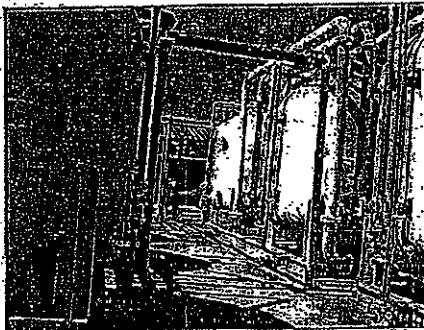
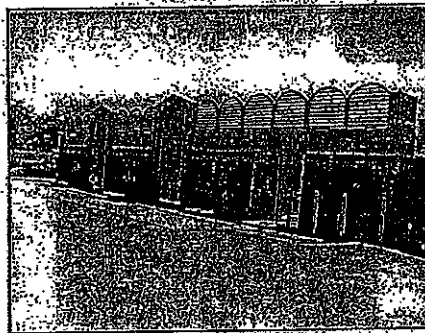
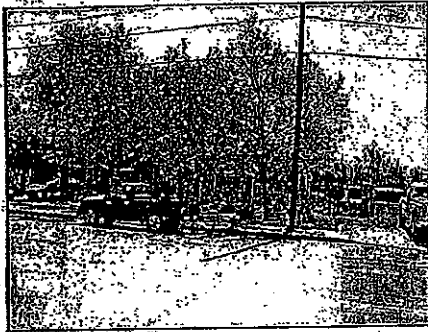

General Electric

- Plume is 1.5 miles long and 0.5 miles wide
- Depth to groundwater is about 380 feet beneath site
- Extraction well at toe of the plume (TCE = 5 ppb) began operation in 1996



General Electric

Since 1996, almost 2 billion gallons of groundwater have been extracted and treated (currently about 2 mgd)

SAWPA TAC

**Basin Plan Amendment
Required Monitoring and
Analyses**

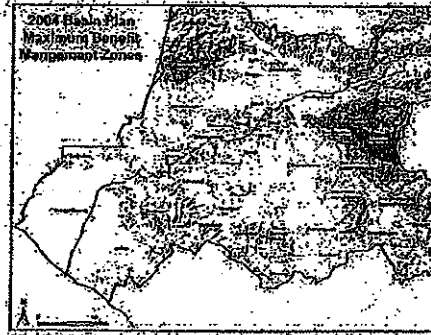
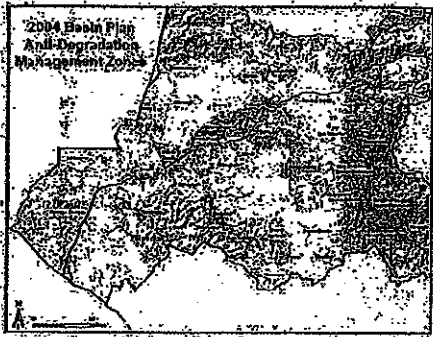
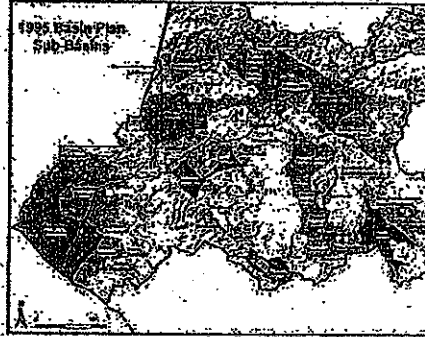
Recompilation of Ambient Water Quality
1984-2003

July 16, 2004

Background

TINJDS Study - Phase 2A

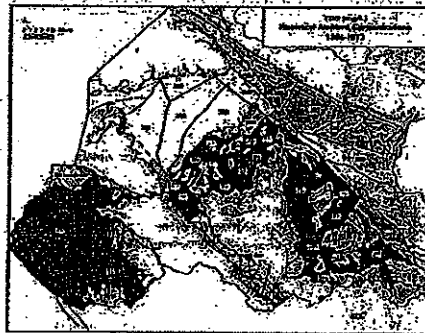
- Updated ground water basin boundaries
- Management Zones
- Calculated ambient water quality
 - 1954-1973 - Historical Period (low flow)
 - 1978-1997 - Current Period (measurement of conductivity)
- Methods
 - Flow used to divide
 - Highly reviewed process with local public comments

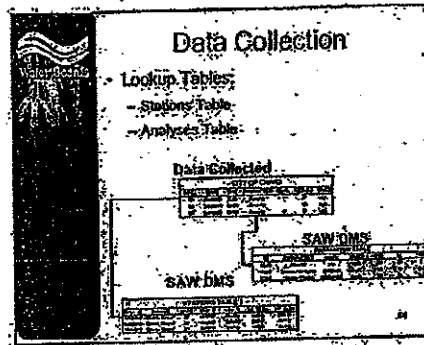
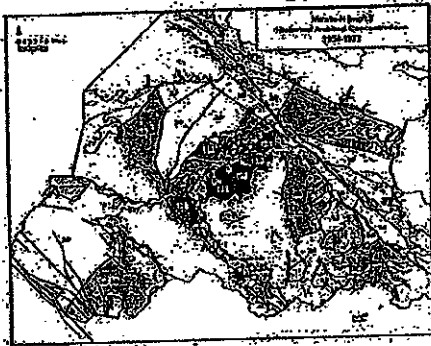


Calculate Ambient Water Quality

TINJDS Study - Phase 2A

- Develop volume-weighted management zone estimates of IDS and nitrate concentrations
- Concentration = $\frac{IDS_{flow}}{flow}$
- 1954-1973 - Historical Period
 - Set per objectives
- 1978-1997 - Current Period
 - Determination of estimate conductivity
- Re-computation of AWQ
 - 1994-2003
 - Measurement of conductance





Develop Queries to Extract Data

Queries:

- Water level data
- Water quality data
 - TDS
 - NO₃-N
 - Other inorganic and general physical parameters

Develop Queries to Extract Data

QA/QC Checks

- Develop TDS and NO₃-N time histories
- Appropriate statistical tests for normality and outliers

Shapiro-Wilk test

- Standard method tests
 - Mean value tests
 - Measured TDS vs. calculated TDS
 - Measured EC and for some TDS to EC ratio
- Reject data if any test failed


Develop Point Statistics

- Each well must have at least three data points in separate years during the analysis period. If a well has more than one data point in one year, those data are averaged for the year.
- Computed statistics account for variability resulting from:
 - sampling error
 - analytical error
 - hydrological/dynamic errors
 - non-homogeneous hydrogeological properties

Estimate Regional Water Quality

Summary Statement


Develop water quality contours based on point statistics of TDS and NO₃-N



Estimate Regional Water Quality

Procedures:

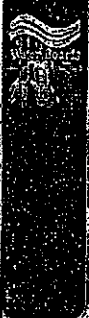
- Delineate aquifer geometries
 - Orange County (2 layers)
 - Citrus (3 layers)
 - Suwannee (2 layers)
- Compare well construction to layer geometry
 - Assign each well to particular layer(s)



Estimate Regional Water Quality

Procedures:

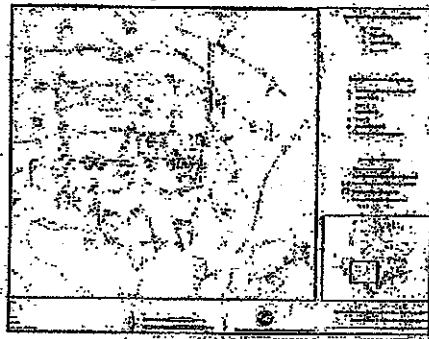
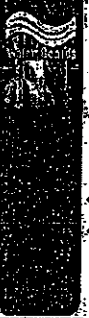
- Plot point distribution maps
 - TDS and NO₃-N
 - Each layer (where applicable) and each major basin
 - Total maps: 22
- Develop and digitize contours of water quality, accounting for
 - Management zone boundaries
 - Meter values



Compute Ambient Water Quality for Management Zones

Summary Statement:

Generate volume-weighted estimates of ambient water quality (TDS and NO₃-N) for individual management zones

Compute Ambient Water Quality for Management Zones

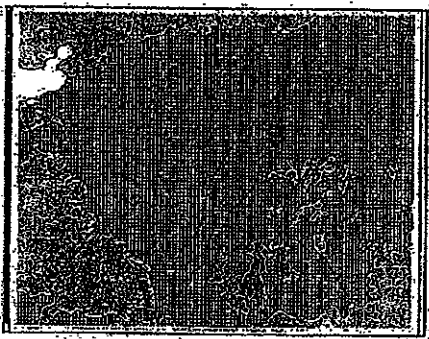
Create 3-D grids

- Waterwell elevation
- Water quality (TDS and NO₃-N)
- Specific yield and porosity layers (drape)

Use contours and data points

Software:

- Surfer during TIN/TDS SAG
- Geostatistical Analyst (ArcGIS extension)



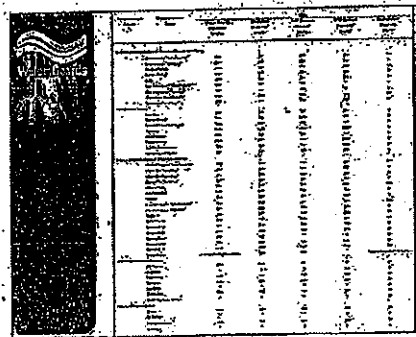
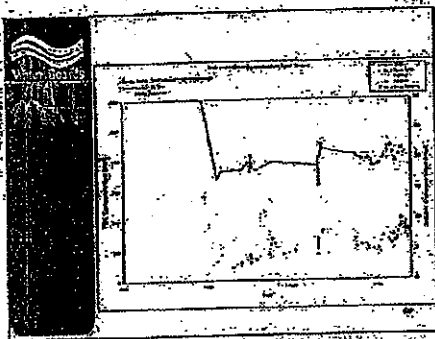
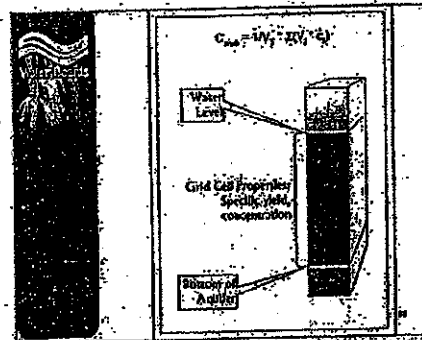
Compute Ambient Water Quality for Management Zones

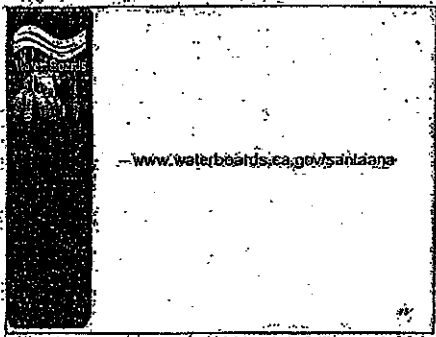
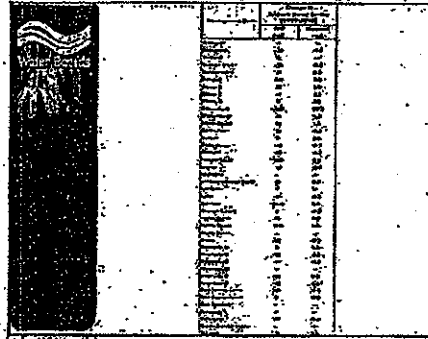
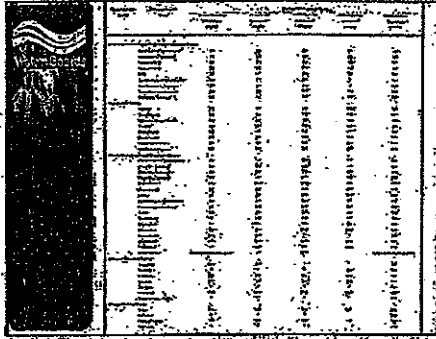
Compute volume of groundwater in each grid cell - for each layer (if applicable):

$$V_i = A_i (WU_i - B_i) \cdot SV_i$$

Where:

- V_i = Volume of groundwater in i th grid cell
- A_i = Grid Cell Area (1000 square feet)
- WU_i = Average elevation of groundwater in i th grid cell (feet above MSL)
- B_i = Average elevation of the selected base of aquifer in i th grid cell (feet above MSL)
- SV_i = Specific Yield (assumes a value of 0.25)





Board Members: Tom Doduc, Art Baggett, Pete Silva, Jerry Secundy.
Executive Director: Celeste Cantu.

State Water Resources Control Board Meeting, November 2, 2005

Report by Jerry Thibeault, Executive Officer of Santa Ana Region 8

Mr. Thibeault is introduced by Celeste Cantu

Mr. Thibeault: Madame Chair and Members of the Board - Good Morning. Celeste has asked us to tell you a little bit about what is going on in the various regions. First thing I wanted to do was to point out for those who have not been on the Board for a long time Region 8 is the smallest of all the Regional Boards down here. However, we have the second largest population of any of the regions. So we are next to L.A. which is the most populous of the regions and we are have the second largest population - very, very diverse set of environmental conditions in the region. This may be a little hard to see here but it shows our region a little bit here (pointing to map on PowerPoint presentation) Newport Beach, Huntington Beach on the coast going inland to (oh yeah, thank you, that would be great Pete) into the Rialto-Riverside area, the inland empire, San Bernardino, Yucaipa, going up to Cajon Pass - some of the other photos I am going to show you later are from this area right here in Rialto. This is the 15 freeway going up and the 215 freeway and we have a lot of activity going on in here at the 10 freeway. So I just wanted to be showing you some of these things but we will be focusing on that a lot.

For those who have been on the Board for a while, you are well aware of our perchlorate enforcement case in North Rialto and this Board has been extremely helpful in providing a lot of assistance from the clean-up and abatement account to help provide well head treatment for the folks in Rialto. This whole case started out with the Rialto Ammunition Back-up Storage Point during World War II. The military found a place that was outside of where shelling from off shore ships could reach ammunition storage points and this is in North Rialto. The I-15 freeway is right here - 215 over here and this thing is right in the north part. We have a number of responsible parties for the problem that we have talked about this first enforcement case. Most prominent are Kwikset which has become Emhart which has become Black & Decker and yes it's the same Black & Decker we know and love from Home Depot. And also Goodrich, these are the two main responsible parties. This is what the site looked like in 1955. These buildings over here are where most of the work that was done by West Coast Loading where they loaded shells for use in Korea and other military operations throughout the world. These shells were star burst shells which had a high percentage of perchlorate and this site was later taken over five years later by Goodrich for rocket development. And you see this is way out in the country at that time. I lived a couple of miles from here when this facility was in operation and now it's all surrounded by homes and a large landfill down here on this side but back then, this area was not sewerred. Septic tanks, surface impoundments, surface burn pits, lots of opportunities for pollutants to be discharged to the sub-surface.

This is one of the old bunkers from World War II; one of the last remaining bunkers; a lot of munitions were stored there and a lot of materials containing perchlorates. Here is our famous 160 acre site, owned by West Coast Loading which became Emhart which became Black & Decker and also Goodrich. We have two plumes that extend like through these two corners right here from the upper left to the north to the lower right in that direction to the southeast actually. One large plume from the 160 acres and then another plume generated recently by Robertson Ready Mix working for the County. There was apparently some perchlorate in the subsurface. They had a very large gravel washing operation here -- put a lot of water in the ground and mobilized and generated a whole new plume that is distinct from the plume from 160 acres but moving in the same direction away from the County landfill.

The County has been very cooperative in putting in wells and dealing with this problem. They have moved down several miles from the site. These wells are \$250,000 wells that go down 700 feet. Very difficult to drill. Multiple pore completions, a quarter million dollars on each well and this is a well down by the airport -- helicopter landing in the background here -- these are the two plumes -- the County plume shown here and the plume from the 160 acres Goodrich, Kwikset, some fireworks companies, and you can see that they both are moving in the same direction, but they are also moving away from some of the areas that also have perchlorate contamination which we believe comes from agricultural practices; the use of Chilean fertilizer from 1930 through about 1945. So we have a general problem with perchlorates throughout most of the Southern California area from agricultural use of Chilean fertilizer but that is a distinct problem from these two plumes that are the subject of a lot of our fun.

In the case of the County they have been cooperative. They have put in a wellhead treatment system for Rialto well number three as we directed. This is one of the replacement water issues and we have, unfortunately, many of these wellhead treatment systems throughout the area. All over Rialto this is from the Lockheed plume in the Redlands Riverside area and another one -- this one was actually funded from money from the clean-up and abatement account. This was in Southern Rialto and also for perchlorate treatment.

We have scheduled a clean-up and abatement order hearing for May with Black & Decker. Now you might think well, why don't you schedule a hearing in two weeks, hold that hearing for clean-up and abatement orders; it's a pretty easy thing to do. Well, this is the most difficult enforcement I have seen in 30 years. Black & Decker has an unlimited defense budget and they have been using it and so we are treating this as a court case. We are going through discoveries, submittal of evidence, designation of expert witnesses, briefing schedules and the earliest possible time for us to have the hearing was May. We have also instituted a separation of functions where we have a staff prosecution team. We are using attorney general staff at this stage of the game. This is not in court. This is for a clean-up and abatement order hearing. Three deputies are working with us. Phil Wyels has been really helpful. Jorge Leon has put in an incredible amount of time and our staff has put in thousands of hours in this case. We also have a Board advisory team that is kept separate from us. They are not involved in the prosecution at all. Ted Cobb is

heading up that group along with technical staff from the Board who have not been involved with the perchlorate problem.

Now Goodrich has been a lot more cooperative in this whole thing. We are scheduled to hold a consent order hearing next week in Rialto. They have agreed to put in about 3 million dollars worth of wells for a ten month agreement to not take any further enforcement. This will be five deep wells; each well 700 feet deep -- west bay multiple completion wells -- a quarter million dollars each one. And also we have thrown in a hundred thousand dollar per month stipulation for missing the agreed upon schedule. This is a serious approach. However, a lot of the folks in Rialto are not very happy with this because it does not require replacement water. The staff position in this is that we don't have the data necessary to substantiate in court the need for replacement water so this work -- three million dollars worth of work will help give us the substantiation we need to order replacement water which we expect to have to take place next summer.

We have another new situation just south of the Ontario Airport. This is the Ontario Airport up here where I am sure all of you have landed one time or another -- with the 10 freeway right across here. South of the airport this was the dairy preserve. Four hundred thousand dairy animals in this area for the last 50 years and there was very little water production through there. We took some samples and found some TCE a while back. Then the Chino basin water master found a lot of TCE through its sampling program. It turns out we have a very large plume of TCE in the middle of the dairy preserve which does not make any sense until you look at Ontario Airport's two surface waters; Cucamonga Creek and Chino Creek that could have transported this matter down into this area. We have a well known PRP's who spent a lot of time in Ontario Airport. We are working with GE and other clean-ups. Working with Lockheed and other clean-ups. Very cooperative groups. Others have been less cooperative in the past. But we are working with these PRP's to come up with a strategy to deal with this. We have a lot of information on all the discharge points from Boeing, Aerojet, DOD which has not been very cooperative as you know. GE is one of the most cooperative groups around; Lockheed the same. All surface kinds of things; surface sumps, ditches that go right into Cucamonga Creek, the materials, the TCE's, the solvents that are probably carried in the creek where they percolated down within two miles down into the ground water over 50 years. And so now we have the plume that results from that.

We also have 40 million gallons per day of desalting that is taking place at the south end of this plume. The Chino one and the Chino two desalters from the Chino basin of the Inland Empire Utilities Agency and some of the other agencies that are producing about 40 million gallons per day of municipal water, cleaning up water that has been contaminated by 50 years of dairy operations and another 100 years of irrigated agriculture. This plume is headed right for these facilities so the Chino basin water master and the desaltery authority have spent a lot of time working with us to come up with a strategy to clean up this plume and to encourage the PRP's to get on this pretty quickly. The water master has provided consult help to us to come up with clean-up strategies, costs which is like \$445 million over 75 years to deal with this plume -- it is a very serious problem. The consultants have designed a clean-up strategy and they have done a

clean-up modeling for us - see these red spots in the middle here; one year after clean-up is instituted five years later a lot of that mass is gone. We have a lot of information to give to the PRP's to help them move along towards coming up with a solution which we think is going to be put in well head treatment on the desalter wells. The plumes there are the least expensive alternative and we think this is going to be something that will be low cost to them, relatively low cost and we are meeting with them next week to kick this off.

We have another enforcement action which is a really good success story. You notice that we are focusing on enforcement, enforcement and enforcement and will do good science next but our third enforcement is that GE, which had a flat iron plant for 55 years at a site in Ontario high concentration of TCP and hexavalent chrome. From discharge from the site they now have a mile and a half plume and again 400 feet of ground water. Very deep, expensive to drill wells, expensive to pump this material up and you know it's a huge plume. But since 1995 they have cleaned up almost 2 billion gallons of water from this plume and they have a long ways to go but this is a pretty good success story with GE. This is this kind of imprint that they have on the community. In the inside of a park they have a couple of wells in a transitional neighborhood from residential to commercial this is the clean-up facility. Very little impact on the community inside and the clean-up tanks for GE.

Now moving into another topic, in 2004 for those members who were on the Board at that time, we brought a basin plan amendment to you for a complete re-write of the Santa Ana Basin plan which included new water quality objectives for every single ground water basin in our region. We brought it to you with no objections from anybody, consent item, it was an amazing situation that comes from the water agencies and the waste water discharges in the region working together to come up with a well thought out and well supported study that allowed objectives to be validated and more importantly gave us up to the minute real time ground water monitoring for the entire region. No one else has got this. We can tell you what our groundwater quality is anywhere in the region at essentially in any one of the aquifers and multiple aquifers locations. We did it for the historical period from 1954 to 73 which is the State policy for setting water quality objectives - it's the quality of water that occurred at that time but that's what the water quality objective should be. Then we did a measurement for the 20 year period ending in 1997. However, as part of the basin plan amendment we also said that were going to re-do this every five years. Now from our old basins came information set up in the early 70's which didn't really have a good handle on which way water was flowing in some of the basins, there just wasn't much information but you can see that some of these basins have been completely revised in terms of their orientation alignment and we have the benefit of hundreds of wells being drilled and all that information and so we are able to model the effects of the basin very carefully. One of the things that we brought to you in 2004 were maximum benefit objectives. For instance in the Chino basin, objectives were modified from the 1973 levels to allow for the use of re-cycled water as part of the integrated water supply plan for this entire basin. So the objectives were changed by about 25 milligrams per liter that are allowed the use of re-cycled water in the basin and 50 million dollars worth of recharge facilities which are already done. They built them in response to this integrated water supply plan and the revised objectives. These basins.

allow the capture of a huge amount of storm water and for the use of re-cycled water within the basin, a very valuable water supply strategy for the basin. But here is where the good science comes in. We took years to develop the approach on how this was done. Mass historical, we did this thing over 20 years which allowed for the dampening of any hydrologic effects. So if you had a wet year and you did water quality measurements the water does not look artificially good because of the wet year. Or a dry period the same way, so we took those out and we did it for both historical and the current period and that was six years ago; it ended in 1997. And so now we have a brand new measurement of water quality using tens of thousands of data points throughout the region. These are not historic measurements of water quality, calculations of water quality for both salts and for nitrogen. As I said tens of thousands of data points is a huge data base that is managed by SAWPA whom of all you know. This is the Santa Ana Water Shed Data Management System. Many, many look up tables for each data point, all different kinds of information but not only the raw data but a large number of QA/QC checks to make sure that all the data that are used in this analysis are valid, its good information. Sometimes you sample and the results you get just don't make sense and we should not be using that information if it gives us bad results. And then any data that don't meet both the statistical analysis and the standard methods analysis is rejected.

We had to have at least three data points from any one well or that well was not used and we took a large number of steps to deal with sampling error, analytical error, the hydrologic effects that we talked about and any hydro-geologic properties that got in the way. And so we developed water quality contours based on good data of TDS and nitrate. And we also took into account the aquifer characteristics. Orange County has two layers, Channel Basin has three different layers, Bunker Hill has two layers, this is the San Bernardino area and each determination of water quality has to account for how much of the concentration of any constituent is in each of the layers and it does vary. The upper layer in the Chino Basin is going to have a lot of effects from irrigated agricultural and dairies and the lower layers won't. But to get the quality in the basin you have to integrate all those layers. And then we have point statistics and just for the six year period we had 22 different digital maps that came from this and for the original work that was done for the basin we had 200 maps that were used. And we generated volume weighted estimates of water quality for all of the water quality zones in the basin. This is just an example of what these digital maps look like. Our entire region is broken up into 400 by 400 foot meter grids. And so each one of these grids is handled separately for the water quality analysis and then each grid is computed separately and this is that what each one of the little 400 by 400 foot grids looks like. So this is the kind of rigorous scientific approach to water quality. We just don't go out and sample three wells in a basin, average the results of those three wells together and then call that the quality of the basin because it is not. This is a much more valid approach. We develop 20 year time series histories for each well and then we have our new water quality data which is different for both salts and for nitrates which is different from the information that was generated six years ago. Now this table is not for you to look at other than to show you at the top that we have the objectives, the historical ambient, the objectives, the ambient from 1997, the ambient from 2003 and how much assimilative capacity is in each basin. And from the famous State Board Rancho Cabero decision the assimilative capacity is an indication of what

kind of discharge limits we can set in waste discharge limits for any given proposed discharge. We did the same for nitrogen and then we have comparison tables from 1997 and 2003 to see what kind of changes we have had in water quality over the six years.

So anyway, these are some of the things we are doing down in Region 8. We have a lot of other stuff going on but I just focused on enforcement and the modeling that is being done for water quality and for this little talk.

Chair Doduc: Thank you very much. Any questions, comments? Jerry, I know you had a lot of questions on the scientific part.

Jerry Secundy: There were one or two equations that may have slipped by me so -- Black & Decker. Why such a different approach compared to some of the other dischargers?

Mr. Thibeault: We don't know -- it's a huge liability -- the cost to clean up that basin I think will be something in the range of many hundred million dollars over 75 to 100 years probably. It's going to be a long, long process. Part of the problem with the Black & Decker situation is that a predecessor company brought West Coast Loading back in 1957 or 8ish -- late 50's. It was Kwikset Locks. Kwikset Locks brought this company. Kwikset Locks was then absorbed by American Hardware and Kwikset Locks was dissolved. American Hardware was absorbed by Emhart Industries and then Emhart Industries was absorbed by Black & Decker. Over 55 years. And now Emhart Industries is being dissolved as fast as they can do it back in Connecticut and we are involved with that too. But they don't think that they are responsible even though we have a corporate successorship to tie them into it and they have... well first of all they told us that they weren't responsible for the site although they had all the historical documents... you know the assumption agreements and the corporate records and everything else but it's just hard to understand why they are taking this approach other than it's a very, very big financial proposition.

Jerry Secundy: It goes back to caveat emptor. So let the buyer beware, I mean being involved with that before with other companies -- when you purchase a company that has environmental liability you purchase the environmental liability. So the law is very clear there. So....

Mr. Thibeault: They went through the very same thing for Leviathan Mine with Arco and Anaconda and Arco paid the settlement for....

Jerry Secundy: Having been 30 years with Arco I remember it painfully. (laugh) Thank you very much. Excellent presentation.

EXHIBIT 8



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Office of Chief Counsel

1001 L Street, 22nd Floor, Sacramento, California 95819
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 • FAX (916) 341-5199 • <http://www.waterboards.ca.gov>



Arnold Schwarzenegger
Governor

TO: SWRCB/OCC File A-1824

FROM: 
Elizabeth Miller Jennings
Staff Counsel IV
OFFICE OF CHIEF COUNSEL

DATE: May 11, 2007

SUBJECT: SUMMARY OF CONVERSATIONS BETWEEN MEMBERS OF ADVISORY
TEAM OR CURRENT STATE WATER BOARD MEMBERS AND PERSONS
NOT ON THE ADVISORY TEAM OR BOARD MEMBERS

This memorandum describes all oral communications that interviewees reported during interviews. It does not include confidential communications between and among current State Water Resources Control Board (State Water Board) members and Advisory Team members. It does, however, include any conversations whereby any parties or other persons may have relayed communications through an intermediary, including a prior State Water Board member.

No conversations to report

Art Baggett
Wendilyn Fua
James Henik
Charlie Hoppin
Jim Maughan
Fran Spivy-Weber
Gary Wolf

Jon Bishop:

1. Oral communication within approximately the last year: At an MCC¹ meeting, Gerard Thibeault mentioned that there was an enforcement order issued at the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) and that he hoped the State Water Board would provide assistance. No memory of what type of enforcement order and what help needed. No memory of any response. No personal communication with Mr. Thibeault. Those present included Executive Officers from various regional water boards and Celeste Cantu, then Executive Director. (At the time, Mr. Bishop was Executive Officer for the Los Angeles Water Board.)

¹ MCC is the Management Coordinating Committee, which consists of Executive Officers of regional water boards and State Water Board executive managers. MCC meets several times a year.

California Environmental Protection Agency



May 11, 2007

2. Oral communication within the last year: At an MCC meeting, Mr. Thibeault mentioned that Walt Pettit was going to serve as hearing officer regarding perchlorate contamination in Rialto. Other Executive Officers were present.

Tam Doduc:

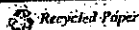
1. Oral communication May 19, 2006: At the May 19, 2006 Santa Ana Water Board meeting, Ms. Doduc was present (as a visiting liaison from the State Water Board). An item was on the agenda regarding perchlorate in Rialto. In the hall earlier, some members of an environmental justice group approached her, said they were there for that item, and were happy it was on the agenda. Later, the Board meeting ended because of lack of a quorum, and the item never came up. There were many people in the hallway—she remembers Penny Newman and Sujatha Jahagirdar. She does not remember responding, other than greeting them.
2. Oral communication on February 5, 2007: Ms. Doduc called Carol Beswick (chair of the Santa Ana Water Board) to say that the State Water Board was taking the matter up on its own motion. There was no conversation about the case, limited to a "heads up" that the State Water Board was sending its letter of that date.
3. Attended briefing of Linda Adams (California Environmental Protection Agency (CalEPA) Secretary) March 1, 2007, prior to her confirmation. No recall of discussion.
4. Oral communication early March 2007: Conversation with Dorothy Rice, when Dorothy said that Penny Newman called Ms. Rice and told her that the second week of April would be better for the hearing. Ms. Doduc instructed Ms. Rice that this was an improper ex parte communication and ignored the request.

While Ms. Doduc apparently referred to communications from or to a District Attorney at the prehearing conference, she has no memory of such a conversation and states that she likely misspoke.

Tom Howard:

1. Oral communications at MCC meetings over last year: It was likely that Jerry Thibeault mentioned the Rialto perchlorate matter at some of these meetings, mostly in the context of it being time-consuming and taking away from other cases. Also at MCC, there was some discussion about an agreement whereby Goodrich would pay \$4 million, and that Einhart/Black & Decker/Kwikset Locks were not part of the agreement. At MCC, present were Regional Board Executive Officers and State Board management—no Board members. Mr. Howard does not remember responding.
2. Oral communication, no date: James Giannopoulos (Division of Water Quality engineer) may have mentioned Rialto perchlorate during a State Water Board management meeting. Mr. Howard believes there was a powerpoint presentation shown by someone.

California Environmental Protection Agency



3. Oral communications regarding approving Cleanup and Abatement Account money for Rialto, approximately 2002 and May 2006. Mr. Howard likely briefed then-Board members about the propriety of giving money for what is basically a long-term cleanup. Board members and State Board staff members likely were present.
4. Oral communication approximately early 2006: Conversation with Celeste Canju about Barry Groveman pushing the State Water Board to take action; and something about Senator Neil Soto and her son. Mr. Howard only vaguely remembers speaking to Celeste about requests for the State Water Board to do something.

Elizabeth Jennings:

1. March 1, 2007: Participated in briefing Linda Adams for her confirmation. I described the information that was in the public notice of the pre-hearing conference. I explained that I could not say anything that was not public; that neither Ms. Doduc nor I could be there if there were discussion about the site; and that if she had specific questions about the site, she should talk to Kurt Berchold (Santa Ana Water Board staff) after Ms. Doduc and I left the room. I described the notice of public hearing that had been issued by the State Board. Maureen Gersen (Department of Toxic Substances Control (DTSC) Director) started to discuss options for site remediation. I interrupted, saying that the State Water Board would hold a quasi-judicial hearing and we could not discuss possible outcomes at all. Others there were Tam Doduc, Maureen Gersen, CalEPA management staff, and James Giannopoulos.
2. Oral communications: Davin Diaz called in early February 2007, about adding his name to the email list. I told him all communications must be by email and to all parties. Jorge Leon came to my office and asked if we had received the Advocacy Team's submission on March 27, 2007. I told him all communications must be by email and to all parties. Scott Sommers called me on April 16, 2007 and asked about responding to certain letters. I told him I would not respond and that all communications must be by email and to all parties.

Michael Lauffer:

Oral communication (about August 8, 2006): Spoke by telephone to Nettle Sablehouse (Senate Rules Committee staff) to explain that Santa Ana Water Board members should not be asked in confirmation hearings about the Rialto issues. Three members had been ordered to appear at the request of Senator Soto.

Karen O'Haire:

1. Possible oral communication, a few years ago: May have called Santa Ana Water Board and asked for agenda packages and hearing tapes. Would have spoken to support staff only.
2. Oral communication July 14, 2006: Bob Wyatt called and said that petitioners in A-1732 et seq would be responding to July 13, 2006 letter. Reminded him that phone calls would not be allowed.

3. Possible oral communication about November 2006: May have called Kurt Berchold to ask whether Resolution RA-2006-0079 was a draft or had been issued. Kurt said it was a draft, had not other conversation.
4. Oral communication about mid-February 2007: David Diaz called and asked that his name be added to list of persons receiving email correspondence. No further conversation.
5. Oral communication about April 12, 2007: Jorge Leon left a voicemail message asking where boxes from Rialto should go. Karen did not return the call.

Dorothy Rice:

1. Oral communication about early March 2006: Penny Newman called on Ms. Rice's cell phone before Dorothy had begun working for State Water Board but after she had accepted the position. Ms. Newman said she hoped the hearing (on A-1824) would be after the noticed date in March. Dorothy replied that she knew nothing about a hearing and would inquire and get back to her. Ms. Rice reported the call to Ms. Doduc. Ms. Doduc said she should not speak to Ms. Newman or anyone else and explained strict ex parte rules. Ms. Rice did not return the call.
2. Possible oral communications during DTSC management meetings. Ms. Rice only vaguely knew that there was a contamination issue and some DTSC involvement. No specific memory of conversations.

EXHIBIT 9

From: Michael Lauffer
To: gthibeau@waterboards.ca.gov; KRogers@waterboards.ca.gov
Date: 8/10/2006 2:24:54 PM
Subject: Re: Request to Participate by Phone for Perchlorate Briefing for Gary Wolf

I just spoke with Celeste. We will make arrangements for staff advising the State Water Board to handle Gary's briefing on perchlorate issues. Short of videotaping the briefing to show that nothing untoward or pertaining to the perchlorate petitions was discussed it is best to have the briefing handled by State Water Board advisory staff.

I recognize the intent of the briefing would only be to discuss the Santa Ana Water Board's approach to perchlorate generally, there have already been too many allegations of inappropriate contacts. Even when the allegations are baseless, it is better to avoid them.

-maml

Michael A.M. Lauffer, Chief Counsel
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Phone: 916.341.5183
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Internet: mlauffer@waterboards.ca.gov

>>> Gerard Thibeault 08/10/06 2:13 PM >>>
Hey Kathy, Our contact person for the Gary Wolf briefing will be Ann Sturdivant, and she may be assisted by Kamron Saremi. I would also suggest that you include our staff counsel, Jorge Leon, on the call, because of the issues with all of the ongoing litigation and the request we have in to the state board to hold a hearing on this matter. I will also cc this to the OGC folks who may need to step in and provide direction to us, because of the litigation stuff.

p.s. Be sure to change to cc contact for my EO from Catherine to Felipa Carrillo.

Gerard J. Thibeault, Executive Officer
Santa Ana Regional Board
3737 Main Street, Suite 500
Riverside, CA 92501
Phone: 951-782-3284
Fax: 951-686-8016
gthibeau@waterboards.ca.gov
www.waterboards.ca.gov/santaana

>>> Kathy Rogers 8/10/2006 1:47 PM >>>
Celeste would like to brief Gary Wolf tomorrow morning at 10 AM re: Perchlorate issues, but you looked busy on your calendar. Can you have one of you staff call in?

Celeste told Gary that perchlorate in your Region is a big one (an understatement) and is the reason the Rules Committee has requested the appearance of the board members from RB 6. He naturally wants to hear more about his topic.

Lisa Douglas, Gary's assistant, is trying to set up this meeting with Gary, Celeste, Tom, and James

Giannopoulos will be sitting in this briefing. Please let me know who from your office will call in. Thanks,
Kathy.

CC:

ksprentiss@waterboards.ca.gov, JLLeon.HQ002.SecDom1@waterboards.ca.gov, asturdiani@waterboards.ca.gov, PWyels@waterboards.ca.gov, TCobb@waterboards.ca.gov

EXHIBIT 10

Water Quality Coordinating Committee

FALL 2006 MEETING AGENDA

October 30 & 31, 2006

Location: CalEPA Headquarters, Sacramento, CA

Meeting Venue: Coastal Hearing Room

Day 1, October 30th Coastal Hearing Room

- 9:30 – 10:00** **Opening Comments; Introduction of New Board Members.** — *Tam Doduc, State Water Board Chair, and Regional Water Board Chairs*
- 10:00 – 12:00** **Regional Board Updates** — *Regional Board Chairs/Members:* Regional Boards will share updates on their top 3-6 issues (e.g., recent events, highlights and accomplishments, current challenges and concerns, emerging issues, etc.).
- 12:00 – 1:00** **Lunch** (will be brought into meeting room)
- 1:00 – 4:00** **Water Boards Restructuring Analysis: DELPHI Approach** — *State and Regional Board Members, with Facilitator Timothy Moore:* Members will participate in a facilitated discuss of several perceived problems with the current Water Boards structure and proposed restructuring solutions.
- 4:00 – 4:15** **Break**
- 4:15– 5:00** **Legislative Update** — *Rob Egel, State Water Board, Director, Office of Legislative Affairs:* Mr. Egel will provide an update on recently enacted legislation and moderate an interactive discussion about these changes.
- 5:00** **Adjourn for Day 1**
- 5:30 – 8:00** **Reception**

California Environmental Protection Agency

Recycled Paper



Day 2, October 31st
Coastal Hearing Room

8:30 – 10:30 Discussion with the Chief Counsel — Michael Lauffer and Philip Wyels, State Water Board Chief Counsel and Assistant Chief Counsel: This will be the traditional wide-ranging discussion of timely legal issues and refreshers including, but not limited to: EO/Board relationships; ex parte communications; conflict of interest rules; ethics requirements; hearing/meeting efficiency issues; relationships between Porter-Cologne and the Clean Water Act; and other topics/questions that Water Board Members wish to raise.

(Executive Officers will participate in a condensed MCC meeting in Conference Room 210 while the Water Board members attend the discussion with the Chief Counsel.)

10:30 – 10:45 Break

10:45 – 12:00 Environmental Justice Discussion — Gary Wolff, State Water Board Member: Dr. Wolff will moderate a panel presentation by environmental justice organizations.

12:00 – 12:45 Results/Evaluation of DELPHI Process and Discussion — State and Regional Board Members, with Facilitator Timothy Moore: We will discuss the previous day's use of the DELPHI Approach and evaluate the potential for this tool to aid in developing a long-term strategy for restructuring the California Water Boards system of governance.

12:45 – 1:00 Meeting Wrap-Up — Tam Doduc & All WQCC Attendees

California Environmental Protection Agency

Recycled Paper



EXHIBIT 11



The Environmental Justice Coalition for Water

Our overwhelming concern is to improve water quality and protect our communities.

We call on every local, state, and federal agency to work with us to present their own water interests to the state and federal governments.

Water Injustices throughout California

The Intersection of Water Boards and Environmental Justice

A map of California with several regions outlined and labeled with letters: SR, SS, SF, IV, and Y.

State Board

Ensuring accountability across agencies
Leadership to address the disproportionate needs of impacted communities

A black and white photograph showing several people sitting around a table in what appears to be a meeting or community gathering.

Lack of clean drinking water due to groundwater contamination


Central Valley
Central Coast
Santa Ana
Los Angeles

A black and white photograph of a person standing at a public water tap, filling a container.

Inclusion of cultural and ceremonial water quality needs


North Coast
Lahonlan

A black and white photograph of a natural landscape featuring a body of water, possibly a river or lake, with hills in the background.

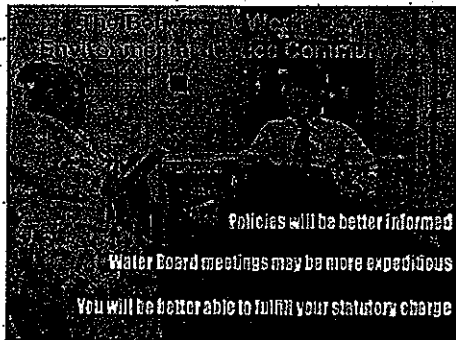


Subsistence fishing needs within TMDLs

San Francisco Bay
San Diego Bay
North Coast

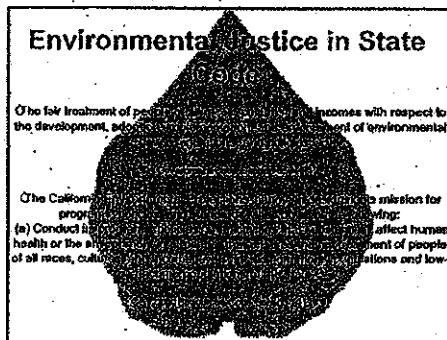


Colorado River Basin



Environmental Justice Communities

Policies will be better informed
Water Board meetings may be more expeditious
You will be better able to fulfill your statutory charge

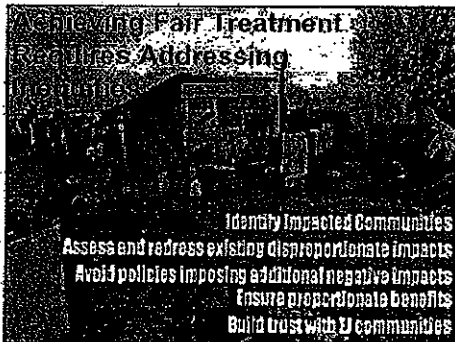


Environmental Justice in State

Of the fair treatment of people of all incomes with respect to the development, adoption, and enforcement of environmental

The California State Water Resources Control Board has a mission for environmental justice, including:

(a) Conducting public hearings that affect human health or the environment of people of all races, cultures, and socioeconomic status and low-





Achieving Fair Treatment Requires Addressing

Identify Impacted Communities
Assess and redress existing disproportionate impacts
Avoid policies imposing additional negative impacts
Ensure proportionate benefits
Build trust with EJ communities

Build Trust through Understanding

Our ComItE got two van loads of people to go to Sacramento for these water hearings...My friend stayed all day long but still didn't get to give public comment. Comment was rescheduled to the next day and she couldn't wait that night. We had kids.

Thanks Dr. Anita, Charles Jones at Blumenthal de Erdem

Accommodate Resource Limitations


- Recognize and accommodate time constraints
- Hold meetings in impacted communities, near public transportation
- Make childcare available
- Distribute information in various forms
- Provide technical assistance

Address Language Barriers

- Provide translation at meetings
- Respect different communication styles

Ensure that participation is not simply to meet procedural requirements

- Respect community member expertise



EJCW Member Panelists

- Laurel Firestone
Community Water Center
- Davin Diaz
Center on Community Action and Environmental Justice

Securing Safe Water for Central Valley Communities

By
Laurel Firestone & Susana De Anda
Community Water Center

The Community Water Center

- Our Mission:**
Act as a catalyst for community water solutions through organizing, education and advocacy in California's San Joaquin Valley.
- Our Goal:**
Ensure that all communities have access to safe, clean and affordable water.

The San Joaquin Valley

The San Joaquin Valley is home to 73% of the people provided contaminated drinking water by public water systems (not including bacteria).

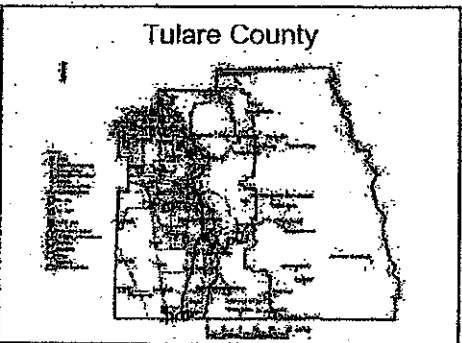
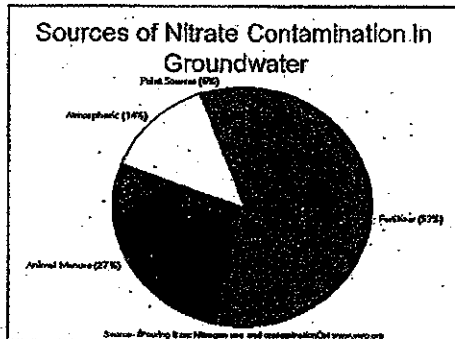
The major contaminant of drinking water in the San Joaquin Valley is Nitrate.



Nitrate in Groundwater

It has also been linked to cancer in adults.

Nitrate contamination at high levels is caused by human activities (mostly fertilizer and manure).



Had to drill new well because of nitrate contamination.

Cost over \$1 million and had to raise water rates.

Challenges to Participation

- ✗ Given well water with nitrates above legal level for 3 months out of every year.
- ✗ Other 9 months receives treated canal water with illegal levels of trihalomethanes.

These are the people affected by regional and state water decisions.

Challenges to Participation

- ✗ Geographic Barriers
 - ✗ Confirms it is hard to take two days off of work to participate in meetings in Sacramento (500 miles round trip)
- ✗ Stakeholder process is not inclusive
 - ✗ C. General WER for CA/CA
 - ✗ Sacramento Meetings, Public Release
- ✗ Language Barriers
 - ✗ Translation necessary when over a third of the region is predominantly Spanish speaking.

Gracias

For more information check out
www.communitywatercenter.org

Perchlorate in the Rio/Cotton Basin

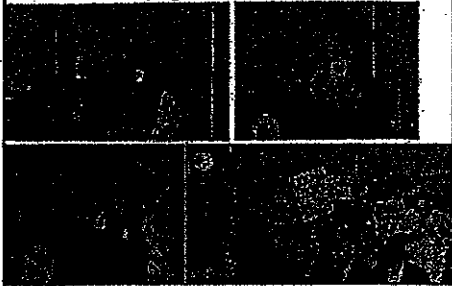
Perchlorate in the Rio/Cotton Basin is a significant concern. The diagram shows the distribution of perchlorate in the Rio/Cotton Basin, highlighting the impact of the 1990s cleanup efforts. The diagram includes a map of the Rio/Cotton Basin and a list of key events and findings related to perchlorate contamination.

Perchlorate in the Rio/Cotton Basin

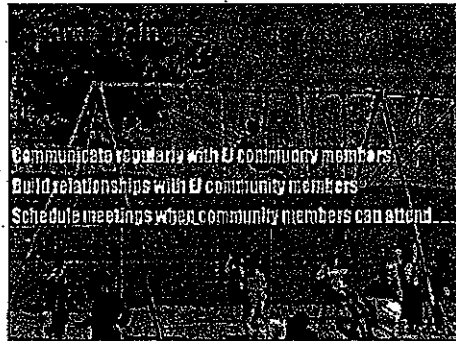
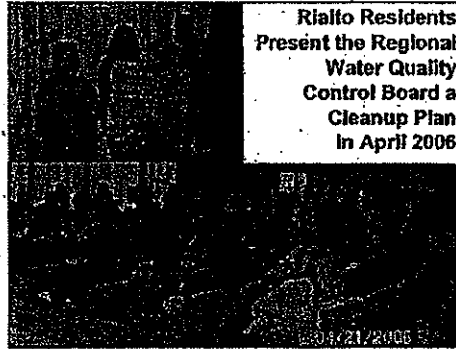
Perchlorate in the Rio/Cotton Basin is a significant concern. The diagram shows the distribution of perchlorate in the Rio/Cotton Basin, highlighting the impact of the 1990s cleanup efforts. The diagram includes a map of the Rio/Cotton Basin and a list of key events and findings related to perchlorate contamination.

- ✗ 1990 perchlorate is discovered in the groundwater
- ✗ By 2003 a total of 21 drinking water wells in the Rio/Cotton Basin had been shutdown
- ✗ Cleanup is estimated to be \$200 to \$300 million by Rio/Cotton Basin
- ✗ October 2006 SARWA releases a draft of a C/O, Goodrich Corp., Pyro Spectaculars, Inc., and Kussel Lobbs & Co. Industries, Inc. Kussel & Co. and Black & Decker Inc.

Rialto Residents Testify in Opposition to an Order the Board Signed with a Discharger in November 2005



Rialto Residents Present the Regional Water Quality Control Board a Cleanup Plan in April 2006



www.ejcw.org

EXHIBIT 12

Center for Community Action and Environmental Justice

Centro de Acción Comunitaria

PO Box 33124 Riverside, CA 92519

951-360-8451 909-381-8883

August 21, 2007

OPEN LETTER TO OUR PUBLIC OFFICIALS

Dear Leaders:

Today is the day an important hearing was to begin. The hearing would adopt a Clean Up and Abatement Order for the perchlorate contamination in the Rialto area. As the communities directly affected by Goodrich/Black & Decker/Pyro Spectacular perchlorate contamination, we are alarmed and shocked at the games being played with our lives. Once again the public process for issuing a Clean Up Order and beginning to address this environmental disaster has been delayed through legal tactics by these polluters.

It is criminal that these corporations—Goodrich, Black & Decker and PyroSpectacular—continue to be allowed to manipulate and delay the public process in this way. Their actions demonstrate quite clearly their lack of regard for the health and well-being of the hard working families of Colton and Rialto. Justice delayed is justice denied.

This leaves us wondering who is protecting us? Who can we count on to represent our families? How long are we going to sit by and allow this plume of pollution to grow? How long do we need to suffer?

With each postponement the plume of chemicals continues to migrate. It is estimated the perchlorate travels about 20 inches a day. With just this latest postponement of 62 days, our rudimentary math calculates that another 800 million gallons of fresh drinking water will be lost— 800 million gallons of drinking water polluted with a chemicals now known to affect the thyroid, creating major health problems for our families especially our children.

If such delays were tolerated when San Bernardino suffered its major fire disaster a couple of years ago, there would be no homes standing in San Bernardino. Do we sit back and haggle over the cost of fighting fires while the flames bear down on us? Of course, not! We step in provide the resources necessary to stop the flames before they destroy more homes and to protect our families.

In the perchlorate case, we are threatened—not with the loss of houses and structures— but with the health and lives of our residents and the precious life resource of our drinking water. Why are you, as our leaders, standing by fiddling around while our communities' resources are destroyed? We need you to act and act now. Step in and take whatever measures you need to in order to stop the migration of the plume and the destruction of more of our drinking water.

If someone crossed our borders with a gallon of chemicals and dumped it into our drinking water source we would have the Department of Homeland Security and every other agency there in minutes to secure the situation and the terrorist hauled off to Guantanamo— no attorneys, no questions, we'd take immediate action. But here we have domestic corporate terrorists who have dumped millions of gallons

of a deadly pollutant into our drinking water source and we sit back negotiating with them. How absurd can it get!

It is time for each of you as our representatives to show some back bone and stand up to this abuse with strong action. We demand that the government of the people, by the people and for the people start acting on behalf of the people!

So far, the City Council of Rialto is the only group to step up to the plate and go toe to toe with the corporate bullies.

Where are the rest of you—Governor Schwarzenegger, while are water supply is destroyed? Where are you— Attorney General Brown, while the polluters play their legal games?

Where is Congressman Baca, our Assembly members and Senators; and our public agencies in our time of need. Where are you?

We demand you step forward and treat these corporate eco-terrorists with the same zeal as we would treat any other terrorists. This is an environmental disaster that continues to spread every day.

We call upon you to issue a state of emergency, pull together a task force of agency resources, allocate the necessary funds and begin —TODAY— to take steps to stop the migration of the plume and begin the cleanup. Then go after the corporate criminals that caused the problem.

Goodrich, Black & Decker and Pyro Spectacular do not have the right to destroy our common water resource. They must be held accountable!

When government fails to do its job, the people must step in to ensure their own safety.

In outrage,

Penny J. Newman
Executive Director

EXHIBIT 13

From: Karen O'Haire
To: Cobb, Ted
Date: Mon, Dec 4, 2006 10:34 AM
Subject: Fwd: Petition update

FYI. I would like to discuss this please. Thanks Karen

>>> Betsy Jennings 12/17/2006 1:02 PM >>>
Surfrider (A-1772 & A-1773): Response and record due 12/20

Emhart and Godrich (A-1797 & A-1797a): I think we agreed you would be doing a dismissal. It may be okay to combine stay and merits, but do you know when the hearing was supposed to be? If that is not a problem, I want a dismissal memo by the end of the month. If it is only the stay at first, that's OK.

EXHIBIT 14

From: Tam M. Doduc
To: alice.dowdn.calvillo@GOV.CA.GOV
Date: 2/17/2007 5:05:47 PM
Subject: Re: Fw: Rialto Water background

Alice, per your request, attached is a short fact sheet. As the hearing officer in this matter, I am subject to the ex parte prohibition, but will designate someone to provide additional details and brief you further as needed. Thanks.

-Tam.

Tam M. Doduc, P.E.
State Water Resources Control Board
(916) 341-5611

>>> <alice.dowdn.calvillo@gov.ca.gov> 2/17/2007 9:53 AM >>>
The residents in Rialto are now asking, via the press, that the Gov. declare a State of Emergency and supply them with clean drinking water. Remember this case when I was at DTSC. Please give me a status report from the Santa Ana regional board on the BP and cleanup and abatement orders. Do they need help? What is causing the delays here? Is DTSC involved, too?
This is time sensitive. Thanks Tam.
Thanks,
Alice Dowdn Calvillo
Chief Deputy Cabinet Secretary
Governor Arnold Schwarzenegger

-----Original Message-----
From: Dan Dunmoyer
To: Alice Dowdn Calvillo, Susan Kennedy, [REDACTED]
Sent: Sat Feb 17 09:40:57 2007
Subject: Fw: Rialto Water background

Before you do: Some history. D2:

-----Original Message-----
From: Henry Renteria@oes.ca.gov <Henry.Renteria@oes.ca.gov>
To: Dan Dunmoyer <dan_dunmoyer@gov.ca.gov>; Frank McCarton <frank.mccarton@oes.ca.gov>
Sent: Sat Feb 17 09:32:05 2007
Subject: Rialto Water background

Dan,
Here is some background info on the problem. This is an ongoing issue and battle between residents and the businesses.
If there is an immediate emergency need for water we can get it there.
I am still waiting to hear back from locals. *****

Background

The problem began back in the 1950's and 1960's when both companies owned and operated a weapons manufacturing plant in the northern part of Rialto that used massive quantities of rocket fuel.⁹ According to former employees at the plant, rocket fuel routinely leaked from the facility during operations and workers regularly disposed of rocket fuel in unlined pits behind the plant.¹⁰

Nestled near the foothills of the San Bernardino Mountains, the city had what local water officials described for decades as one of the purest drinking water supplies in the region. In the late 1990's, Rialto water officials discovered rocket fuel pollution in the city's drinking water supply up to 800 times safety recommendations issued in other states.¹¹ Despite their responsibility and years of negotiations, neither Goodrich Corp. nor Black & Decker have agreed to clean up the mess they have created.¹²

While the companies delay, many citizens of Rialto drink water that is polluted by rocket fuel. According to data supplied to local and state water officials, water from drinking water wells contaminated at up to three times the safety levels issued in other states is piped to homes in the city.¹³ At levels found in contaminated wells, perchlorate can lead to Attention Deficit Disorder, learning disabilities and decreased IQ.¹⁴ With several other wells unusable due to contamination, the drought-prone city teeters on the brink of running out of water. Residents have also been forced to pay water bill price hikes to pursue the polluters for clean water.¹⁵

The Santa Ana Regional Water Quality Control Board (Water Board) has the power to force Goodrich and Black & Decker to clean up their mess. Under the California Water Code, the Water Board can order both companies to fully clean up their pollution and provide the community with a safe water supply immediately, while the cleanup takes place.¹⁶ To protect the community, the Water Board should use these tools immediately. Environment California is working with the Center for Community Action and Environmental Justice and local water officials to convince the Water Board to stand up to the polluters and force Goodrich and Black & Decker to clean up their mess and provide the City of Rialto with an immediate supply of clean water.

On October 18th, 2006, the Santa Ana Water Board took the first step toward holding the Rialto polluters accountable and proposed a cleanup order against both Goodrich and Black & Decker that would:

- Stop the spread of perchlorate contamination throughout the region;
- Pay for full cleanup of all polluted Rialto wells and all contamination within the aquifer;
- Foot the bill for providing a safe, rocket-fuel free drinking water supply until cleanup is complete.

If adopted, the proposed order would also be the first order in the history of the California water boards to require that polluters reimburse taxpayers for all costs paid to date for stop-gap treatment measures. The proposed order marks the culmination of more than a year of advocacy by Environment California and our partner organization, the Center for Community Action and Environmental Justice, who together mobilized thousands of public comments to the board, recruited hundreds of residents to attend water board meetings, secured the support of state legislators and local decision-makers, released several research reports and garnered significant media visibility for the need for a strong cleanup order. The next step in the campaign, which Environment California and COAEJ will focus on in the coming months, will be to ensure that the proposed order is adopted by the Santa Ana Regional Water Board and fully enforced and

ultimately that polluters are held accountable for returning clean water to Riato.

The Water Board says it will decide whether to require string cleanup measures and whether to require a safe alternative water supply for Riato residents only after a year's delay.

On October 27, we delivered 1,000 petition signatures from local Riato residents to the Water Board to immediately provide residents with a safe, secure supply of water. On Wednesday, November 10, the Board will decide whether to indefinitely delay any such order. Partnering with the Center for Community Action and Environmental Justice and several other local groups, Environmental California Research & Policy Center will testify against any further delay.

Specifically, we ask the Santa Ana Water Board to order Goodrich Corp. and Black & Decker to provide a safe, secure water supply to the residents of Riato by March 1, 2006, and order full cleanup of contamination by October 1, 2006.

Henry R. Renteria
Director
Governor's Office of Emergency Services

(Message sent via BlackBerry)

CC: Howard, Tom; Jennings, Betsy; Lauffer, Michael; Rukayser, William

Rialto-Area Perchlorate Contamination Fact Sheet

What is the problem?

- The Rialto-Cotton Groundwater Basin is a source of drinking water to tens of thousands of San Bernardino County residents. Groundwater contamination in this basin was discovered in 1997.
- Twenty-two municipal wells belonging to four water purveyors have been shut down due to the presence of perchlorate in the Rialto Groundwater Basin.
- Perchlorate removal systems have been installed on 10 of the 22 closed wells. Water rates have increased in Rialto to pay for ongoing treatment costs, which has raised environmental justice issues.
- Perchlorate and its salts are used in solid propellant for rockets, missiles, and fireworks, and elsewhere (e.g., production of matches, flares, pyrotechnics, ordnance, and explosives).
- Perchlorate interferes with iodide uptake by the thyroid gland and can decrease production of thyroid hormones, which are needed for prenatal and postnatal growth and development, as well as for normal metabolism and mental function in the adult.

Is there an imminent public health risk?

- There is no indication that any area residents are currently drinking water that could pose a threat.
- There is existing wellhead treatment and blending to ensure that drinking water delivered to residents meets the perchlorate drinking water public health goal (PHG) and action level set by the Office of Environmental Health Hazard Assessment (OEHA) and the Department of Public Health, respectively.
- A PHG is the level of a chemical contaminant in drinking water that, based upon currently available data, does not pose a significant risk to health. In March 2004, OEHA set PHG of 6 parts per billion (ppb) for perchlorate.

What has been done to date?

- Since 2002, the Santa Ana Regional Water Quality Control Board (Regional Water Board) has been conducting an investigation of groundwater contamination in the area. The focus of the investigation has been facilities located on a 160-acre site in Rialto.
- The Regional Water Board has issued investigation orders, cleanup and abatement orders, and entered into interim agreements with potentially responsible parties (PRPs) to facilitate installation of treatment systems.

- The State has already provided \$6 million to help the affected water utilities purchase water treatment equipment. One of the PRPs has provided an additional \$4 million.
- In February 2006, the Regional Water Board's Executive Officer issued a Cleanup and Abatement Order (CAO) and subsequent amendments naming a number of responsible parties (RPs). The RPs include Goodrich, Emhart/Black & Decker, and Pyro Spectaculars.
- The named RPs petitioned the Regional Water Board to conduct a hearing to review the CAO. The Regional Water Board scheduled a hearing for October 2006, but the process was delayed by challenges from the RPs.
- Other steps taken by the Regional Water Board to proceed with the hearing have also been challenged in petitions filed by the various RPs.
- In light of the various objections and appeals, and the need to take action in an expeditious manner, the State Water Resources Control Board (State Water Board) on February 5, 2007, announced that it will review this matter on its own motion.

What actions will the State Water Board take?

- An evidentiary hearing will be conducted by the State Water Board to determine whether to amend or reissue the Cleanup and Abatement Order for the investigation and remediation of perchlorate in the Rialto area, or take such other action the State Water Board deems appropriate.
- On February 22, 2007, the State Water Board's hearing officer will conduct a pre-hearing conference to discuss the scope of the hearing, the designation of parties, and any other appropriate procedural issues.
- The evidentiary hearing will be held in the community of Rialto at the earliest possible date. [Note: the State Water Board anticipates that the hearing will commence by the end of March and continue into April.]
- The results of this hearing will determine which party(s) is/are responsible for the perchlorate contamination and will pay for cleanup and replacement water to the extent necessary.
- The hearings are part of the State Water Board's quasi-judicial functions and will be akin to a trial with the board member/hearing officer's role akin to that of a judge. The State Water Board will not be setting policy, but determining fact.

EXHIBIT 15

From: Rob Egel
To: Betsy Jennings; James Giannopoulos
Date: 3/1/2007 1:50:07 PM
Subject: Re: briefing for Linda Adams on perchlorate

Attached is the fact sheet for Linda. I have shown in track changes the additional two sentences to reflect DTSC's activities in the area. I recognize that it is a bit incongruent to the document, but DTSC has asked to include a mention of their activities at the Denova site. If you are OK with it, accept changes and print it out. I am also in a meeting from 2:00 - 3:00. Rob

>>> Betsy Jennings 3/1/2007 1:35 PM >>>

I will be in a briefing with Charlie starting at 2. At this point, I assume I will give Linda the existing fact sheet. Betsy

>>> Rob Egel 3/1/2007 11:34 AM >>>

Betsy and James, attached is the draft fact sheet. I am waiting for DTSC's input and then will re-route through OCC and then finalize for Tom. I hope to have a final before the meeting.

FYI, I have also attached the fact sheet from OEHHA/State Water Board/DTSC on perchlorate generally. Rob

>>> Tom Howard 3/1/2007 11:19 AM >>>

The meeting is from 3 - 4 in 2540.

Attendees should be James Giannopoulos and Betsy Jennings. James should provide maps if possible of (1) a California map showing perchlorate pollution sites and (2) a map of the Rialto area showing pollution plumes.

It would be preferable if Rob gives these two attendees the issue papers for Linda so they can hand to her during the briefing.

Kurt, please be available for a phone call if necessary to provide Linda with local perspective. I do not know if it will be necessary. I do not think James is involved in the hearing so he can participate with Kurt but Betsy will have to leave.

Rob will be coordinating this so direct all phone calls to him.

CC: Michael Lauffer; Tom Howard

STATE WATER BOARD

WATER QUALITY

Issue: Perchlorate Contaminated Groundwater in Rialto/Colton

Background:

Since 2002, the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) has been conducting an investigation of groundwater contamination in the area of the City of Rialto. The focus of the investigation has been facilities located on a 160-acre site in Rialto. In 2005, the Santa Ana Water Board Executive Officer issued a Cleanup and Abatement Order. The order provided that it would not require any specific activities until after the Santa Ana Water Board conducted an evidentiary hearing on responsibility and cleanup requirements. On October 27, 2006, the Executive Officer proposed amending the order and naming additional responsible parties.

The Cleanup and Abatement Order and proposed amendments are the subject of challenges in petitions filed by various entities named as responsible parties. (Among these are Kwikset, Black & Decker and Goodrich, and Pyro Spectaculars). The parties responsible for perchlorate contamination must pay for the cleanup in Rialto/Colton and the extra costs of providing acceptable water. In light of the various objections and appeals, and the need to take action in an expeditious manner, the State Water Resources Control Board (State Water Board) notified the parties on February 5, 2007 that it would review this matter "at the earliest possible date."

The State Water Board Chair will act as the hearing officer, and will conduct an evidentiary hearing in Rialto on March 28-30 and April 4-5 to determine whether to amend or reissue the Cleanup and Abatement Order requiring the investigation and remediation of perchlorate in the Rialto area, or to take such other action the State Water Board deems appropriate. The results of this hearing will determine which party(s) is/are responsible for the perchlorate contamination and will pay for cleanup and replacement water to the extent necessary. The hearings are part of the State Water Board's quasi-judicial functions and will be akin to a trial with the board member/hearing officer's role akin to that of a judge. The State Water Board will NOT be setting policy, but determining fact.

Practical effects in Rialto/Colton presently include the non-use of some wells and the use of other with necessary treatment equipment (to remove perchlorate) installed at the well head. Water users currently pay surcharges because of the extra costs incurred by the municipal water district and the water company in the area. This issue has attracted considerable and extended attention from local media, residents and local elected officials. The area includes many lower socio-economic residents and members of minorities thereby raising Environmental Justice issues.

ISSUE SUMMARY

Questions/Answer

1. What are the State Water Board and Regional Water Board Doing to Protect the Health of the Citizens of Rialto?

- The citizens of Rialto are receiving safe, potable drinking water that meets all the relevant health criteria. Where a public drinking water well has been adversely impacted by perchlorate, the Santa Ana Water Board and the Department of Health Service working with local water officials have had the well shut down. Some wellhead treatment has been put in place to assure safe drinking water.

The focus of the Santa Ana Water Board's effort has been on protecting the ground water resource, so that the area can continue to rely on its local aquifers as a source of drinking water. The Santa Ana Water Board has issued investigation and cleanup orders to a number of parties. Most responsible parties are complying with Santa Ana Water Board orders. The Cleanup and Abatement Order that is subject to State Water Board review is the primary exception. In that regard, the Santa Ana Water Board has faced significant legal challenges. The State Water Board has just begun its review and is commencing a hearing later this month.

2. Why Did the State Water Board Decide to Take This Issue Up On its Own Motion?

- While the Santa Ana Water Board had been making progress on the Rialto-area perchlorate investigations, responsible parties had used expensive, time-consuming legal maneuvers to avoid an evidentiary hearing assigning responsibility for cleanup. The potentially responsible parties had alleged bias by the Santa Ana Water Board members and raised procedural challenges to an alternate hearing process the Santa Ana Water Board considered. In the interest of efficiency and to avoid further delays, the State Water Board decided to review and consider the Cleanup and Abatement Order on its motion.

3. When Will the State Board Make a Decision?

- A decision is likely this summer. The State Water Board anticipates five days of evidentiary hearings from March 28-30 and April 4-5. After the evidentiary hearings, the parties will submit final, closing briefs sometime in April or early May. The State Water Board's Hearing Officer, Tom Doduc, will then prepare a formal recommendation to the other State Water Board members that will be considered at a public meeting later this spring or summer.

ISSUE SUMMARY

Status

- Tim Doduc, Chair of the State Water Resources Control Board will conduct an evidentiary hearing in Rialto on March 28-30 and April 4-5 to determine whether to amend or reissue the Cleanup and Abatement Order requiring the investigation and remediation of perchlorate in the Rialto area, or to take such other action the State Water Board deems appropriate. The results of this hearing will determine which party(s) is/are responsible for the perchlorate contamination and will pay for cleanup and replacement water to the extent necessary.

Office of Environmental Health Hazard Assessment
Department of Toxic Substances Control
State Water Resources Control Board

Perchlorate

Significant Issue

Perchlorate, a chemical component of rocket fuels, roadside flares, fireworks and Chilean fertilizer, has been detected in more than 525 public drinking water wells in California. A number of these wells have been taken out of service or are being treated. The Colorado River also contains detectable levels of perchlorate, originating from a former perchlorate manufacturing facility in Henderson, NV. In addition to California, 32 other states have found perchlorate in their drinking water. The general U.S. population is also exposed to perchlorate in food, because various foods grown with perchlorate-contaminated water can accumulate the chemical.

Perchlorate inhibits the uptake of iodide into the thyroid gland, which may lead to decreased thyroid function, posing a particular problem for pregnant women, their fetuses, and infants.

Background/Discussion

High perchlorate concentrations were detected in groundwater beneath the Aerojet facility in Rancho Cordova dating back to the 1950s. In 1996, the U.S. Environmental Protection Agency (U.S. EPA) reported that low concentrations of perchlorate created a risk to public health. In 1997, a new analytical method lowered the detection limit for perchlorate in drinking water from 400 parts per billion (ppb) down to 4 ppb. Within a short time, perchlorate was discovered in groundwater at or near several California plants that provided and tested rockets for the U.S. military. It is likely that past product and waste management methods allowed large releases of perchlorate into drinking water aquifers and the Colorado River. The Regional Water Quality Control Boards and the Department of Toxic Substances Control (DTSC) have been investigating industrial facilities, military sites and other possible sources. It is too early to tell what total cleanup costs will be.

Intense efforts have been mounted in California and other states to determine safe levels of perchlorate exposure and develop drinking water standards. In 2004, California became the first state to develop a Public Health Goal (PHG) for the contaminant when the Office of Environmental Health Hazard Assessment (OEHHA) published a PHG of 6 ppb. The Department of Health Services (DHS) currently is proposing a state Maximum Contaminant Level of 6 ppb. Massachusetts has set a state MCL of 2 ppb, while New Jersey has proposed an MCL of 5 ppb. Several other states have drinking water guidelines ranging from 1 to 18 ppb. U.S. EPA has developed a non-regulatory drinking water number of 24.5 ppb, but unlike the various state numbers, the federal level does not account for probable exposure to perchlorate through food.

Question/Answer

What steps has Cal/EPA taken in response to a major new federal study of perchlorate's effect on the thyroid?

A U.S. Centers for Disease Control and Prevention (CDC) study published in October 2006 found an association between relatively low perchlorate exposure levels and changes in thyroid hormones in women with low iodide excretion. Several environmental groups have cited the study as a major reason for their recent request for OEHHA to initiate an early review of its 2004 PHG. OEHHA recently completed a thorough assessment and reanalysis of the CDC data, and replicated the CDC's findings. OEHHA has also discussed its analyses with the lead author of the CDC study.

OEHHA believes it would be premature to initiate an early review of the PHG for perchlorate because it needs further clarification on key issues concerning the significance of perchlorate exposures. The CDC is

February 16, 2007

currently conducting a follow-up study in which it is analyzing data from the two-thirds of the volunteers in its nationwide survey whose samples were not included as part of the 2006 CDC study. (That study only analyzed perchlorate in one-third of the samples.) OEHHA will be in a better position to interpret the results of the original findings after this confirmatory study is completed.

Further inquiry into questions raised by the CDC study and other new data on perchlorate will help ensure the highest quality of OEHHA's upcoming 2009 review of the perchlorate PHG, which is mandated by state law.

What steps has Cal/EPA taken to address cleanup of perchlorate in groundwater?

- o DTSC and the Water Boards have aggressively pursued investigation and cleanup at over 35 facilities. In a number of cases the Water Boards have required the responsible parties to provide alternate water supply or treated water. These include significant sites in Morgan Hill, Redlands, Livermore, Rialto-Colton, Hollister, Santa Clarita and Rancho Cordova. The Water Board initiated the first perchlorate remediation in the country at the Aerojet facility in Rancho Cordova in 1997.
- o The Water Boards, DTSC, and U.S. EPA have targeted areas where a number of public supply wells exceed the perchlorate PHG in order to identify sources and responsible parties. Each agency has investigated a number of these areas. Cal/EPA, DTSC, and the Water Boards developed a prioritization protocol with the Department of Defense and have implemented investigations at facilities not already under cleanup.
- o The State Water Board has provided direct aid in the form of State Water Board Cleanup and Abatement Account funds and Proposition 50 bond funds for water treatment at the well-head prior to distribution and use in the Rialto-Colton area, where 20 public supply wells had been taken out of service.

Status:

- o OEHHA staff scientists are maintaining regular contact with CDC scientists and risk assessors throughout the United States on matters pertaining to perchlorate.
- o Cal/EPA has established a federal and state agency monthly roundtable discussion addressing all aspects of perchlorate in California, including standard setting, sampling and assessment technologies, investigation approaches, and treatment technologies to ensure all agencies involved are well informed and coordinate activities.
- o Perchlorate levels in the Colorado River have fallen well below 6ppb due to continued cleanup and contamination control activities. This alleviates the concern over the Colorado River as a drinking water source, but questions remain over the perchlorate uptake in plants when the water is used for agricultural irrigation.
- o Several major sites of perchlorate releases (such as Rialto/Colton, Morgan Hill, and Rancho Cordova) will require monitoring and cleanup activities for decades.
- o Public drinking water supplies have been monitored for perchlorate for several years, with heavily contaminated wells being taken out of service or the water treated to remove perchlorate. However, the cost burden for water treatment is significant, and removal of wells from service has decreased available water supplies, which might prove a particular problem in the event of a prolonged drought.
- o A major and ongoing effort of the Water Boards is to identify responsible parties. Once identified, Water Boards can and do require responsible parties to provide replacement water or to treat perchlorate-contaminated water as a part of the cleanup process.
- o Private drinking water wells, which are not regulated in California, continue to be a source of perchlorate exposure (and a potential health risk) for certain rural populations. In Morgan Hill, the Central Coast Water Board required Olin to provide replacement water to owners of private wells exceeding the perchlorate PHG.

February 16, 2007

EXHIBIT 16

From: Dorothy Rice
To: Zwarts, Patty
Date: Mon, Mar 26, 2007 1:50 PM
Subject: Re: lunch??

Wednesday would be great! thanks Patty.

>>> "Zwarts, Patty" <PattyZ@CALEPA.ca.gov> 3/26/2007 1:46 PM >>>
Dorothy

I would love to and it was nice to see you this morning. I am pretty full this week but I am open this wed. Does that work? We just had a meeting with Gov. Wilson about the Rialto-Coulton cleanup and he wants Linda to take the site cleanup away from the SWRCB. And give it to DTSC. Oh boy. Linda wants to talk to SWRCB.

Patty

Sent from my BlackBerry Wireless Handheld

Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Dorothy Rice <DRice@waterboards.ca.gov>
To: Zwarts, Patty
Sent: Mon, Mar 26, 12:02:36, 2007
Subject: lunch??

Patty - I was wondering if you have time for lunch one day this week - it would be great to catch up and get your perspective on water board priorities. Let me know if any day is good for you - thanks!