



# State Water Resources Control Board



**Linda S. Adams**  
*Secretary for Environmental  
Protection*

## Executive Office

**Tam M. Doduc, Board Chair**  
1001 I Street • Sacramento, California 95814 • (916) 341-5615  
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100  
Fax (916) 341-5621 • <http://www.waterboards.ca.gov>

**Arnold Schwarzenegger**  
*Governor*

## FOURTH REVISED

### NOTICE OF PUBLIC HEARING

In the Matter of

### **PERCHLORATE CONTAMINATION AT A 160-ACRE SITE IN THE RIALTO AREA (SWRCB/OCC FILE A-1824)**

The Chair of the State Water Resources Control Board (State Water Board), Ms. Tam Doduc, will serve as Hearing Officer and will conduct a public hearing in this matter on August 21-22 and 27-30, 2007 at the San Bernardino County Auditorium in Rialto. The Hearing Officer will take testimony regarding legal responsibility, technical need for investigation and cleanup, feasibility of cleanup, and appropriate cleanup standards for the 160-acre Rialto site.<sup>1</sup> This Notice of Public Hearing (Notice) contains detailed requirements, many of which require action in advance of the hearing dates. Failure to adhere to the requirements in this Notice may affect your ability to participate in the hearing.

### **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. The Santa Ana Water Board Executive Officer (Executive Officer) issued a Cleanup and Abatement Order (CAO) on February 8, 2005 (See <http://www.waterboards.ca.gov/santaana/pdf/05-53.pdf>; 2005 CAO) and subsequent amendments naming a number of responsible parties. The Executive Officer is acting as part of the Santa Ana Water Board Advocacy Team (Advocacy Team), which was formed to enforce the Water Code with respect to the contamination. On October 27, 2006, the Advocacy Team issued a Draft Amended CAO No. R8-2005-0053 ([http://www.waterboards.ca.gov/santaana/perchlorate/Amended%20CAOR8-2005-0053\\_10\\_27\\_06Draft.pdf](http://www.waterboards.ca.gov/santaana/perchlorate/Amended%20CAOR8-2005-0053_10_27_06Draft.pdf); 2006 Draft CAO), naming several entities and requiring various actions including investigation, water replacement, and remediation.

The 2005 CAO and proposed amendments are the subject of challenges in petitions filed by various entities named as responsible parties. In light of the various objections and appeals, and the need to take action in an expeditious manner, the State Water Board will review this matter on its own motion. The Executive Director of the State Water Board, by letter dated February 5, 2007, informed all parties that the State Water Board would hold a hearing on this matter at the earliest possible date. It is in the best interest of all participants and the public who reside in the Rialto area that the hearings pertaining to this matter proceed in a fair, expeditious,

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<sup>1</sup> The 160-acre site in question is located in 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.

and cost-effective manner. Any investigation and remediation should likewise occur expeditiously.

The purpose of the evidentiary hearing is to receive evidence to determine whether to amend or reissue the 2005 CAO and whether to adopt the 2006 Draft CAO, as written or amended, for the investigation and remediation of perchlorate in the Rialto area, or take such other action the State Water Board deems appropriate. The Hearing Officer will make a recommendation to the full State Water Board. Any final action will be taken by the State Water Board.

### **PURPOSE OF HEARING**

The purpose of this hearing is to receive relevant testimony and evidence and to hear legal argument and policy statements on the following issues: legal responsibility for site investigation and remediation; the technical evidence justifying site investigation and cleanup; the feasibility and propriety of cleanup and other remediation requirements; and appropriate cleanup standards for protection of public health and beneficial uses of waters of the state. The scope of the hearing will cover the 160-acre Rialto site, including but not limited to perchlorate and trichloroethylene (TCE) contamination, sources, responsible parties, investigation, and remedial actions.

The hearing will be held on August 21-22 and August 27-30, 2007 at the San Bernardino County Auditorium at 850 East Foothill Boulevard in Rialto. The hearing schedule will be as follows:

Tuesday, August 21:	10:00 a.m. – 9:00 p.m. (with two 60-minute breaks)
Wednesday, August 22:	9:00 a.m. – 5:00 p.m. (with one 60-minute break)
Monday, August 27:	10:00 a.m. – 9:00 p.m. (with two 60-minute breaks)
Tuesday, August 28:	10:00 a.m. – 9:00 p.m. (with two 60-minute breaks)
Wednesday, August 29:	10:00 a.m. – 9:00 p.m. (with two 60-minute breaks)
Thursday, August 30:	9:00 a.m. – 5:00 p.m. (with one 60-minute break)

The hearing will be conducted by Ms. Tam Doduc acting as Hearing Officer. Other State Water Board members may be present at various times during the hearing. At the hearing, the Hearing Officer will receive oral and written testimony, legal arguments, and policy statements on the issues described above.

### **HEARING PARTICIPATION**

Participants at the hearing are either “parties” or “interested persons.” **Parties** to the hearing may present legal and policy arguments, testimony by witnesses, and evidence. The parties’ witnesses are subject to cross-examination. Parties may also cross-examine other parties’ witnesses. The scope of cross-examination is limited to testimony presented during direct examination and the evidence and testimony presented by the party. Requirements for submission of written argument, witness lists and testimony, and exhibits are described below.

**Interested persons** may present non-evidentiary policy statements by following the requirements listed below. Interested persons are not subject to cross-examination and may not cross-examine other participants. (Parties may not submit separate policy statements. Their submissions are all subject to the requirements for party submissions.)

#### **REQUIREMENTS FOR PARTICIPATION AS AN INTERESTED PERSON**

**Interested persons** may present non-evidentiary policy statements. The policy statements may present legal and policy arguments and statements concerning any of the issues that will be considered at the hearing. Policy statements may refer to evidence in the record, but cannot include any testimony or new evidence, and must be limited to **five pages, single-sided, double-spaced**. Written policy statements have already been submitted in accordance with the April 24, 2007 Third Revised Notice of Public Hearing. Interested persons may comment orally at the hearing, whether or not they submitted a written policy statement, but no written statements will be accepted at the hearing.

#### **REQUIREMENTS FOR PARTICIPATION AS PARTIES**

The following participants are hereby designated as parties at the hearing:

1. Santa Ana Water Board Advocacy Team [Advocacy Team]
2. Goodrich Corporation [Goodrich]
3. Pyro Spectaculars, Inc. [Pyro]
4. Emhart Entities (collectively Kwikset Locks, Inc., Emhart Industries, Inc., Kwikset Corporation, Black & Decker Inc., and Black & Decker [U.S.] Inc.) [Emhart]
5. City of Rialto and Rialto Utility Authority [Rialto]
6. Center for Community Action and Environmental Justice [CCA EJ]

#### **PARTY SUBMISSIONS**

Each party shall adhere to the following instructions for submission of documents prior to the hearing.

##### **Tuesday, February 27, 2007 at 5:00 p.m.: Advocacy Team's Pleading**

Already submitted in accordance with the February 23, 2007 Notice of Public Hearing.

##### **Monday, March 5, 2007 at 5:00 p.m.: Pre-Hearing Motions**

Already submitted in accordance with the February 23, 2007 Notice of Public Hearing. Any pre-hearing motions had to be submitted by **Monday, March 5, 2007 at 5:00 p.m.** The Hearing Officer has discretion to grant or deny any pre-hearing motions and to modify any previous ruling.

##### **Tuesday, March 27, 2007 at 5:00 p.m.: Advocacy Team's Documents, Testimony, and Exhibits**

Already submitted in accordance with the March 8, 2007 Revised Notice of Public Hearing.

**Friday, April 6, 2007 at 5:00 p.m.: Advocacy Team's Detailed Description of Witness' Testimony**

Already submitted in accordance with the April 3, 2007 Second Revised Notice of Public Hearing.

**Thursday, April 12, 2007 at 5:00 p.m.: Rialto's and CCAEJ's Documents, Testimony, and Exhibits**

Already submitted in accordance with the April 3, 2007 Second Revised Notice of Public Hearing.

**Tuesday, April 17, 2007 at 5:00 p.m.: Emhart's, Goodrich's, and Pyro's Documents, Testimony, and Exhibits**

Already submitted in accordance with the April 3, 2007 Second Revised Notice of Public Hearing.

**Thursday, May 17, 2007: Final Day for Discovery**

All discovery pursuant to the authority of the State Water Board ceased on **Thursday, May 17, 2007. This cutoff date remains in effect.**

**Thursday, June 7, 2007 at 5:00 p.m.: Rebuttal for Advocacy Team, Rialto, Emhart, Goodrich, and Pyro**

Already submitted in accordance with the April 24, 2007 Third Revised Notice of Public Hearing. The Hearing Officer maintains her discretion to strike any testimony or evidence **acquired after May 17, 2007.**

**Monday, July 9, 2007 at 5:00 p.m.: Submission of a Briefing Schedule**

As stipulated by the parties, they shall submit a briefing schedule for **existing** motions and objections and submit their schedule to the Hearing Officer. **No new motions may be submitted as part of this submission.** The Hearing Officer may accept, reject, or modify the schedule submitted by the parties.

**Wednesday, August 8, 2007 at 10:00 a.m.: Pre-Hearing Conference**

A pre-hearing conference will be held at the Cal/EPA Building in Sacramento. The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. There will be no discussion during the pre-hearing conference of any substantive issues regarding the Rialto-Area Perchlorate contamination. **No pre-hearing motions will be accepted during the pre-hearing conference.**

**Friday, August 10, 2007 at 12:00 p.m.: PowerPoint and other Computer Displays**

Parties may submit PowerPoint and other computer displays electronically. Electronic submissions must be received by **Friday, August 10, 2007 at 12:00 p.m.** These submissions will only be accepted if they summarize the information contained in documents that were timely submitted in compliance with the deadlines and restrictions described above. They will not be accepted if they contain any new testimony, evidence, or arguments. Electronic submissions must be sent so as to be received electronically by all other parties by the deadline. They must be in a format that is readable by the computers at the State Water Board.

### **Closing Briefs**

Parties may submit a closing brief after the hearing. The Hearing Officer will notify the parties regarding the requirements for this submission soon after the close of the hearing.

**No documents will be accepted at the hearing** whether they are new evidence or argument, summaries or compilations, or any other materials. The Hearing Officer **will strictly enforce** the deadlines, page limits, and limits on oral presentations and written submissions described herein. All submissions must be submitted in paper hard copy to the State Water Board and must be served on all designated parties. Any presentation using a computer must comply with the requirements for "PowerPoint and other Computer Displays" described above. Computer files with the **same information** as the hard copy may be emailed if necessary. All submissions must be transmitted so as to be received by each party in the same format and on the same due date as for submissions to the State Water Board.

Oral testimony by witnesses that goes beyond the scope of written submittals will be excluded. Written declarations from persons who are not present and subject to cross-examination will not be made part of the record. Depositions will be accepted without the deponent's personal appearance, to the extent consistent with the California Evidence Code.

### **HEARING PROCEDURES**

#### **Time Limitations for Parties and Order of Appearances**

To ensure that everyone has an opportunity to participate in the hearing, the following time limits will apply. Each party will be allotted a total of five hours to make opening statements, present evidence, testimony, legal and policy arguments, and conduct cross-examination. Each party will first have the opportunity to make an opening statement. Following the opening statements of all parties, each party will conduct its direct examination. After hearing all parties' direct examination, each party will have the opportunity to conduct cross-examination of any other parties' witnesses. The sum of these three stages will not exceed the allotted five hours for each party. After all the parties have conducted cross-examination, each party will be allotted an additional thirty minutes to present rebuttal and closing arguments. Parties may not "cede" their time to other parties or interested persons. Parties may not "reserve" unused time for their rebuttal and closing arguments.

#### **Order of Party Presentations**

It is anticipated that the parties will present their cases in chief and their rebuttal presentations in the following order:

1. Advocacy Team
2. Rialto
3. Emhart
4. Goodrich
5. Pyro
6. CCAEJ

### **Time Limitations for Interested Persons and Time Set Aside for Public Comments**

Interested persons will each be given between 3 – 5 minutes to present their policy statements. The amount of time may be limited depending on the number of speakers and is at the discretion of the Hearing Officer. The Hearing Officer may, at her discretion, allow a group of persons who are all present to make a joint presentation. Persons who are members of a group that is a party are **not** entitled to submit or make a separate policy statements. It is anticipated that time will be set aside each hearing day for interested persons to make oral statements. There will be times during the day and the evening for the public, although not necessarily each day and each evening of the hearings.

### **Court Reporter**

The State Water Board will provide a court reporter. Any party who wishes to bring its own court reporter may do so, but may be limited as to where the court reporter may sit.

### **Seating of Parties**

Each party will be provided with a place to sit during its presentation. During the rest of the hearing, parties will likely be seated in the audience.

### **SUBMISSION OF WRITTEN MATERIALS**

All written materials shall be submitted to the State Water Board at the following address:

Karen O'Haire, Senior Staff Counsel  
State Water Resources Control Board  
Office of Chief Counsel  
1001 I Street, 22nd Floor  
Sacramento, CA 95814  
Reference: (SWRCB/OCC FILE A-1824)  
Email: [kohaire@waterboards.ca.gov](mailto:kohaire@waterboards.ca.gov)

Parties must also submit their written materials to all other parties at the following addresses:

1. Advocacy Team:  
Jorge A. León, Esq.  
State Water Resources Control Board  
Office of Enforcement  
1001 I Street, 16<sup>th</sup> Floor  
P.O. Box 100  
Sacramento, CA 95812-0100
2. Goodrich:  
Peter R. Duchesneau, Esq.  
Manatt, Phelps & Phillips LLC  
11355 West Olympic Boulevard  
Los Angeles, CA 90064-1614

3. Pyro:  
Philip C. Hunsucker, Esq.  
Resolution Law Group, P.C.  
3717 Mt. Diablo Blvd., Suite 200  
Lafayette, CA 94549
  
4. Emhart:  
Robert D. Wyatt, Esq.  
Allen Matkins Leck Gamble Mallory & Natsis LLC  
3 Embarcadero Center, 12th Floor  
San Francisco, CA 94111-4074
  
5. Rialto:  
Scott A. Sommer, Esq.  
Pillsbury Winthrop Shaw Pittman LLP  
50 Fremont Street  
San Francisco, CA 94105-2228
  
6. CCA EJ:  
Ms. Penny Newman  
Center for Community Action and Environmental Justice  
7701 Mission Boulevard (92509)  
P.O. Box 33124  
Riverside, CA 92519

### **LOCATION AND ACCESSIBILITY**

The San Bernardino County Auditorium is accessible to people with disabilities. Public parking is available on site. A map of the exact location is attached to this notice.

Individuals who require special accommodations are requested to contact Lucille Cruz at (909) 421-9435 at least five (5) working days prior to the hearing.

### **AUTHORITY FOR HEARING AND LEGAL REQUIREMENTS**

The State Water Board may, on its own motion, at any time, review a regional water quality control board's action or failure to act. (Water Code, § 13320.) In so doing, the State Water Board is vested with all the powers of the regional water quality control board. A single State Water Board member is authorized to serve as a Hearing Officer pursuant to Water Code section 183. Previously, the State Water Board has delegated the selection of a Hearing Officer to its Executive Director, in consultation with the State Water Board's Chair. (SWRCB Resolution No. 2002-0104, ¶ 8; see <http://www.waterboards.ca.gov/resdec/resltn/2002/rs2002-0104.pdf>.)

The Hearing Officer will conduct the hearing in accordance with the State Water Board's regulations governing adjudicative proceedings and incorporated provisions of Chapter 4.5 of the Administrative Procedure Act (APA). The State Water Board's regulations are in the

California Code of Regulations, title 23, commencing with section 648 (<http://www.calregs.com>) and will be provided upon request. The APA provisions commence at California Government Code section 11400. The hearing will not be conducted as a hearing under Chapter 5 of the APA (commencing with Government Code section 11500).

**IF YOU HAVE ANY QUESTIONS**

Questions concerning the hearing may be addressed to Karen O'Haire, Senior Staff Counsel, at (916) 341-5179 or at [kohaire@waterboards.ca.gov](mailto:kohaire@waterboards.ca.gov).



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Song Her  
Clerk to the Board

Dated: July 5, 2007

Enclosure



San Bernardino County Auditorium  
850 East Foothill Boulevard  
Rialto, CA 92376-5230

