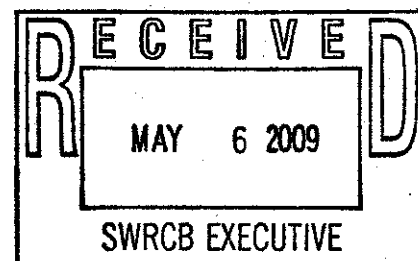




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May 6, 2009

Via Electronic Mail

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
P.O. Box 100  
Sacramento, CA 95812-0100

Re: Comments to A-1824 – May 19, 2009 Board Meeting

To the Clerk to the Board and Members of the Board:

The City of Rialto and Rialto Utility Authority (“Rialto”) submit these comments to Draft Order WQ 2009-\_\_\_, In the Matter of the Petition of Rialto-Area Perchlorate Contamination; SWRCB/OCC File A-1824. Almost two years have passed since the hearing was scheduled in this matter. The citizens of Rialto have continued to bear the financial burden of the perchlorate and TCE contamination in the Rialto-Colton Basin. It is critically important to Rialto’s citizens that this matter move forward so the State Water Resource Control Board (“SWRCB”) can enforce the applicable provisions of the California Water Code as the Legislature intended.

Rialto supports the SWRCB’s assumption of jurisdiction over this matter, the appointment of a hearing officer with authority to resolve procedural and discovery issues, the scheduling of a hearing at an appropriate time to allow the SWRCB to consider evidence developed since May 2007, and the ultimate resolution of this matter.

Summary of Rialto’s Position

Rialto anticipates that there will be significant additional evidence based on recent testing data as to the effect of the operations of Goodrich and Emhart/West Coast

Loading Corporation. It would be appropriate that this new evidence be admitted in the upcoming hearing.

Draft Order WQ 2009-\_\_\_\_ should be sufficiently clear that the State Board is delegating to the Executive Officer the authority to appoint the hearing officer to consider whether it will be appropriate to include up to three additional PRPs in the proceeding. It can be anticipated that Goodrich and Emhart/West Coast Loading Corporation will argue that one source of perchlorate contamination is a former pit in operation from approximately 1972 to 1987, referred to as the "McLaughlin Pit". One of the dischargers into that pit is currently named in the proceedings, Pyro Spectaculars, Inc. However, another PRP, Harry Hescox on behalf of Pyrotronics Corporation and its insurers, has not been named. As the issue of the McLaughlin Pit is likely to be adjudicated in the hearing, the Executive Officer and hearing officer should have the authority to consider inclusion of this PRP. The same is true for the property owners who currently own the sites on which Goodrich and Emhart/West Coast Loading Corporation have operated.

The Executive Officer and hearing officer should have authority to consider whether additional evidence will be submitted as to the alleged ex parte communications, pursuant to Govt. Code § 11430.50.<sup>1</sup>

Accordingly, we believe that additional language should be included in the "Further Proceedings" section of Draft Order WQ 2009-\_\_\_\_ at p. 4, as follows:

This authorization to the Executive Director includes, but is not limited to, authorization to direct the Hearing Officer, in the Hearing Officer's discretion, to consider that additional PRPs be named in the proceeding,

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<sup>1</sup> Govt. Code § 11430.50 provides, in pertinent part:

(c) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:

- (1) The party shall be allowed to comment on the communication.
- (2) The presiding officer has discretion to allow the party to present evidence concerning the subject of the communication....

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and to consider such evidence, consistent with Govt. Code § 11430.50 and other provisions of California law, that the PRPs may wish to present concerning the subject of the alleged ex parte communications.

Rialto concurs with the Santa Ana Regional Board that it would be appropriate that the Regional Board be authorized to continue with other proceedings regarding the 160-acre parcel and other affected areas of the City of Rialto, to the extent not inconsistent with Draft Order WQ 2009-\_\_\_\_\_.

The Draft Order Complies with Law

Draft Order WQ 2009-\_\_\_\_\_ is appropriately based upon Water Code § 183, which provides:

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.

Any hearing or 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 action, but any final action of the board shall be taken by a majority of all the members of the board, at a meeting duly called and held.

All hearings held by the board or by any member thereof shall be open and public.

(Emphasis added.)

Govt. Code § 11182 provides:

The head of a department may delegate the powers conferred upon him by this article to any officer of the department he authorizes to conduct the investigation or hearing.

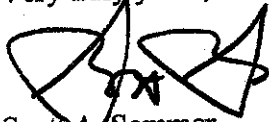
Draft Order WQ 2009-\_\_\_\_\_ properly delegates to the Executive Director the authority to select a hearing officer for the evidentiary hearing and is consistent with the SWRCB's authority and delegations under the Government Code, Water Code and the judgment of the Los Angeles Superior Court.

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Conclusion

The citizens of Rialto thank you for your time and attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott A. Sommer". The signature is stylized and somewhat abstract, with a large "S" and "A" being the most prominent features.

Scott A. Sommer

Attachments

cc: Lyris List