

State of California
Santa Ana Regional Water Quality Control Board

Minutes of the June 18, 2021 Board Meeting
Video and Teleconference Meeting
No Physical Meeting Location
(Authorized by and in furtherance of
Executive Order N-08-21)

Chair Ruh called the meeting to order at 9:00 a.m.

1. **Introductions**

Board Members Present at Virtual Board Meeting:

Lana Peterson, Chair
Kris A. Murray, Vice Chair
William Ruh
Daniel P. Selmi
Joseph Kerr
Letitia Clark

Staff Present at Virtual Board Meeting:

Hope A. Smythe, Executive Officer
Jayne Joy, Assistant Executive Officer
Teresita Sablan, Regional Board Counsel
Ann E. Sturdivant, Division Chief
Mark E. Smythe, Division Chief
Lauma Willis, Division Chief
Julio C. Lara, Chief of Wastewater
Kevin Heinemann, Information Technology Manager
Don Nguyen, Information Technology Associate
Daniel Mefford, Information Technology Specialist I
Jeannie Aguilar, Associate Governmental Program Analyst, Board Clerk
Ryan Harris, Water Resource Control Engineer
Valerie Jahn-Bull, Senior Environmental Scientist
Ken Williams, Senior Engineering Geologist
SueAnn Neal, Environmental Scientist
Claudio Tenorio, Environmental Scientist
Eric Lindberg, Senior Engineering Geologist
Sean Maguire, State Board Liaison
Jennifer Fordyce, Assistant Chief Counsel, State Water Board

Also Present at Virtual Board Meeting

Julie Song, EPA Region 9
Jim Herberg, Orange County Sanitation District
David Shawver, Orange County Sanitation District

Mike Markus, Orange County Water District
Lan Wiborg, Orange County Sanitation District
Marlee Nelson, Court Reporter
(*Court Reporter recorded items 1, 4, 5, 7, 8, 9, 10*).

Virtual Public Attendance by Virtual Speaker Cards Received

Barry Jones, Bryan Bergerson, Jason Dadakis, Orange County Water District; Stephen Weisberg, SCCWRP; Mark B. Gilmartin, Law Offices of Mark B. Gilmartin; Jeff Appel, United El Segundo; Ed Rands, Frey Environmental; Joe Frey, Frey Environmental.

Break at 10:37 a.m. return at 10:53 a.m.

Item 2. Public Forum:

None

Item 3. State Water Resources Control Board (SWRCB) Liaison Report

This item was presented by Sean Maguire.

Mr. Maguire discussed the drought challenges and said we should prepare for drought conditions. The Water Board has been challenged this year in managing limited resources of water. Mr. Maguire mentioned Governor Newsom's California Comeback Plan of \$5.1 billion for immediate drought response and long-term water resilience to ensure that California has the water infrastructure it needs.

Mr. Maguire announced we have a new State Water Board Member Nicole Morgan and she looks forward to joining the Board.

Mr. Maguire gave an update on racial equity efforts informing the Board the Racial Steering Committee and the Racial Equity Work Group have put a lot of effort into developing a resolution. The resolution will be going out as a draft and we are hoping to have that on the State Board agenda for adoption consideration in August. Mr. Maguire hopes that the Regional Boards will consider adopting either the same resolution or a similar type of resolution.

Board Members had questions for Mr. Maguire.

Item 4. Regional Board Meeting Minutes of May 7, 2021

Chair Peterson asked for a motion and asked Board Clerk Ms. Aguilar for a roll call vote. (*Information pertaining to this item is contained in a verbatim transcript of the proceedings*).

Motion: It was moved by Board Member Ruh, seconded by Board Member Selmi, and the Minutes of the May 7, 2021 Board Meeting was unanimously approved by roll call vote.

Board Member Kerr seconded the motion, and then asked to withdraw his motion. Board Member Kerr and Vice Chair Murray were not at the Board Meeting of May 7, 2021.

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Roll call vote: Board Member Letitia Clark - Aye, Board Member Daniel Selmi - Aye, Board Member William Ruh – Aye, Chair Lana Peterson – Aye, Board Member Joe Kerr – I abstain, Vice Chair Kris Murray – I abstain.

Item 5. Consideration of the Consent Calendar items are listed with an asterisk

Chair Peterson asked the Board Members for a motion and asked Board Clerk Ms. Aguilar for a roll call vote.

(Information pertaining to this item is contained in a verbatim transcript of the proceedings).

Item *6. Renewal of Waste Discharge Requirements and National Pollutant Discharge Elimination System Permit (NPDES Number CA0110604) for Orange County Sanitation District's Reclamation Plant Number 1 and Treatment Plant Number 2, Collection System, and Outfalls – Order Number R8-2021-0010
(Item 6 was removed from the consent calendar and presented after approval of the consent items).

Item *7. Waste Discharge Requirements for Lennar Homes of California, Inc. Pacific Mayfield Residential Development Project, City of Menifee, Riverside County - Order Number R8-2021-0032

Item *8. Waste Discharge Requirements for FPG SUN Menifee 80, LLC Project, City of Menifee, Riverside County - Order Number R8-2021-0033

Item *9. Short-Term Renewal of Order Number R8-2016-0003, as Amended by Order Number R8-2017-0023, Conditional Waiver of Waste Discharge Requirements for Discharges from Agricultural Operations in the Watershed of the San Jacinto River and its Tributaries, and Canyon Lake and Lake Elsinore and their Tributaries Collectively “The San Jacinto Watershed”, Riverside County, Order Number R8-2021-0034

Motion: It was moved by Board Member Ruh, seconded by Board Member Clark and unanimously carried to adopt Orders R8-2021-0032, R8-2021-0033 and R8-2021-0034 as presented by roll call vote.

Roll call vote: Board Member Letitia Clark - Aye, Board Member Joe Kerr - Aye, Board Member Daniel Selmi - Aye, Board Member William Ruh - Aye, Vice Chair Kris Murray - Aye, Chair Lana Peterson - Aye.

Item 6. Renewal of Waste Discharge Requirements and National Pollutant Discharge Elimination System Permit (NPDES Number CA0110604) for Orange County Sanitation District's Reclamation Plant Number 1 and Treatment Plant Number 2, Collection System, and Outfalls – Order Number R8-2021-0010

Presentation by Julio C. Lara, Chief of Wastewater and Ryan Harris, Water Resource Control Engineer.

Mr. Harris said Orange County Sanitation District is a public agency that provides wastewater collection, treatment and disposal to communities living in a 479 square-mile area of central and northwest Orange County.

Mr. Harris provided an overview of what Orange County Sanitation District owns and operates and a detailed map of Orange County Sanitation plant locations and service areas including a map of the average daily flow rates and discharge locations. Mr. Harris explained the wastewater treatment process and displayed a diagram of the Orange County Sanitation 2023 flow schematic.

Mr. Lara discussed the Tentative Order overview and explained the facility information and findings, prohibitions, discharge specifications – narrative, effluent limitations – numeric and performance goals and mass emission benchmarks and the Ocean Monitoring Reporting Program.

Due to the primary ocean outfall discharging beyond the 3-mile offshore border, OCSD must have a joint USEPA and SARWQCB permit. Mr. Lara stated Ms. Song from USEPA drafted the permit and Board staff assisted Ms. Song with the permit.

SARWQCB received nine Letters of Support from different cities within the service area of Orange County and received Comment Letters from Orange County Sanitation District, Orange County Public Works and Orange County Coastkeeper. Mr. Lara answered and explained the concerns and questions from the Comment Letters to the Board.

Mr. Lara introduced Ms. Julie Song to the Board.

Ms. Song said EPA would like to express support for the Board adoption of the Order.

Board members had questions for Mr. Lara and Ms. Song.

Speakers: David Shawver, Orange County Sanitation District; Jim Herbert, Orange County Sanitation District; Lan Wiborg, Orange County Sanitation District; Mike Markus, Orange County Water District; Jason Dadakis, Orange County Water District; Stephen Weisberg, Southern California Coastal Water Research Project Authority; Lauren Chase, Orange County Coastkeeper.

Chair Peterson asked for a motion and asked Board Clerk Ms. Aguilar for a roll call vote.

Motion: It was moved by Vice Chair Murray, seconded by Board Member Kerr and unanimously carried to adopt Order R8-2021-0010 as presented by roll call vote.

Roll call vote: Board Member Letitia Clark - I abstain, Board Member Joe Kerr - Aye, Board Member Daniel Selmi - Aye, Board Member William Ruh - Aye, Vice Chair Kris Murray - Aye, Chair Lana Peterson - Aye.

Item 10. Cleanup and Abatement Order R8-2021-0006, United El Segundo, Inc., Restructure Petroleum Marketing Service of California, Inc., My Montecito Inc. SH et al.

(Information pertaining to this item is contained in a verbatim transcript of the proceedings).

Chair Peterson announced, this is the time and place set aside for the Santa Ana Water Board's consideration of Cleanup and Abatement Order for R8-2021-0006. Chair Peterson gave instructions on how the hearing will proceed. Each designated party will be provided an opportunity to provide testimony. We will hear the testimony from Santa Ana Water Board staff, then Responsible Parties from United El Segundo will be allotted 30 minutes to provide their testimony. Board Members may ask questions at the end of the presentation. The matter before the Board is whether to rescind Cleanup and Abatement Order R8-2016-0048 and replace it with Cleanup and Abatement Order R8-2021-0006.

Chair Peterson opened the hearing by administering the Oath. The meeting was held on Zoom and not in person.

Responsible Parties

Representatives of the Responsible Parties: Mark B. Gilmartin, Law Offices of Mark B. Gilmartin, legal counsel for United El Segundo, former owner, Rapid Gas Inc., former operator, CF United PropCo, the current owner and operator of the existing gas station at 6020 Arlington Avenue; Joe Frey, Principal Engineering Geologist, Frey Environmental; Ed Rands, Frey Environmental; Jeff Appel, Officer of United El Segundo and Rapid Gas.

Santa Ana Regional Water Board Staff Testimony

Presented by Valerie Jahn-Bull, Senior Environmental Scientist.

Ms. Jahn-Bull's presentation to the Board of Cleanup and Abatement Order for R8-2021-0006 - Commingled Plume Cleanup for Former United Oil/Rapid Gas Number 37 (6020 Arlington Avenue) and E-Z Serve Gas Station (6160 Arlington Avenue) Riverside.

Ms. Jahn Bull stated the matter considered by the Santa Ana Water Board is whether to rescind and replace Cleanup and Abatement Order R8-2016-0048 with Cleanup and Abatement Order R8-2021-0006 (Order), which would require the Responsible Parties to remediate petroleum hydrocarbon contamination, inclusive of both soil and ground water impacts attributable to unauthorized releases of hazardous materials and discharges of waste at adjacent retail fueling operations, as well as the commingled groundwater plume stemming from those releases/discharges, pursuant to authorities granted under Health and Safety Code section 25296.10, California Code of Regulations, title 23, sections 2720–2727, and Water Code sections 13304 and 13267.

Ms. Jahn-Bull presented relevant background regarding the two site's ownership and operational histories, the chemical make-up of the respective site releases and other technical data collected during source area investigations for both properties, and discussed the fate and transport mechanisms, which allowed for off-site migration of groundwater impacts into the surrounding areas and resulted in the commingling of site contaminants into an expansive plume (comprised of pollutants from both sites) that had, to date, been shown to extend beneath adjacent streets, rights-of-way, private residences,

and a nearby elementary school. The evidence that was presented by Ms. Jahn-Bull provided the technical basis for imposing joint and several liability with respect to any necessary cleanup required to abate the effects of the commingled groundwater plume.

Ms. Jahn-Bull also highlighted the potentially serious threat posed to the underlying groundwater resource and human health, and outlined the additional testing and site investigation that would be required pursuant to the Order, to delineate the full extent of site impacts and further evaluate the threat to public health and safety, as necessary to identify adequately-scaled corrective action responses for each of the respective source properties (individually) and the commingled plume (collectively).

Board members had questions for Ms. Jahn-Bull.

Responsible Parties Testimony

United El Segundo Inc. representatives Attorney Mark B. Gilmartin, Ed Rands and Jeff Appel provided testimony.

Responsible Party representatives for the 6020 Arlington Avenue source property, including current and former owners and operators and their legal counsel, provided testimony opposing the Order, citing concerns related to Responsible Party identification and apportionment of responsibility, and disputed staff's commingled plume determination.

To the best of staff's knowledge, Responsible Party representatives for the 6160 Arlington Avenue source property did not attend and made no effort to exercise their right to participate in the proceedings or offer testimony.

Board Members asked questions to representatives of United El Segundo Inc.

Open Discussion

Board Members asked questions to staff and Attorney Mark B. Gilmartin.

Board staff recommended the adoption of Order Number R8-2021-0006.

Chair Peterson asked for a motion and asked Board Clerk Ms. Aguilar for a roll call vote.

Motion: It was moved by Board Member Ruh seconded by Board Member Kerr and was unanimously carried to adopt Order Number R8-2021-0006 and rescind Cleanup and Abatement Order R8-2016-0048 by roll call vote.

Roll call vote: Board Member Letitia Clark - Aye, Board Member Joe Kerr - Aye, Board Member Daniel Selmi - Aye, Board Member William Ruh - Aye, Vice Chair Kris Murray - Aye, Chair Lana Peterson - Aye.

Board Members were unhappy with My Montecito violating the law and asked legal counsel what can be done within our legal authority to force them into compliance.

Item 11. Underground Storage Tanks Corrective Action Plans

Report on File.

Item 12. Underground Storage Tanks Site Closure Report

Report on File.

Item 13. Executive Officer's Report

Hope Smythe made note of the Executive Order from the Governor resuming in person meetings after September 30, 2021.

Item 14. Regional Board Member and Executive Officer Communications

Board Members discussed Dr. Tom Rivera's retirement and how much he will be missed.

Closed Session

Chair Peterson leads everyone to the closed session to consider personnel matters under Government Code Section 11126 (a)(1).

Adjournment – Chair Peterson adjourned the meeting at 12:36 p.m. to the regular Board Meeting of July 30, 2021 at 9:00 a.m. This will be a video and teleconference meeting. Due to the COVID-19 emergency and the Governor's Executive Order N-08-21, recent Board meetings have been presented as video and teleconference meetings with no physical meeting location, and solely via remote presence. Please follow our website for further updates.

Respectfully submitted:

JAYNE JOY
Executive Officer

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