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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER: WQ 97 - 08

In the Matter of the Petition of
EAST CHARLESTON, INC.
for Review of Administrative Civil Liability
Orders 96-108 and 96-109 of the
California Regional Water Quality Control Board,
San Francisco Bay Region

SWRCB/OCC File A-1039

BY THE BOARD:

On July 17, 1996, the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) adopted two orders assessing administrative civil liability against a closely held corporation called East Charleston, Inc. The two orders were based on complaints issued by the Executive Officer and were affirmed in the amounts of \$184,400 and \$9,400. The Regional Water Board suspended 80 percent of the larger sum on condition that certain actions required by an earlier cleanup and abatement order be carried out in a timely fashion.

East Charleston, through its sole stockholder, Ronald Hothem, filed a timely petition challenging both orders. About two months after the petition was filed and while it was under consideration by legal staff, Mr. Hothem was killed in an industrial accident. His widow and two young children contacted legal staff and requested a dismissal of the orders under review. They were referred to the Regional Water Board so that all relevant circumstances could be considered by the fact-finder most familiar with the case.

On July 16, 1997, the Regional Water Board adopted Resolution 97-093 asking the State Water Resources Control Board (State Water Board) to amend the orders so that only staff costs of \$2,760 are owed.

I. BACKGROUND

The site in Palo Alto was formerly occupied by Fairchild Chemical, then by Advalloy, Inc. The latter caused the site to be polluted with volatile organic compounds before going bankrupt and dissolving a few years ago. East Charleston was formed by Mr. Hothem for the sole purpose of buying the site from the trustee in bankruptcy. The sale took place in April 1995. Staff from the Regional Water Board met with Mr. Hothem before he bought the property so that he was well aware of the pollution at the site.

In October 1995, after East Charleston bought the site, Regional Water Board staff issued what they insist on calling "site cleanup requirements" to East Charleston pursuant to Water Code Section 13304. An order was adopted by the full Board in November after a hearing that was not attended by Mr. Hothem or anyone else representing East Charleston. No petition to review the order was filed with the State Water Board.

The Section 13304 order required the submittal of a remedial investigation workplan by January 1996. None was received. Staff contacted Mr. Hothem in February to notify him that East Charleston was in violation of the order. He responded by explaining that his company did not have enough money to begin the cleanup activity and that other neighboring properties and former occupants of his property should be contacted about the problem. (In 1990, the Regional Water Board had determined in a public hearing that there was not enough evidence in the file to justify naming Fairchild to the order. Advalloy no longer exists as a corporate entity.)

In May 1996, believing that East Charleston was a shell corporation, the Regional Water Board staff attempted to learn more about its finances. The Executive Officer served a request for more information pursuant to Water Code Section 13267. No answers were provided in the time specified.

In May 1996, the Executive Officer issued an administrative civil liability complaint to East Charleston in the amount of \$22,000 for its failure to abide by the Section 13304 order. A hearing was scheduled for June 19, 1996. Mr. Hothem was unable to attend that hearing because of a trial in Sonoma County and asked a colleague to attend and request a continuance. The Regional Water Board granted the request but instructed staff to reissue the complaint for the additional days that had passed and to use a higher per-day amount to set the proposed assessment. They also asked staff to issue a separate complaint for the failure to respond to the Section 13267 request.

New complaints for administrative civil liability were issued in the amount of \$170,960 for violation of the Section 13304 order and \$7,000 for the Section 13267 order. By the time of the hearing on July 17, 1996 both amounts were higher because of ongoing violations.

At the hearing on the new complaints, the Regional Water Board staff made a presentation and both Mr. Hothem and his consultant testified. Thereafter, the Regional Water Board affirmed the complaints and adopted orders assessing civil liability in the amounts of \$184,400 and \$9,400. All but 20 percent (\$36,880) of the larger order was suspended conditioned on future compliance with a time schedule for cleanup. None of the smaller assessment was suspended.

II. CONTENTION AND FINDING

Contention: The change of circumstances occasioned by the death of Mr. Hothem justifies amending the administrative civil liability order as requested by the Regional Water Board's resolution.

Finding: Considering what has happened since the adoption of the two orders, it is entirely reasonable to amend them as suggested by the Regional Water Board. Given the facts of this case, it is appropriate for the State Water Board to defer to the judgment of the Regional Water Board. They are more familiar with the facts of the case, the intent that was behind the decision to adopt the orders, and the impact that amending the orders will have on their programs.

Section 13323(d) of the Water Code says that an order assessing administrative civil liability is "effective and final upon issuance thereof" and requires payment within 30 days. The petition process does not alter the finality of the Regional Water Board order. Therefore, the Regional Water Board is unable to amend its own administrative civil liability orders and must rely on the State Water Board to do so.

III. CONCLUSION

The death of Mr. Hothem significantly changed the circumstances behind the administrative civil liability assessment. The request by the Regional Water Board, based on its judgment that the changed circumstances justify amending the orders, should be honored.

IV. ORDER

IT IS HEREBY ORDERED THAT Orders 96-108 and 96-109 issued by the San Francisco Bay Regional Water Quality Control Board on July 17, 1996, should be and hereby are amended as follows:

1. The amount owed by East Charleston, Inc. under Order 96-108 shall be reduced to \$2,400.
2. The amount owed by East Charleston, Inc. under Order 96-109 shall be reduced to \$360.

CERTIFICATION

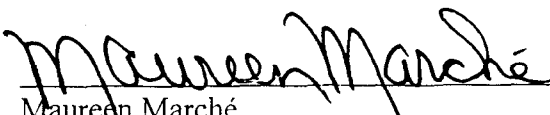
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 23, 1997.

AYE: John P. Caffrey
James M. Stubchaer
Marc Del Piero
Mary Jane Forster
John W. Brown

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Administrative Assistant to the Board



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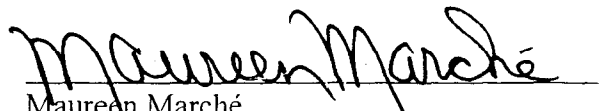
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NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Administrative Assistant to the Board

