

California Regional Water Quality Control Board
Santa Ana Region

April 24, 2009

ITEM: ## and ##

SUBJECT: Adoption of (1) Resolution No. R8-2009-0009, Authorizing the Executive Officer to Enter into an Administrative Settlement Agreement with the County of San Bernardino et al, and (2) Cleanup and Abatement Order No. R8-2009-0010, Superseding and Replacing Cleanup and Abatement Order No. R8-2003-0013 and R8-2004-0072 for San Bernardino County, Solid Waste Management Division, Mid-Valley Sanitary Landfill Property

DISCUSSION:

The County of San Bernardino (County) owns about 497 acres of property in the North Rialto area of San Bernardino County. This property overlies the Rialto Groundwater Management Zone. The County initially purchased a portion of this property in 1957, another portion was purchased in 1973, and the northeastern area of the property (about 96 acres) was purchased in the 1990s.

In 1958, the County of San Bernardino began operation of the Mid-Valley Sanitary Landfill (MVSL) at this site. Municipal wastes have been placed, or currently are being placed, on about 222 acres of this property. Ultimately, waste disposal activities will be expanded to include about 408 acres of the property. Early phases of the landfill (Units 1 and 2) were constructed on native soil without a clay or synthetic liner, or a leachate collection system. The most recent phase of the landfill (Unit 3) began operation in 2002. This phase has a double composite liner and a leachate collection and removal system, and similar components will be installed in future phases (Units 4 and 5).

A sand and gravel business, operated by Robertson's Ready Mix (RRM), utilizes a portion of the property in accordance with a formal agreement between the County and RRM. Soil is stockpiled on another portion of the property for processing by the sand and gravel operation prior to use of that portion of the property for landfilling.

The northeast area of the property that the County purchased in the 1990s contained storage bunkers that formerly contained explosives, chemicals, propellant, oxidizers, and fireworks. These bunkers were constructed, and were initially used, by the military in the mid-1940s. The bunkers were used subsequently by aerospace, hazardous waste and fireworks companies. Perchlorate salts were handled and stored in some of these bunkers. The

County's operations contractor demolished the bunkers in 1998-1999. A portion of this area is currently utilized by RRM.

Perchlorate was detected in low concentrations (less than 5 ppb) in a groundwater sample collected from one of the MVSL detection monitoring system wells in 1997. In 2001, the concentration of perchlorate in this monitoring well increased significantly, to 250 ppb. As a result, the County increased its monitoring for perchlorate in existing monitoring wells and assessed possible perchlorate sources on its property, which included collecting and analyzing soil samples and process water samples from the sand and gravel operation on the northeast area of the County's property. The County found that the source of the perchlorate found in groundwater immediately adjacent to, and downgradient of, the County's property may be from the northeast area of its property that the County purchased in the 1990s.

Beginning in late 2002, the Regional Board directed the County to conduct an investigation to define the vertical and lateral extent of perchlorate in soil and groundwater in the vicinity of its property. In January 2003, the Regional Board adopted Cleanup and Abatement Order No. R8-2003-0013, which directed the County to cleanup and abate the discharges of perchlorate at and from its property. The County filed a timely petition of this order with the State Water Resources Control Board, but requested that it be placed in abeyance.

As a result of a series of groundwater investigations that the County performed following issuance of Cleanup and Abatement Order No. R8-2003-0013, perchlorate was detected in June 2004 in groundwater immediately upgradient of Rialto Well No. 3, a municipal water supply well for the City of Rialto. As a result, the Executive Officer directed the County in early July 2004 to submit an acceptable water supply contingency plan for Rialto Well No. 3. The County submitted a conceptual plan in late July. On September 17, 2004, the Regional Board revised Cleanup and Abatement Order No. R8-2003-0013 for the County and required the County to provide replacement water to the City of Rialto to replace the water historically extracted from Rialto Well No. 3 (Order No. R8-2004-0072).

Since August 2002, the County has installed 25 monitoring wells in the vicinity and downgradient of the County property. The analytical results of groundwater samples obtained from these monitoring wells showed that perchlorate was present as high as 1,000 ppb downgradient of the County's property. In all material respects, the County has consistently complied with its orders, expending roughly \$13 million on investigation, cleanup and abatement activities as of August 1, 2008. In addition, investigations by others have revealed the existence of perchlorate in soil in the vadose zone on property (known as the Stonehurst Site) directly downgradient of the property owned by the County. The Stonehurst Site is known to have been the site of operations that used or stored perchlorate.

In January 2005, the County submitted its "Revised Draft Interim Remedial Investigation/Feasibility Study" and its "Revised Draft Interim Remedial Action Plan for Mitigation of Perchlorate and Volatile Organic Compound (VOC) Impacts to Groundwater". The Regional Board and the County held public hearings regarding the Interim Remedial Investigation/Feasibility Study and the Interim Remedial Action Plan. On February 25, 2005 the Executive Officer approved these documents.

The County entered into a replacement water agreement with the City of Rialto effective April 1, 2005. On June 2, 2006, the County began treating water produced at City of Rialto Well No. 3 using ion-exchange perchlorate removal technologies. In March 2007, the County submitted its "Hydrogeologic Model of Perchlorate Transport Conditions in the Northern Rialto-Colton Basin" and the "Phase 2 Plume Containment System Design, Perchlorate GWTS at Rialto Well No. 3". The Regional Board provided a public comment period for the model and design report. On February 20, 2008 the Executive Officer approved the Phase 2 remedial design. The construction of upgrades to the extraction and treatment system for containment of perchlorate and VOC impacts below and downgradient of the County property is essentially complete.

The current state of information concerning the extent of perchlorate and VOC contamination in the Rialto Groundwater Management Zone is in dispute. The team of Regional Board staff who are overseeing the investigation and cleanup activities believe the evidence establishes that the contamination is divided into two distinct plumes, one emanating at least in part from the County's property (the Western Plume) and the other emanating from property known as the 160-Acre Site (the Eastern Plume). Those staff contend that responsibility for the contamination in those plumes is as follows: Western Plume responsible parties include the County and others; Eastern Plume responsible parties include, among others, Goodrich Corporation, Pyro Spectaculars, Inc., and Kwikset Locks, Inc., Emhart Industries, Inc., Kwikset Corporation, and Black & Decker, Inc.

In March 2008, the Cities of Rialto and Colton negotiated a settlement of litigation against the County. That settlement, provided it is approved by the federal court, would resolve claims against the County under CERCLA. In exchange for dismissal of Rialto's and Colton's claims, the County agreed in the settlement to pay a sum of \$4 million to the City of Rialto and a sum of \$1 million to the City of Colton. The settlement, and the obligation to pay these amounts, is contingent on the execution of a settlement of unresolved issues between the County and Regional Board. In staff's view, such a settlement must require that the County withdraw its petitions on the previously issued cleanup and abatement orders, and that the County agree to comply with a cleanup and abatement order to address the Western Plume (as set forth in proposed Cleanup and Abatement Order No. R8-2009-0010).

The proposed Administrative Settlement Agreement meets these requirements. Under the terms of the proposed Agreement, the County agrees to withdraw its petitions on the cleanup and abatement orders. The County further agrees to not contest the issuance of the proposed cleanup and abatement order.

Proposed Cleanup and Abatement Order No. R8-2009-0010 directs the County to address perchlorate and VOCs in the Western Plume, and requires the County to implement a response action in a manner consistent with (a) CERCLA and the National Oil and Hazardous Substance Pollution Contingency Plan, Title 42 U.S.C. section 9605 and Code of Federal Regulations, Title 40, Part 300 (NCP) and (b) the Porter-Cologne Water Quality Control Act (Water Code, section 13000 et seq.).

Here, the settlement with the County of San Bernardino, Robertson's Ready Mix, Inc., and the Schulz Parties¹ (collectively "Settling Parties") would secure a remedy that will fully contain the Western Plume in the Rialto-Colton Basin (RCB) at its distal end, provide treated water to the City of Rialto, and secure the payment of the Regional Board's oversight costs into the future.

The Settling Parties are incurring at least their share of liability for the Western Plume. The Settling Parties' liability for the Western Plume Area stems from their status as former or current owners of property where alleged discharges have occurred, or from construction-type activity on lands alleged to have mobilized pre-existing contamination. Although the actions required in the settlement would fully contain the Western Plume and provide treated water for the one drinking water well affected by that plume, the Settling Parties did not use, manufacture, or initially dispose of any of the contaminants in that plume. Other entities initially disposed of the contamination that exists in the Western Plume. Thus, entities other than the Settling Parties should pay a substantial share of the cost of containing and otherwise remediating the Western Plume; however, under the settlement, those costs are essentially being borne by the Settling Parties, as set forth in the Administrative Settlement Agreement.

Even if the Settling Parties have some liability for the Eastern Plume, the Settling Parties have still clearly paid more than their fair share of the response costs in the RCB. First, the payment of essentially all response costs to address the Western Plume Area (whose contamination was initially discharged by third parties) represent substantially more than the allocable share of the Settling

¹ The Schulz Parties includes the following: Edward Stout; Edward Stout as the Trustee of the Stout-Rodriguez Trust; Elizabeth Rodriguez; John Callagy as Trustee of the Fredricksen Children's Trust Under Trust Agreement Dated February 20, 1985; John Callagy as Trustee of the E.F. Schulz Trust; Linda Fredricksen; Linda Fredricksen as Trustee of the Walter M. Pointon Trust Dated 11\19\1991; Linda Fredricksen as Trustee of the Michelle Ann Pointon Trust Under Trust Agreement Dated February 15, 1985; Linda Fredricksen as Trustee of the E.F. Schulz Trust; John Callagy; Mary Callagy (formerly known as Mary Mitchell); Jeanine Elzie; Stephen Callagy; Michelle Ann Pointon; and Anthony Rodriguez.

Parties for the entire RCB. They are paying to remediate a significant portion of the problem in the RCB, despite the fact that they have at most only limited responsibility for the Western Plume Area and nothing to do with the larger Eastern Plume Area. Thus, even if there is some potential liability for the Eastern Plume Area, due to alleged commingling or otherwise, the overall assumption of responsibility and payment in the Settlement Agreement is greater than their share for the entire RCB.

Second, the potential for the existence of some trivial or theoretical contribution to the Eastern Plume Area is not sufficient to allocate a meaningful share of liability to the Settling Parties, particularly in the context of a settlement that secures remediation of the Western Plume Area. The best information shows that even if there is some commingling, it is trivial. Third, the County has acted proactively to address the contamination on the western side of the basin and to cooperate fully with regulatory agencies with respect to those actions. This high degree of cooperation weighs in favor of a lower allocation to the Settling Parties.

Proposed Resolution No. R8-2009-0009 authorizes the Executive Officer to enter into an Administrative Settlement Agreement with the County of San Bernardino et al, The proposed Administrative Settlement Agreement is in the public interest in that it, together with proposed Cleanup and Abatement Order No. R8-2009-0010, defines by mutual agreement and without need for dispute or litigation, the efforts that will be required of the County to address the Western Plume.

RECOMMENDATION:

Adopt Resolution No. R8-2009-0009 and Cleanup and Abatement Order No. R8-2009-0010 as presented.