**California Regional Water Quality Control Board**
**Santa Ana Region**

**RESOLUTION NO. R8-2006-0079**

**DIRECTING THE EXECUTIVE OFFICER TO DELEGATE CERTAIN AUTHORITIES TO AN INDEPENDENT HEARING OFFICER FOR THE PURPOSE OF CONSIDERING THE ISSUANCE OF INVESTIGATION AND/OR CLEANUP AND ABATEMENT ORDERS AND CONDUCTING HEARINGS AS NECESSARY IN THE RIALTO 160-ACRE SITE PERCHLORATE INVESTIGATON AND REMEDIATION**

**WHEREAS, THE REGIONAL BOARD FINDS:**

1. Since 2002, the Regional Board Staff has been conducting an extensive investigation of perchlorate discharges in the Rialto, Colton and Fontana vicinity;

2. On February 28, 2005, the Regional Board Executive Officer issued a Cleanup and Abatement Order (CAO No. R8-2005-0053) naming Emhart Industries, Inc., and Black & Decker (U.S.), Inc., concerning perchlorate discharges at facilities located on a 160-acre site in Rialto ("Rialto 160-acre site") formerly operated by West Coast Loading Corporation, Goodrich Corporation and a number of pyrotechnics manufacturers. The Order was amended and reissued on December 2, 2005 but does not contain specific deadlines for investigative and remedial tasks. The amended order names Kwikset Locks, Inc., Emhart Industries, Inc., Kwikset Corporation, Black & Decker Inc. and Black & Decker (U.S.), Inc. (the "Emhart Entities");

3. A formal separation of functions has been established in this matter with Executive Officer Gerard Thibeault, Assistant Executive Officer Kurt Berchtold and Regional Board Counsel Jorge Leon, among others ("Advocacy Staff"), preparing to advocate that the Regional Board itself ratify the Amended Cleanup and Abatement Order and establish deadlines for investigative and remedial tasks;

4. The Emhart Entities filed petitions with the State Water Resources Control Board (State Water Board), objecting to a hearing before the Regional Board itself because of an alleged "bias" (State Water Board Case Nos. A-1732 through A-1732(d)) and requesting a hearing before the State Water Board;

5. The Regional Board and the Regional Board Advocacy Staff requested that the State Water Board take up the matter and conduct a hearing on the merits of the Amended Cleanup and Abatement Order, as requested by the Emhart Entities themselves (Thibeault letter of June 16, 2006, Attachment 1);

6. Upon initial refusal by the State Water Board to conduct the hearing, the Advocacy Staff requested that the State Water Board reconsider its decision (Thibeault letter of June 29, 2006, Attachment 2);

7. During the pendency of the petitions before the State Water Board, the Advocacy Staff investigated other options for holding a hearing in the matter of the Amended Cleanup and Abatement Order and has described those options to the State Water Board and the Emhart Entities (Thibeault letter of July 13, 2006, Attachment 3);

8. The Emhart Entities subsequently reversed the position taken in their petitions and advocated that the State Water Board not hold a hearing on the Amended Cleanup and Abatement Order. Moreover, they have asserted that none of the other options for a hearing described by the Advocacy Staff are acceptable and that they will not agree to any of the hearing options (Emhart Entities letter of August 2, 2006, Attachment 4);

9. The State Water Board on September 15, 2006 placed the Emhart Entities' petitions into abeyance (State Water Board letter of September 15, 2006, Attachment 5);

10. Inasmuch as Amended CAO No. R8-2005-0053 has not been revoked or rescinded by the Executive Officer or the Regional Board and the State Water Board will not act on the Emhart Entities petitions, the Order remains viable;

11. The Rialto Perchlorate Investigation and Remediation has been delayed and otherwise hindered by the lack of cleanup and abatement orders against the responsible parties;

12. It is in the best interest of the water purveyors, communities, and citizens affected by the perchlorate discharges that some resolution be achieved in assigning legal liability to the appropriate parties for the investigation and remediation of those discharges;

13. The Advocacy Staff has previously reported that, on the present state of evidence, it may propose issuing new orders to Goodrich Corporation and/or Pyro Spectaculars, Inc., or adding them to the current Emhart Entities order;

14. While adamantly and unequivocally denying that any of its members harbor any actual bias against any party in this matter, the Regional Board desires an expeditious resolution of the liability issues and a fair and impartial hearing process for those named and proposed to be named in cleanup and abatement orders;

15. Inasmuch as the Emhart Entities have challenged a hearing before the Regional Board and have refused to agree to a hearing by the Office of Administrative Hearings (Emhart Entities letter of August 2, 2006), and the State Water Board has declined to conduct the hearing, the Regional Board must consider remaining options for the conduct of any hearings that may be necessary in this matter;

16. The two options that remain available are: (a) appointment of a current Regional Board employee to act as an independent hearing officer in the place of the Executive Officer (who is precluded from so acting because of his advocacy role in this matter) and (b) appointment of an outside person to so serve;

17. The first option appears to be precluded by the provisions of Government Code Section 11400.30(a)(2);

18. The remaining option would allow the Regional Board to appoint a former state employee with experience in water quality issues to serve on a temporary basis for the limited purpose of considering any proposed investigation and/or cleanup and abatement orders in this matter;

19. The Executive Officer is authorized to conduct hearings and issue Investigation Orders and Cleanup and Abatement Orders (Resolution No. 88-121, Water Code Sections 13223, 13267, 13304);

20. The Executive Officer's powers may be exercised by a deputy (Water Code Section 7);

21. The Regional Board is authorized to employ a retired annuitant on a limited term basis to perform defined tasks (Government Code Sections 19144, 21224);

22. Ted Cobb, a member of the Regional Board Advisory Staff, has conducted a survey of several former top level State Board and regional board employees and a former Deputy Attorney General to determine their availability;

23. Mr. Walt Pettit, who served as the State Water Board's Executive Director during the years 1990-2000, has expressed a willingness to serve as an independent hearing officer in place of the Executive Officer in this matter;

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. Mr. Walt Pettit is hereby appointed and employed as a Deputy Executive Officer with the authority and power to conduct hearings, determine whether or not to issue investigation, cleanup and abatement, and water replacement orders, and to issue such orders, relating to the perchlorate discharges at the Rialto 160-acre site, including, but not limited to, determining whether additional or amended orders proposed by the Advocacy Staff should issue in this matter. During the term of this appointment, Mr. Pettit shall have the authority and power to conduct hearings, determine whether or not to issue any final investigation, cleanup and abatement, and water replacement orders, and to issue such orders, relating to the perchlorate discharges at the Rialto 160-acre site;

2. Mr. Pettit is authorized to exercise all authorities in this matter that would normally be available to the Executive Officer including the authorities contained in Water Code Section 13223, 13267 and Section 13304;

3. Mr. Pettit will be assisted by technical and legal staff that he selects, and Mr. Pettit shall have the authority and power to select such staff from the State Board. Such staff as he selects shall not have served in an advocacy capacity in the Rialto matter;

4. During their assignment to assist Mr. Pettit, technical and legal staff will not be supervised by the Executive Officer, the Assistant Executive Officer, or the Advocacy Staff Counsel or any other member of the Advocacy Staff;

5. Mr. Pettit is hereby requested to convene a prehearing conference and issue an order setting forth a hearing schedule, requirements related to separation of staff functions, ex parte communications, public participation, designation of parties and any other matters he deems appropriate;

6. Any investigation or cleanup and abatement orders issued by Mr. Pettit in this matter will be deemed final orders of the Regional Board and are subject to direct petition to the State Water Board pursuant to Water Code Section 13320;

7. In conducting the duties under this Resolution, Mr. Pettit shall not be subject to the authority, direction, or discretion of the Executive Officer or the members of this Regional Board;

8. The Executive Officer, the Assistant Executive Officer, and Counsel Jorge Leon, who is now with the State Water Board Office of Enforcement, are expected to continue to act in an advocacy capacity in this matter.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on October 13, 2006.

Gerard J. Thibeault
Executive Officer