

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

RESOLUTION NO. R8-2009-0009
AUTHORIZING THE EXECUTIVE OFFICER
TO ENTER INTO AN ADMINISTRATIVE SETTLEMENT AGREEMENT
WITH THE COUNTY OF SAN BERNARDINO ET AL.

WHEREAS:

1. The County of San Bernardino (hereinafter County) currently owns property in Sections 28 and 29, Township 1 North, Range 5 West, San Bernardino Base and Meridian, in the County of San Bernardino, State of California.
2. The County operates the Mid-Valley Sanitary Landfill (MVSL) on the property noted above. This property overlies the Rialto-Colton Basin. The MVSL property consists of about 448 acres, of which about 222 acres are currently used for waste disposal activities. 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. Ultimately, waste disposal activities will be expanded to include about 408 acres of the property, all within Section 29.
3. The MVSL is a municipal solid waste disposal facility that has been operated by the County since 1958. Landfilling of waste has been conducted in phases, with each phase consisting of waste being applied on a different portion 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 future phases (Units 4 and 5) will have similar components.
4. Perchlorate, in the form of perchlorate salts has been used by several tenants of properties in close proximity to the landfill. Therefore, it is possible that the landfill may have accepted perchlorate waste from these neighboring tenants. However, there is currently no evidence that perchlorate waste was disposed of in Units 1, 2 or 3 of the landfill or that

there has been a discharge of perchlorate from Units 1, 2 or 3 of the landfill.

5. The County purchased the northeast area of its current property in the 1990's from certain of the Schulz Parties.¹ This property contained storage bunkers that were known to have housed explosives, chemicals, propellant, oxidizers, and fireworks. These bunkers were constructed, and were initially used, by the military in the mid-1940's. The bunkers were used subsequently by aerospace, hazardous waste and fireworks companies. Perchlorate salts, TCE and other chemicals were handled and stored in and/or around 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.
6. Perchlorate salts are highly soluble and dissociate in water to form perchlorate ions. The California Department of Public Health has established a drinking water Maximum Contaminant Level (MCL) for perchlorate of 6 parts per billion (ppb). Water purveyors are required to test for TCE, which has both a federal and state MCL of 5 ppb. TCE has been detected in monitoring wells upgradient of City of Rialto Well No. 3.
7. Several municipal water supply wells in the Rialto-Colton Groundwater Basin have been affected by perchlorate and TCE.
8. Perchlorate was initially detected at high concentrations (approximately 750 ppb) in the Rialto-Colton Basin in 1997 in West Valley Water District Well No. 22. The County subsequently tested all of the MVSL detection monitoring system wells for perchlorate. In 1997, of the 23 MVSL monitoring wells tested, the County found low concentrations of perchlorate (less than 5 ppb) in only one well, with the balance of the wells being non-detect for perchlorate. These results indicated that perchlorate had not been discharged from historic or active waste disposal areas (Units 1, 2 and 3) at the MVSL. In 2001, the concentration of perchlorate in one of the detection monitoring system wells increased significantly to 250 ppb. As a result, the County increased its monitoring for perchlorate in the existing monitoring wells.

¹ The Schulz Parties comprise the following persons and entities: Edward Stout, Edward Stout As The Trustee Of The Stout-Rodriguez Trust (formerly known as the Schulz Family Trust), Elizabeth Rodriguez, John Callagy As Trustee Of The Frederiksen Children's Trust Under Trust Agreement Dated February 20, 1985, John Callagy As Trustee Of The E.F. Schulz Trust, Linda Frederiksen, Linda Frederiksen As Trustee Of The Walter M. Pointon Trust Dated 11/19/91, Linda Frederiksen As Trustee Of The Michelle Ann Pointon Trust Under Trust Agreement Dated February 15, 1985, Linda Frederiksen 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.

In addition, the County assessed possible perchlorate sources on its property, including 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 a 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 – the property that the County purchased in the 1990s.

9. The County, RRM, and the Schulz Parties have been, and/or are defendants in several lawsuits related to the existing groundwater contamination in or alleged to be migrating from the Rialto-Colton Basin, including lawsuits brought by the Rialto Utility Authority and the Cities of Rialto and Colton. One component of the litigation involves claims brought in federal court that defendants, including the County, caused the Cities to incur response costs cognizable under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. section 9601 et seq.) (CERCLA) to address perchlorate and VOC contamination in the Rialto-Colton Basin.
10. 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 asked that the petition be placed in abeyance. As the request was not opposed, the petition was placed in abeyance as requested. In all material respects, the County has consistently complied with the cleanup and abatement order and all preceding orders, reporting that it has expended roughly \$13 million on investigation, cleanup and abatement activities as of December 31, 2008.
11. Investigations by others have revealed the existence of perchlorate in soil in the vadose zone on property directly downgradient of the property owned by the County (known as the Stonehurst Site), which is known to have been the site of operations that used or stored perchlorate.
12. The presence of perchlorate in groundwater at and upgradient of Rialto Well No. 3 affects the beneficial use of Well No. 3 as a municipal drinking water supply. Rialto Well No. 3 has historically represented about 15% of the City of Rialto's demand and is an important facility in the City of Rialto's water system. In a letter dated July 6, 2004, the Executive Officer directed the County to submit an acceptable water

supply contingency plan for Rialto Well No. 3. The County submitted a conceptual plan on July 26, 2004, and proposed to begin providing replacement water to the City of Rialto by September 14, 2005. 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).

13. While the County filed a timely petition of this order with the State Water Resources Control Board, the petition was placed in abeyance at the County's request and the County has consistently complied with the order.
14. 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 Remedial Investigation, among other things, sufficiently defined the lateral and vertical extent of the perchlorate plume that was alleged to be emanating from and near the County's property, and the Remedial Action Plan proposed an Interim Remedial Action to address the groundwater contamination that was the subject of the order. 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.
15. The County entered into a replacement water agreement with the City of Rialto effective April 1, 2005.
16. On June 2, 2006, the County began treating water produced at City of Rialto Well No. 3 using ion-exchange perchlorate removal technologies.
17. 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 impacts below and downgradient of the County property is essentially complete.

18. The current state of information concerning the extent of perchlorate and VOC contamination in the Rialto–Colton Basin 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).
19. In March 2008, the Cities of Rialto and Colton negotiated a settlement of litigation against the County, the Schultz Parties and RRM (collectively the “Settling Parties”). That settlement, provided it is approved by the federal court, would resolve claims against the Settling Parties in that action. In exchange for dismissal of those claims, the Settling Parties 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 between the Settling Parties and the Regional Board that provides for the County to implement a response action in the Western Plume Area.
20. The proposed Administrative Settlement Agreement meets these requirements. Under the terms of the proposed Agreement, the County agrees to withdraw its petitions of the cleanup and abatement orders. The County agrees to comply with a cleanup and abatement order to address the Western Plume as set forth in the attached revised cleanup and abatement order (Revised Order). The County further agrees to not contest the issuance of the Revised Order directing the County to address perchlorate and VOCs in the Western Plume.
21. The Revised Order 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.).
22. The Administrative Settlement Agreement, in return, resolves the liability of the Settling Parties to the extent set forth therein.
23. The proposed Administrative Settlement Agreement is in the public interest in that it, together with the Revised Order, 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.

NOW, THEREFORE, BE IT RESOLVED:

1. The Executive Officer is authorized to execute the attached Administrative Settlement Agreement on behalf of the Regional Board;
2. The Executive Officer is directed to continue to oversee the County's investigation and cleanup activities to ensure they are consistent with the requirements of CERCLA and the Water Code; and
3. The Staff is directed to periodically report on the status of the County's investigation and cleanup activities at Regional Board meetings.

I, Gerard J. Thibeault, 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 _____, 2009.

Gerard J. Thibeault
Executive Officer

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