

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**TENTATIVE ORDER NO. R2-2023-XXXX**

**RESCISSION OF RISK MITIGATION AND MANAGEMENT REQUIREMENTS  
(ORDER NO. R2-2022-0009) for:**

**THE CLOROX COMPANY AND SWAC HOLDINGS**

For the property located at:

**850 42ND AVENUE  
OAKLAND  
ALAMEDA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), finds that:

1. **Regional Water Board Order:** The Regional Water Board adopted risk mitigation and management requirements for the former Clorox Plant on March 8, 2022 ([Order No. R2-2022-0009](#)). The order named The Clorox Company (Clorox), as a discharger, because it previously owned and operated a bleach manufacturing facility at 850 42<sup>nd</sup> Avenue in Oakland (Property) where elemental mercury was discharged to soil and groundwater threatening human health, water quality, and the environment. SWAC Holdings (SWAC) was named as a discharger because it was the current owner of the Property. Clorox and SWAC are collectively referred to as the “Dischargers.”

Order No. R2-2022-0009 set an indoor air risk management level for mercury in indoor air, based on the Regional Water Board’s commercial indoor air environmental screening level (ESL). It also required the Dischargers to 1) submit a technical report documenting various sampling activities since November 2021, 2) submit a risk mitigation and monitoring plan (RMMP) to reduce and monitor concentrations of mercury in indoor air, 3) implement the RMMP, and 4) implement an indoor air monitoring and reporting program.

2. **Summary of Investigations and Remedial Actions:** The Regional Water Board began regulating the Property in the 1980s and issued Site Cleanup Requirements in 1995 ([Order No. 95-233](#)). Remedial actions taken at the Property have included soil removal and treatment, removal, and disposal of a portion of the mercury-impacted building slab from the one-story building in 1995. Groundwater extraction and treatment was performed from 1988 to 1997. Groundwater monitoring has been ongoing at the Property since the 1990s. In 2019, the Regional Water Board issued a requirement for the testing of soil vapor and indoor air to complete an assessment of a feasibility study. Clorox submitted indoor air data to the Regional Water Board in September 2021, indicating concentrations of mercury were above indoor air ESLs. In response, the Regional Water Board issued a Proposition 65 Notice as required by Health and Safety Code section 25180.7, notifying Alameda County Public Health Department of the mercury discharge.

In 2021, the Dischargers began mitigation efforts to reduce concentrations of mercury in indoor air. Those measures included deployment of air filtration units, cleaning and sealing of the original concrete floors, and increased ventilation. In 2022, the Dischargers installed soil vapor wells beneath the building footprint to assess if volatilization of mercury from groundwater was contributing to indoor air. During drilling activities, a black, sludge-like material was encountered approximately 3 feet below the building slab. Following discussions with the Department of Toxic Substance Control (DTSC), this new information prompted the transfer of the soil, soil vapor, and indoor air case from Regional Water Board oversight to DTSC oversight.

3. **Basis for Rescission:** The Regional Water Board has overseen this site from the 1980s to present. On January 10, 2023, the DTSC issued an *Imminent and Substantial Endangerment Determination and Order and Remedial Action Order* for the Property, which requires the cleanup and abatement of discharges to soil, soil vapor, and indoor air. The Regional Water Board has retained oversight for the groundwater case and will continue its oversight in accordance with Order No. 95-233.
4. **Human Right to Water:** The State of California's policy is that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Wat. Code, § 106.3; see also State Water Board Resolution No. 2016- 0010.) The human right to water extends to all Californians, including disadvantaged individuals and groups and communities in rural and urban areas. The rescission of the 2022 order will not affect the human right to water.
5. **CEQA:** This action rescinds an order to enforce the laws and regulations administered by the Regional Water Board. Rescission of the order is not a project as defined in the California Environmental Quality Act (CEQA). (Public Resources Code, § 21065; Cal. Code Regs., tit. 14, § 15378.) In the alternative, this action is exempt from CEQA because there is no possibility that the activity in question may have a significant effect on the environment. (Cal. Code Regs., tit. 14 §§ 15378 and 15061, subd. (b)(3).)
6. **Notification:** The Regional Water Board has notified the discharger and all interested agencies and persons of its intent to rescind risk mitigation and management requirements for the discharge and has provided them with an opportunity to submit their written comments.

**IT IS HEREBY ORDERED** that Order No. R2-2022-0009 is rescinded.

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Eileen White  
Executive Officer