

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

RESOLUTION No. R8-2003-0070

PETITIONS FILED BY GOODRICH CORPORATION
AND KWIKSET CORPORATION FOR REVIEW
OF CLEANUP AND ABATEMENT ORDER NO. R8-2002-0051

WHEREAS,

1. A hearing was held before the Board on September 13, 2002 to consider a request from Kwikset Corporation and Goodrich Corporation to rescind Cleanup and Abatement Order No. R8-2002-0051, issued by the Executive Officer on June 6, 2002. Following the presentation of evidence and testimony, the Board met in closed session to deliberate. It then delivered its decision orally, rescinding the Cleanup and Abatement Order as to both Kwikset Corporation and Goodrich Corporation and directing that orders pursuant to Water Code Section 13267 be issued to all potentially responsible parties suspected of having discharged perchlorate;
2. On advice of counsel, the Board Chair decided to bring the matter back to the Board at the October 25, 2002 Board meeting because of a defect in the notice of the September 13, 2002 meeting. That notice did not properly provide for a closed session. This matter was brought back to the Board on October 25, 2002;
3. In conformance with the public notice for the October 25, 2002 meeting, no further evidence or testimony was received from any party or interested person prior to deliberation by the Regional Board on October 25, 2002. Board Members Solorio and Withers did not take part as neither had fully participated in the September 13, 2002 session. The Board issued the same oral decision;
4. The Board received a request for a written decision from Kwikset Corporation's counsel, dated October 28, 2002, with findings that Kwikset is not the legal successor to West Coast Loading Corporation, and that West Coast Loading Corporation did not discharge perchlorate at its Rialto site. Board counsel prepared a written decision, summarizing in writing the Board's oral decision of October 25, 2002. The written decision was approved by the Board Chairperson and issued on November 19, 2002;

5. Kwikset filed a petition for review of the written decision with the State Water Resources Control Board. On March 13, 2003, the State Board issued a letter dismissing the petition because Kwikset is not an "aggrieved party," as required by Water Code Section 11320;
6. Thereafter, on April 10, 2003, Kwikset filed a Petition for Writ of Mandate in Riverside Superior Court requesting that the Court order the Regional Board to issue an order finding conclusively that Kwikset Corporation is not a legal successor to West Coast Loading Corporation and that there is no evidence that West Coast Loading Corporation discharged perchlorate;
7. The Petition for Writ of Mandate filed by Kwikset reflects fundamental misunderstandings regarding the Board's intentions, its findings and its authorities;
8. Pursuant to Water Code Section 13267 and 13304, the Regional Board is charged with overseeing investigations, cleanups and abatement actions of discharges to the waters of the state. Those provisions provide the Regional Board with continuing jurisdiction over investigations, cleanups and abatement actions;
9. The Regional Board is conducting an extensive investigation into the perchlorate groundwater contamination of public water supply wells in the Rialto-Colton area, which includes discharges suspected to be emanating from the location of facilities on property formerly operated by West Coast Loading Corporation, Goodrich Corporation, and others;

THE BOARD FINDS:

10. The Regional Board intends to continue its efforts to identify all potentially responsible parties concerning the perchlorate groundwater contamination in the Rialto-Colton area and to require that they conduct appropriate investigations, cleanups and abatement actions;
11. The Regional Board desires to make clear its intentions and findings in this matter, and has determined that it is appropriate to adopt this resolution in order to do so;
12. The Board is concerned about the time involved in solving the problem of perchlorate in the groundwater of the Rialto-Colton area and believes that pursuing enforcement

of the cleanup and abatement order, as issued on June 6, 2002, would result in unnecessary delay as a result of administrative appeals and litigation;


13. The Board expects extensive legal delays would occur while communities are losing access to drinking water and has determined that addressing the problem as quickly as possible by cleaning up the contaminated wells or providing alternative water sources to be of greatest importance;
14. Kwikset Corporation disputes whether it is a legal successor in interest to West Coast Loading Corporation, alleged to be one of the original responsible parties;
15. Goodrich Corporation disputes that there is sufficient evidence to demonstrate that it discharged perchlorate and/or caused the contamination;
16. Goodrich Corporation has been and has reconfirmed that it is willing to cooperate with the Board to investigate whether it caused the contamination;
17. A non-adversarial approach is more likely to obtain some cooperation from those two companies;
18. There has not been adequate characterization of the plume, and further investigation is required;
19. Incentives should be identified to encourage timely participation by all potentially responsible parties;
20. The use of investigation orders under Water Code 13267 may bring to the table more potentially responsible parties;
21. The evidence presented at the September 13, 2002 hearing of culpability of Goodrich Corporation and West Coast Loading Corporation for discharges at their respective facilities in Rialto was inconclusive;
22. The evidence presented at the September 13, 2002 hearing of the corporate responsibility of Kwikset Corporation for the acts of West Coast Loading Corporation was inconclusive;
23. Many other potentially responsible parties suspected of having discharged perchlorate were mentioned in the briefings and during the presentations of September 13, 2002; it is important to broaden the investigation to bring in those other potentially responsible parties;

24. It is not reasonable to focus on two parties when there is evidence that many others might be the cause or have contributed to the contamination and bear some responsibility;
25. The practical approach requires broadening the investigation by issuing 13267 Orders to all suspected dischargers to conduct investigations;
26. Sensitive land uses in the area make it very important that timely action take place;
27. On October 25, 2002, the Board adopted a motion to rescind the cleanup and abatement order (No. R8-2002-0051) issued by the Executive Officer on June 6, 2002 and to direct the Executive Officer to issue Water Code 13267 letters to all potentially responsible parties. The Board further directed the Executive Officer to require those subject to the 13267 letters to submit their plans for addressing the issues involved in this investigation as quickly as possible; and
28. The Board also asked Staff to use innovative approaches to find funding for wellhead treatment and supplemental water sources and to be creative in approaching the potentially responsible parties to maximize their participation.

THEREFORE, BE IT RESOLVED THAT:

1. Kwikset's request for a determination that Kwikset is not the legal successor to West Coast Loading Corporation, and that West Coast Loading Corporation did not discharge perchlorate at its Rialto site, has been denied without prejudice due to the pending nature of the investigation;
2. Staff is directed to return to the Board with the results of its investigation once it is concluded, so that the Board may determine what further action may be appropriate.

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 May 16, 2003.



Gerard J. Thibeault
Executive Officer