



California Regional Water Quality Control Board

Santa Ana Region



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Agency Secretary

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Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING (Date of Notice: October 17, 2005)

For Regional Board review of

Cleanup and Abatement Order No. R8-2005-0053
Issued to

Emhart Industries, Inc.
Black & Decker (U.S.), Inc.

A hearing before the Regional Board, or a Panel thereof, will be held on May 17 and 18, 2006 for review of Cleanup and Abatement Order No. R8-2005-0053 (“the CAO”) issued to Emhart Industries, Inc., and Black & Decker (U.S.), Inc. (collectively, “B&D Entities”). An agenda announcement for the hearing in this matter will specify the hearing location(s) and start time(s). The agenda announcement will be sent to the parties and to any person requesting notice and will be available to the public on the Regional Board’s website prior to the hearing.

The issues before the Board are: (1) Whether there exists legally adequate evidence to support a finding of perchlorate discharge, within the meaning of Water Code Section 13304, by West Coast Loading Corporation and (2) Whether each of the named B&D Entities is properly included in the CAO as a discharger or a legal successor of a discharger.

The Regional Board proceedings in this matter are subject to regulations in Title 23, California Code of Regulations (CCR) Sections 648, et seq.

PARTIES AND INTERESTED PERSONS

The Regional Board staff comprising the Staff Advocacy Team (described below) and the B&D Entities are the currently Designated Parties to this proceeding, pursuant to Title 23, CCR, Section 648.1(a). The order of proceeding for the hearing is: (1) Staff Advocacy Team; (2) B & D Entities; (3) other interested persons. Time limits for presentation, as well as requests to provide rebuttal or closing arguments, will be considered at the final Prehearing Conference.

Only Designated Parties will have these rights:
to call and examine witnesses;
to introduce exhibits;

California Environmental Protection Agency



to cross-examine opposing witnesses;
to impeach any witness; and
to rebut the evidence against him or her.

All other persons wishing to testify or provide comments are Interested Persons. All Designated Parties and Interested Persons may speak at the Regional Board hearing and are expected to orally summarize their written materials.

Any person may request status as a Designated Party for purposes of this hearing by submitting such request in writing to the Regional Board no later than October 31, 2005. The request must set forth the basis for status as a Designated Party and, in particular, how the person is directly affected by the discharge. Objections to requests for Designated Party status must be submitted in writing to the Regional Board no later than November 3, 2005.

SEPARATION OF REGIONAL BOARD STAFF FUNCTIONS

This matter involves highly controversial issues. Issues similar to those presented in this matter involving the B&D Entities are also the subject of ongoing litigation in federal courts. Accordingly, it is necessary to separate the functions of staff members presenting evidence for consideration by the Regional Board from those of staff members providing legal and technical advice to the Regional Board. Assigning responsibility for advising the Regional Board members to staff other than those who will present testimony in support of the CAO is intended to assure the fairness and impartiality of the Regional Board's proceedings. The Regional Board staff participating in the proceedings will be separated into two groups.

Staff Advocacy Team: One group will serve a "prosecutorial" function in the proceedings and assume responsibility for presenting evidence to the Regional Board supporting the CAO. Members of the Staff Advocacy Team will be treated, for purposes of the present matter, like other parties who come before the Regional Board throughout the proceedings. They shall have no contact with Regional Board members or with members of the Advisory Team on matters relating to the proceedings, except where those contacts are consistent with the limitations on *ex parte* contacts that apply to all other parties. For purposes of this Notice, an "*ex parte* contact" is any written or oral communication relating to the CAO between a member of the Advocacy Team and a Regional Board member or a Staff Advisory Team member, unless the communication is copied to all other parties to the proceedings (if written) or made in the presence of all other parties and interested persons (if oral). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted.

Members of the Staff Advocacy Team are: Gerard J. Thibeault, Executive Officer; Kurt Berchtold, Assistant Executive Officer; Robert Holub, Supervising Water Resource Control Engineer; Ann Sturdivant, Senior Engineering Geologist; Kamron Saremi, Water Resource Control Engineer; Debi Ney, Associate

Government Program Analyst; Jorge A. Leon, Senior Staff Counsel, State Water Resources Control Board, Office of Chief Counsel; and Phillip Wyels, Assistant Chief Counsel, State Water Resources Control Board, Office of the Chief Counsel. Mr. Leon, who regularly advises the Regional Board at its public meetings, has been assisting the Staff Advocacy Team. Accordingly, he has not in the past nor will he provide advice to the Regional Board in connection to this matter.

Staff Advisory Team: This group will assist the Regional Board members in matters such as evaluating requests for Designated Party status, enforcing deadlines and other limitations on submissions and exhibits, and preparing for and conducting the proceedings. The Advisory Team will also provide advice to the Regional Board members at the hearing and in their deliberations on the evidence presented in the proceedings.

Members of the Advisory Team are: Joanne Schneider, Environmental Program Manager; Ted Cobb, Assistant Chief Counsel, State Water Resources Control Board, Office of the Chief Counsel; and John Broderick, Engineering Geologist.

SCHEDULE PRIOR TO HEARING

PREHEARING CONFERENCE

A Prehearing Conference will be held on November 4, 2005, at 10 a.m. in the office of the Regional Board to address any motions or requests that are timely submitted. Any requests for Designated Party status will be decided at this time. Requests for modification of the schedule contained herein will be decided at this time. Any request for modification of the schedule must be filed on or before October 28, 2005. Any such request filed after that date must be accompanied by a declaration indicating that the information on which the request is based was not available on or before that date and why the information was not available. Additionally, the amount of time to be allocated to each Designated Party during the hearing will be decided at this time. The prehearing conference will be conducted by Ted Cobb. Anyone unable to attend the conference in person should contact Mr. Cobb in advance of the conference to arrange alternative attendance procedures.

EXCHANGE OF EVIDENCE, DESIGNATION OF WITNESSES AND CAO REVISIONS

By December 9, 2005, the Designated Parties shall exchange all evidence upon which they intend to rely in support of their respective positions. A copy of all exhibits, documents, photographs and other material must be provided to each of the other Designated Parties. Additionally, each Designated Party shall submit a list of all witnesses, including expert witnesses, who may be called by that Party at the hearing.

The Staff Advocacy Team shall issue any amendments to Order No. R8-2005-0053 by this deadline.

DISCOVERY

All discovery shall be completed by the Designated Parties by February 17, 2006. Any discovery disputes must be brought to the attention of the Staff Advisory Team by February 21, 2006. A Prehearing Conference will be held on March 7, 2006 to resolve any discovery disputes, if necessary.

OPENING BRIEFS AND DIRECT TESTIMONY

By April 4, 2006, each Designated Party shall submit its opening brief and any direct testimony or other documentary evidence to the Staff Advisory Team, with copies to each of the other Designated Parties. Documentary evidence may only include evidence exchanged by December 9, 2005, as required under EXCHANGE OF EVIDENCE, DESIGNATION OF WITNESSES AND CAO REVISIONS, and evidence obtained through discovery. The Regional Board may modify this requirement upon a showing of good cause.

INTERESTED PERSON COMMENTS

By April 4, 2006, each Interested Person shall submit any written comments that they wish to present to the Board to the Staff Advisory Team, with copies to each of the Designated Parties.

REPLY BRIEFS AND REBUTTAL TESTIMONY

Any reply briefs and rebuttal testimony must be submitted to the Advisory Team by April 28, 2006, with copies to each of the other Designated Parties.

REQUIREMENT TO COMPLY WITH DEADLINES

A Designated Party wishing to submit written testimony, evidence, or comments on this matter must do so as provided herein. Direct oral testimony at the hearing will not be allowed unless it was previously submitted in writing no later than the deadline above for written testimony. Rebuttal evidence may be introduced and is not subject to the deadline for submittal, provided that it was not reasonably foreseeable that such evidence would be introduced. Written testimony, evidence or comments submitted after the deadline will not be accepted and will not be incorporated into the administrative record. Any late submissions must be approved by the Regional Board on good cause shown in order to be accepted. The Regional Board shall refuse to admit late submissions where there is a showing of prejudice to any party or the Board.

Interested Persons shall submit any written comments by the deadline indicated above. Written comments submitted after the deadline will not be accepted and will not be incorporated into the administrative record over the objection of any Designated Party where there is a showing of prejudice to any party, or where the Interested Person fails to show good cause for failure to comply with the deadline.

WHERE TO SEND CORRESPONDENCE, REQUESTS AND OTHER SUBMISSIONS

All written submissions, including evidence, testimony, comments, requests for Designated Party status, and procedural objections or motions must be sent to each of the following addressees. Hard copies of all testimony, evidence, comments or other written documents must be submitted. Eight copies of all items to be presented to the Regional Board must be submitted to Catherine Ehrenfeld at the address below.

Any Designated Party or Interested Person submitting any motion, objection, evidence, testimony, brief or other correspondence to the Advisory Team must provide copies of the materials to all Designated Parties.

ITEMS ADDRESSED TO THE STAFF ADVISORY TEAM:

Ted Cobb, Assistant Chief Counsel
SWRCB
1001 I Street, P.O. Box 100
Sacramento, CA 95812
tcobb@waterboards.ca.gov
(916) 341-5171

AND

Joanne Schneider, Environmental Program Manager
California Regional Water Quality Control Board, Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501
jschneider@waterboards.ca.gov
(951) 782-3287

AND

Catherine Ehrenfeld, Executive Assistant
California Regional Water Quality Control Board, Santa Ana Region
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cehrenfeld@waterboards.ca.gov
(951) 782-3285

ITEMS ADDRESSED TO THE STAFF ADVOCACY TEAM:

Jorge A. Leon, Senior Staff Counsel
SWRCB, Office of Chief Counsel
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(916) 341-5180

AND

Kurt Berchtold, Assistant Executive Officer
California Regional Water Quality Control Board, Santa Ana Region
3737 Main Street, Suite 500
Santa Ana, CA 92501
kberchtold@waterboards.ca.gov
(951) 782-3286

ITEMS ADDRESSED TO THE B&D ENTITIES:

Robert D. Wyatt, Esq.
Allen Matkins Leck Gamble & Mallory LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074
rwyant@allenmatkins.com
(415) 273-7420

This Notice and the deadlines may be revised by the Regional Board. Any questions or comments regarding this Notice should be addressed to Ted Cobb, Assistant Chief Counsel.



Carole H. Beswick
Chair

cc: Attached Mailing List
Regional Board