California Regional Water Quality Control Board
Santa Ana Region

Linda S. Adams
Secretary for Environmental Protection

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Arnold Schwarzenegger
Governor

January 26, 2007 VIA EMAIL

Mr. Walter Pettit
California Regional Water Quality Control Board, Santa Ana Region
3737 Main St., Suite 500
Riverside, CA 92501

ADVOCACY STAFF PREHEARING STATEMENT

Dear Mr. Pettit:

The Advocacy Staff respectfully submits the following Prehearing Statement as required by your Order Requiring Prehearing Statements, dated January 10, 2007.

1. **Designated Party Status.**

The Advocacy Team does not object to granting Designated Party status to any of the parties named in the Order Requiring Prehearing Statements.

2. **Issues for Adjudication and Time Allocation.**

The Advocacy Team intends to present evidence regarding the following issues:

a. Whether West Coast Loading Corporation discharged perchlorate at the 160-acre site within the meaning of the Water Code;
b. Whether Emhart Industries, Inc., Kwikset Locks, Inc., Black & Decker Inc., and Kwikset Corporation are legal successors for the liabilities of West Coast Loading Corporation;
c. Whether Goodrich Corporation discharged perchlorate at the 160-acre site within the meaning of the Water Code;
d. Whether Pyro Spectaculars, Inc., or its predecessors discharged perchlorate at the 160-acre site within the meaning of the Water Code; and
e. The basis for requirements for investigation and remediation.

At this time, the Advocacy Team requests one full hearing day, i.e., 6-8 hours, for its presentation. This estimate is premised on the expectation that numerous evidentiary issues can be resolved prior to the date of the hearing by stipulation or Hearing Officer direction. However, if the other parties present extensive evidentiary objections that must be addressed in other ways, the time needed to present the Advocacy Team's evidence may increase. The Advocacy Team requests the opportunity to modify this estimate if necessary.

3. **Composition of Administrative Record.**

The Advocacy Team proposes to prepare an initial comprehensive Index of Evidence for use by all parties. The parties may then review the Index and add to the Index as desired. At that point, a process ordered by the Hearing Officer could require submission of any objections to the documents by the parties. If not made, objections would be waived. The resulting Index containing all documents submitted by all parties will be posted on the Regional Board's website on a dedicated page that is updated regularly. Additionally, the Advocacy Team will create a document repository at the Regional Board office containing a copy of each document listed in the cumulative Index. The document repository would include both paper and electronic versions of all documents to facilitate viewing and/or copying of the documents. The cumulative Index will be used to compile the Administrative Record in this matter, based on the Hearing Officer's rulings on admissibility.

4. **Technical Advisor to the Hearing Officer and Venue.**

With respect to technical staff available to assist the Hearing Officer, the Advocacy Team notes that the Regional Board's Resolution No. R8-2006-0079 does not contemplate the use of Regional Board staff to serve as advisors. See No. 3 at page 4 of the Resolution. It limits the available staff to State Board staff. We are aware of several qualified potential advisors from State Board staff, including: James Giannopoulos, Leslie Graves, Liz Haven, Joe Mello, John Russell, and Margie Youngs.

The Advocacy Team proposes the following venue for the hearing:
San Bernardino County Behavioral Health Resource Center
850 E. Foothill Blvd.
Rialto, CA 92376
San Bernardino County staff have offered to make this facility available for the hearing, and have already reserved the facility on March 23 based on the draft Notice of Public Hearing.

5. **Discovery**

The Advocacy Team does not request additional Discovery of the parties named in the CAO at this time.

6. **Email Service List for Designated Parties.**

The Advocacy Team designates Kurt Berchtold, Assistant Executive Officer, and Jorge Leon, Senior Staff Counsel, as its contacts for purpose of receipt of any and all notices,

correspondence and filings in this matter. Mr. Berchtold's email address is "kberchtold@waterboards.ca.gov." Mr. Leon's email address is "jleon@waterboards.ca.gov."

7. **Mailing List of Interested Persons.**

The Advocacy Team has provided contact information for interested parties, including email addresses, to Kevin Heinemann.

8. **and 9. Draft Notice of Public Hearing and Draft Hearing Procedure.**

a. According to the Order Requiring Prehearing Statements, the Advocacy Team must submit a "Summary Report and Supporting Information and Witness List" by January 29, 2007. According to the schedule, the other Designated Parties must submit "Written Testimony, Evidence and Argument" by February 14, 2007. The Advocacy Team requests clarification of the difference, if there is any, in the filings expected from the Advocacy Team as distinguished from those expected from the other Designated Parties. In part, given this ambiguity, the Advocacy Team requests additional time to submit its initial filing. We request 21 days from the date of issuance of the Hearing Officer's response to the parties' Prehearing Statements. The Advocacy Team does not oppose the other Designated Parties being provided additional time corresponding to this proposed change.

b. The Advocacy Team supports the Hearing Officer's effort to streamline the hearing process as set forth in Hearing Procedure under "Direct Testimony, Evidence and Argument." However, much of the written materials will consist of the transcripts of sworn deposition testimony of, and documents authenticated by, former employees of West Coast Loading Corporation, Goodrich Corporation, Pyro Spectaculars, Inc., and related entities, in many instances defended by the attorneys for the named parties. Accordingly, the attorneys for the named parties have had full opportunity to cross examine these witnesses. In addition, these persons are under control of the named parties and/or reside in other states, and are generally elderly. We request that a procedure or stipulation for authentication under Title 23, CCR Section 648.4 be developed to avoid unnecessary delay or other issues during the hearing. We would propose that the Hearing Officer determine that the witness deposition transcripts are not "written testimony" for hearing purposes. Additionally, witness declarations should be admissible if they were submitted as an exhibit during the deposition. We also suggest that the Hearing Officer require submission of a detailed schedule by each party regarding their proposed witnesses to determine what matters may be handled via written format and to allow efficient management of hearing time. We request that the "Rebuttal" provisions be modified to permit rebuttal by the Advocacy Staff.

c. With respect to the schedule for submission of witness lists, the Advocacy Staff requests clarification of the requirement for submission of witness lists by "all parties" on February 27, 2007 (the deadline prior to the Hearing Officer's ruling of January 19, 2007 would have been February 20, 2007). The schedule also requires that the Advocacy Staff submit its witness list on February 5, 2007 (the former deadline was January 29, 2007).

Aside from the Order requiring Prehearing Statements, the Advocacy Staff would like to address at this time and requests a ruling from the Hearing Officer on an issue raised for the fist time in Goodrich's letter to the Hearing Officer of January 18, 2006. Goodrich erroneously claims that the Hearing Officer is not authorized "...to conduct proceedings or order Goodrich with respect to the alleged TCE contamination." The Hearing Officer's delegation is not so limited. At the time the Regional Board adopted Resolution No. R8-2006-0079 (October 13, 2006), Amended Cleanup and Abatement Order R8-2006-0053 (dated December 2, 2005) required investigation and remediation of perchlorate and TCE (also referred to as a VOC). The December 2, 2005, Amended Cleanup and Abatement Order is posted at http://www.waterboards.ca.gov/santaana/perchlorate/amended_R8-2005-0053.pdf. See Findings 4, 16, 17, 23 and 24 and Requirements 1-6. The Regional Board was aware of the Amended Cleanup and Abatement Order that existed at the time. The only modification discussed at the Regional Board meeting of October 13, 2006 was the possible addition of Goodrich Corporation and Pyro Spectaculars, Inc. There was no discussion about a possible deletion of TCE as a contaminant of concern. Under these circumstances, it is clear that the Regional Board's intention was to provide the Hearing Officer with full authority to rule on issues concerning both perchlorate and TCE contamination at the site. Goodrich's argument to the contrary is without support.

As a housekeeping matter we note that the Draft Notice of Hearing contains an erroneous address for the Regional Board's website at page 2, under "Document Review and Reproduction."

Sincerely,

For Gerard J. Thibeault
Executive Officer
Santa Ana Regional Water Quality Control Board

cc: Erik Spiess, SWRCB
Kevin Heinemann, RWQCB
Scott Sommer
Cris Carrigan
Julie Macedo
Robert Wyatt
Pete Duchesneau
Jeffrey Dintzer
Erik Mroz
Joel Moskowitz
Marty Refkin
Tom Bloomfield