



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

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File No. 2119.1057 (GVL)
T0609592138

By Email

Ms. Janet Schneider, Chief Admin.
City of Richmond
405 Civic Center Plaza
Richmond, California 94804
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SUBJECT: State Water Board Remand of Regional Water Board Order No. R2-2008-0095 and Its Effect on the Governor's Approval of the Navy's Covenant Deferral Request for the Former Point Molate Naval Fuel Depot site, Richmond

Dear Ms. Schneider:

On September 15, 2009, the State Water Resources Control Board (State Water Board) issued Order WQ 2009-0010 (Remand Order), vacating and remanding San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Order No. R2-2008-0095 (Order), which pertained to the cleanup of the Former Point Molate Naval Fuel Depot site. The Remand Order concluded that an incorrect California Environmental Quality Act (CEQA) exemption was cited in the Order; it did not find any substantive defect with the Order itself, nor its tasks or provisions. Specifically, the Remand Order determined that the Regional Water Board may not use the categorical exemption normally allowed by CEQA when issuing orders for site cleanups and directed the Regional Water Board to make a CEQA determination consistent with the Remand Order by finding that the Order is either statutorily exempt, preparing an environmental document, or finding that the Order is subject to the CEQA "common sense" exception.

The Remand Order had the effect of reviving the Regional Water Board's previous cleanup and abatement orders in effect for the Former Point Molate Naval Fuel Depot site, which had been rescinded by the Order. These previous orders consist of Order No. 95-235 and its amendments, Orders Nos. 97-124 and 97-125. These orders still require a cleanup of the Former Point Molate Naval Fuel Depot site acceptable to the Executive Officer.

The original purpose of the Order was to further refine the reporting requirements and submittal dates for the tasks originally developed in Order No. 95-235. The previous cleanup orders adequately provide assurance that cleanup will occur at the Former Point Molate Naval Fuel Depot site. From this perspective, the Remand Order has no effect on the validity of the Governor's approval of the early transfer process. Moreover, that approval hinged on a finding that 1) the site was suitable for transfer for the use intended by the transferee, and the intended use is consistent with the protection of human health and the environment; 2) the deed or

agreement governing the transfer contains cleanup response action assurances; 3) the Navy has provided adequate public notice of and opportunity to comment on the proposed transfer; and 4) the transfer will not substantially delay cleanup response actions.

Whatever misperceptions exist with respect to the effect of the Remand Order will soon become moot as the Regional Water Board intends to comply with the Remand Order by relying on the Point Molate EIS/EIR when the City certifies it. Immediately following certification of that EIS/EIR, we intend to complete the administrative detail of reissuing the Order with updated submittal dates.

If you have questions, please contact George Leyva at 510-622-2379 or email at gleyva@waterboards.ca.gov.

Sincerely,

Bruce H. Wolfe
Executive Officer

cc:

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