



Winston H. Hickox
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Los Angeles Region

Over 50 Years Serving Coastal Los Angeles and Ventura Counties
Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful



Gray Davis
Governor

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.swrcb.ca.gov/rwqcb4>

Los Angeles Regional Water Quality Control Board Minutes of February 19, 2002 Special Board Meeting held at City of Simi Valley Council Chambers 2929 Tapo Canyon Road, Simi Valley

INTRODUCTION

1. The meeting was called to order by Chairman Nahai at 9:17 a.m.

Board Members Present

Julie Buckner-Levy, Susan Cloke, Francine Diamond, Robert Miller, and H. David Nahai,

Board Members Absent

R. Keith McDonald, Bradley Mindlin, Christopher Pak and Timothy Shaheen

Staff Present

Dennis Dickerson, Ronji Harris, Laura Gallardo, Robert Sams, Michael Lauffer, Jonathon Bishop, Jenny Newman, Jack Price, Paula Rasmussen, Beverly Barbour, Kwang-il Lee, Wen Yang, Gary Schultz, Carey Wilder, Russ Colby, Elizabeth Erickson, Tracy Woods

Others Present

Louise Rishoff, District Director, State Assembly
representing Assemblymember Fran Pavley

Anthony Volante, Mayor, City of Port Hueneme

Kathy Long, Ventura County Supervisor

Ted Cartee, representing Ventura County
Supervisor John Flynn

Drew Bohan, Santa Barbara Channel Keeper

Vicki Clark, EDC

Lee Quaintance, The Beacon Foundation

David Pritchett, Ormond Beach Observers

Edward McGowan, PhD

Gloria Roman

Das Williams, CAUSE

Mati Waiya, Wishtoyo Foundation

Linda Kaplan, Surfside III Residents

Roma Armbrust, Ormond Beach Task Force

Sondra Briggs, Surfside III

Barbara Hamrick, California Department
of Health Services

Daniel Cooper, Lawyers for Clean Water

John Haack, Halaco

Arthur Fine, Halaco

Dave Gable, Halaco

Norman Clark, Halaco

Andy Cejo, Halaco

Jason Clark, Halaco

Al Jackson, Halaco

John H. Philyaw, Halaco

Taylor, Ross, Halaco

Harmon E. Williams, Halaco

John S. Smith, Halaco

Arthur Daniels, Halaco

William L. Terry

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption

For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>



Recycled Paper

Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

Pledge of Allegiance

1. Roll Call

A roll call was taken.

2. Order of Agenda.

There were no changes to the agenda.

3. Approval of Minutes

No minutes were approved at this meeting.

4. Board Member Communications and Ex Parte Disclosure.

No Board Members had anything to communicate.

5. Public Forum

No one spoke during the public forum

Enforcement

6. Consideration of Tentative Cease and Desist Order for Halaco Engineering Company

Michael Lauffer, Staff Council, presented background, procedural elements, and legal analysis of the negotiated tentative cease and desist order (NTCDO). He stated that the Santa Barbara Channel Keeper did not support the NTCDO and had requested a formal evidentiary hearing, but that he felt a formal hearing was unnecessary. He added that although Halaco is the only designated party with a right to require an evidentiary hearing, the Board could decide whether or not to hold one at any point during the meeting.

The Board agreed to proceed informally and to decide whether or not to have a formal hearing later.

The Board allowed political representatives to speak before the staff presentation.

Loiuse Rishoff, representing Assemblymember Fran Pavley, read a letter from the assemblymember supporting the toughest practicable CDO against Halaco.

Anthony Volante, Mayor of the City of Port Hueneme, urged the Board to move forward, either with an evidentiary hearing or to issue a CDO.

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>



Recycled Paper

Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

Kathy Long, Ventura County Supervisor, spoke against the current NTCDO, criticizing the process, commenting on Halaco's history as a bad corporate citizen, and expressing concern that the NTCDO did not have any regulatory teeth. She added that the Board should not settle for the apparent findings as written in the current NTCDO.

Ted Cartee, representing Ventura County Supervisor John Flynn, read a letter written by Mr. Flynn urging the Board to act and to issue a truly effective CDO.

Staff Presentation

Dennis Dickerson, Executive Officer, gave the staff presentation including background on the facility, its location, proximity to wetlands, and regulatory status. He then went over the recent Board hearings and Staff's decision to base a tentative CDO on the current regulations in Board Order 80-58. He discussed Halaco's recent proposal to install a filter press and other key issues in the development of the NTCDO. He stated that he expects the terms of the order to be fully enforceable. He then reviewed the elements of the NTCDO including the time schedule, drainage and erosion control, the waste management unit (WMU) sampling and work plan, decommissioning the existing ground water monitoring wells, surface water monitoring, site characterization, WMU seismic survivability analysis, liquid waste characterization report, and the interim technical report and operations plan for waste removal. He then went over principle changes including improvement to ground water monitoring and temporary erosion control. Finally, he addressed comments from Assembly Member Pavley and EDC.

Robert Sams, Staff Council, presented legal issues. He stated that he felt that staff, EDC, and Halaco had come very close to reaching an agreement on the provisions of the order and expressed dismay with the recent letter submitted by EDC, which leaves the impression that they were nowhere near an agreement. Mr. Sams stated that the point of the negotiated cease and desist order was that Halaco agreed to the provisions, and that there would therefore be no future petition to the State Board or subsequent court proceedings. He reported that the fact that the findings have the "apparent" language in them is not important because it is the provisions that will be enforceable.

Dennis Dickerson then discussed the options and scenarios before the Board and recommended that the Board adopt the NTCDO, stating that Halaco has committed to ceasing all discharge by November 30, 2002 and that the NTCDO achieves substantial compliance based on Order No. 80-58.

Discharger Presentation

Art Fine, Halaco, presented the background to the NTCDO and the facility description. He stated that Halaco's waste is mostly flexing salts and non-recoverable metals that are discharged to the 35 to 40 ft high surface impoundment in the southern area. He went over the requirements of 80-58, stating that it included no storm water provisions and no description of Basin Plan defined beneficial uses. He then went over Halaco's compliance history. He stated that the wetness discovered along the eastern berm was not necessarily discharge from Halaco. He then reviewed the process by which the

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>



Recycled Paper

Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

current NTCDO was developed, including the presentation of the filter press and the meetings between Halaco and the Board. He responded to some of EDC's comments objecting to the NTCDO, including the use of the word "apparent" in the findings. He recommended that the Board adopt the NTCDO.

John Haack, Halaco, Described the filter press and updated the Board on its status. He discussed the possible uses and disposal options for the wet and dry material and presented samples from the pilot operation.

Dave Gable, presented background on Halaco and the benefits of the metal recycling process. He stated the reasons for its location and discussed the anticipated costs of compliance with the CDO.

Environmental Organizations Joint Presentation

Drew Bohan, Santa Barbara Channelkeeper, objected to the NTCDO. He gave an overview of the process leading up to this NTCDO and stated that he felt Halaco's actions were a deliberate attempt to stall the process. He said that he would welcome the NTCDO if it works but asked the board to look at Halaco's past actions, such as not responding to 13267 information requests, and submission of incomplete permit applications to other agencies, to determine whether or not Halaco would act in good faith to comply and meet the deadlines in the NTCDO. Mr. Bohan stated that the NTCDO had no teeth and that the Board could not rely on Halaco's word. He added that Channelkeeper and EDC were not just complaining about a word here or there in the CDO. He stated that the November 30, 2002 deadline would not be the actual deadline because the force majeure clause allows extensions for regulatory and third party delays. Mr. Bohan urged the Board not to rely upon Halaco's promises and to proceed with a formal adjudicative hearing.

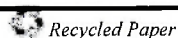
Vicki Clark, EDC, discussed EDC's involvement in the development of this NTCDO. She expressed concern that the NTCDO would not be effective if the proposed filter press process does not work. She reviewed Halaco's compliance history, results of inspections of the waste pile, and disagreed with Halaco's contention that there are no storm water provisions in 80-58. She then discussed the need to remove the "apparent" language from the findings, as it renders them unenforceable. She objected to the force majeure clause and told the Board that a formal adjudicative hearing was needed in order to find all facts.

Daniel Cooper, Lawyers for Clean Water, stated that he had never seen a CDO like this, with "apparent" language in each of the findings. He felt the NTCDO rewarded Halaco for recalcitrance and litigiousness. He expressed concern that this NTCDO would set a precedent for this type of behavior and would encourage other facilities to "paper" staff.

Drew Bohan added that EDC and Channelkeeper were not trying to remove the "apparent" language from the findings so that they can be used in their lawsuit against Halaco.

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

Public Comments

The following Halaco employees spoke on behalf of Halaco, stating that they felt Halaco was working to comply with regulations and had improved in recent years:

Andy Ceja
Al Jackson
John Philyaw
Taylor Ross
John Smith
Harmon Williams
Arthur Daniels
Johnny Savido

Barbara Hamrick, State Department of Health Services – Radiological Health Branch, stated that she did not feel Halaco presented an immediate threat but that the possible long term effects need to be determined by a radiological characterization. She added that the requirements to sell the waste to certain buyers may impact compliance timelines.

People who were in favor of a stronger cease and desist order than the current NTCDO:

Lee Quaintance, the Beacon Foundation
Dr. Edward McGowan
David Pritchett, Ormond Beach Observers
Roma Armbrust, Ormond Beach Task Force
Das Williams, Cause
Linda Kaplan, Surfside III Residents

Others who concerned concern with environmental, health, and cultural impacts of current conditions at Halaco and who supported enforcement action against Halaco:

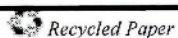
William Terry
Gloria Roman
Mati Waiya, Wishtoyo Foundation – Ventura Coastkeeper

Art Fine responded to comments by Channelkeeper, EDC and the public, stating that if Halaco asked for a formal adjudicative hearing they would be accused of delays. He added that Halaco worked hard to compromise with staff for this CDO. He stated that the force majeure clause was there in case permitting required by AQMD and DTSC might interfere with time limits.

Michael Lauffer reviewed some changes to which each party agreed just before the hearing. This included fixing the lack of a ground water monitoring program in finding No. 17 and inserting language to finding No. 23, clarifying Halaco's denials of violations. He then discussed the use of the word "apparent" in the findings and stated that the word was not a flaw in terms of enforceability. He added that extensions to

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

Minutes of Special Board Meeting
on February 19, 2002

April 25, 2002

deadlines were subject to approval by the executive officer. He then reviewed the options before the Board, which included no decision, adopt the NTCDO with the changes he just outlined, have a recess to discuss the proposed changes, move to have a formal adjudicative proceeding, or issue a cleanup and abatement order (CAO).

Board Member Nahai asked how a CDO is procedurally different from a CAO and if a CAO could be issued by the authority of the executive officer.

Mr. Lauffer replied that the reporting requirements of a CAO were different and a CAO could accelerate cleanup. He added that the executive officer did have the authority to issue a CAO and that Halaco could appeal.

Board Member Cloke objected to nonconforming language regarding the waste management unit and the use of the word "apparent" in the findings.

Chairperson Diamond asked how finding No. 22 would limit the CDO and how it would help.

Mr Lauffer replied that it preserves the option of issuing a CAO and sets deadlines.

Board Member Nahai described changes to the CDO he wished to be made. He stated he was fine with language saying that the findings do not constitute an admission on the part of Halaco, but he does not like the "apparent/may" language. Under 6-32 subsection L, he asked for language to be added that says if the liquid waste has not evaporated within 12 months, then Halaco shall have 3 months to submit a report characterizing the liquid waste. Finally, he instuced that the force majeure clause be limited to acts of god.

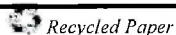
After a 30 minute recess, Mr. Lauffer reported that he met with Halaco regarding the Board's recommended changes and felt that they could resolve each issue although certain issues might need additional negotiating. These include the "apparent/may" language. Mr. Lauffer felt they could remove the language but might need to add additional language to paragraph 22 explaining Halaco's denials of violations. The other big issues are removing 3rd parties from the force majeure clause, and provision M, requiring a more firm date for the removal of the waste pile.

There was a motion for an evidentiary hearing to be scheduled in the first two weeks of April with the proviso that if staff comes back with a revised CDO that meets the Boards recommended changes, then the evidentiary meeting would be canceled.

MOTION: By Board Member Nahai, seconded by Chairperson Diamond and approved on a voice vote. No votes in opposition.

California Environmental Protection Agency

******The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption***
For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>***



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

Minutes of Special Board Meeting
on February 19, 2002
Adjournment of Current Meeting

April 25, 2002

The meeting adjourned at 6:00 p.m. The next regular meeting is scheduled for February 28, 2002, at City of Simi Valley Council Chambers, 2929 Tapo Canyon Road, Simi Valley, California, at 9:00 a.m.

Minutes adopted at the _____ Regular Board meeting
submitted/amended.

Written and submitted by: _____.

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>



Recycled Paper

Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.