



Alan C. Lloyd, Ph.D.  
Agency Secretary  
Cal/EPA



## Department of Toxic Substances Control

700 Heinz Avenue, Suite 200  
Berkeley, California 94710-2721



Arnold Schwarzenegger  
Governor

September 29, 2005

Curtis Scott  
Chief, Groundwater Protection  
And Waste Containment Division  
Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, California 94612

Dear Mr. Scott:

The Department of Toxic Substances Control (DTSC) understands that the community has expressed concern that the Water Board's Tentative Rescission Orders for the Zeneca and U.C. Berkeley Richmond Field Station would render the deed restrictions required by the Water Board unenforceable and leave the sites without enforcement authority by DTSC. The Tentative Rescission Orders are in response to the change of lead agency oversight from the Water Board to DTSC. As these Orders will be considered at the Water Board's October 19, 2005 Board Meeting, DTSC would like to provide information about our regulatory authority to help clarify this issue.

The Covenants and Environmental Restriction documents signed by Cherokee Simeon Venture I and the Water Board run with the land in perpetuity and will remain in place until the Water Board and DTSC determine that it is appropriate to modify or remove them. DTSC's February 8, 2005 Site Investigation Order for the Zeneca Site allows DTSC to enforce the requirements of the land use covenants and environmental restriction documents under California Health and Safety Code, Chapter 6.8. Specifically, Section 5.8 of the Order states that:

*On April 26, 2004, the Cherokee Simeon Venture I (Current Property Owner) and the SFRWQCB signed Covenants and Environmental Restriction documents for Lot 1, Lot 2, and Lot 3. The documents were recorded with the Contra Costa County Recorder's Office. The Current Property Owner shall abide by the terms of those covenants until they are either removed or replaced.*

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DTSC is presently implementing the cleanup and monitoring requirements of plans approved under the Water Board's Orders at both sites. DTSC is also requiring additional investigations, studies and monitoring above and beyond the scope of requirements set forth in the Water Board's Orders. Rescission of the Water Board's Orders does not impact DTSC's authority to conduct oversight of the sites.

DTSC is in the process of expanding its existing Order for the Zeneca site to include the East Stege Marsh area and additional DTSC requirements. DTSC plans to have this Order in place by the end of 2005. DTSC is also in the process of drafting an Order for the University of California Richmond Field Station. We also anticipate having this Order in place by the end of 2005. Until such time as the Orders are issued, we believe that we have sufficient authority to ensure that no actions can take place on the properties covered under the Tentative Rescission Orders that would pose a significant threat to public health or the environment.

DTSC understands that the City of Richmond has approved a Notice of Determination and Mitigated Negative Declaration, and granted a Conditional Use Permit for the Western Research Center (now known as Lots 1 and 2). The Conditional Use Permit approves the development of an urban campus on Lots 1 and 2 of the Zeneca Site. All three documents reference the conditions contained in the RWQCB's Land Use Covenants and No Further Action letters, dated June 21, 2002 and November 16, 2001. As discussed earlier, DTSC has the authority to enforce the conditions of the Land Use Covenants and Environmental Restrictions. Additionally, DTSC's existing Order requires the Responsible Parties to evaluate current conditions on the properties addressed in the no further action letters to determine if further actions are required.

Thank you for the opportunity to provide this clarification. If you have any questions regarding this letter, please call me at (510) 540-3843.

Sincerely,



Barbara J. Cook, P.E., Chief  
Northern California - Coastal Cleanup  
Operations Branch

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