



San Diego County Water Authority

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November 30, 2015

Randy Record and
Members of the Board of Directors
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

MEMBER AGENCIES

- Carlsbad Municipal Water District
- City of Del Mar
- City of Escondido
- City of National City
- City of Oceanside
- City of Poway
- City of San Diego
- Fallbrook Public Utility District
- Helix Water District
- Lakeside Water District
- Olivenhain Municipal Water District
- Otay Water District
- Padre Dam Municipal Water District
- Camp Pendleton Marine Corps Base
- Rainbow Municipal Water District
- Ramona Municipal Water District
- Rincon del Diablo Municipal Water District
- San Dieguito Water District
- Santa Fe Irrigation District
- South Bay Irrigation District
- Vallecitos Water District
- Valley Center Municipal Water District
- Vista Irrigation District
- Yuima Municipal Water District

RE: 8-7 Report on Metropolitan's involvement in the Omega Chemical Corp Superfund Site, request authority to enter into a consent decree for a partial settlement with the USEPA as part of a group of potentially responsible parties, and delegate authority to the GM with the approval of the GC to enter into future partial settlements (L&C)

Chair Record and Board Members:

We request an open session board report be provided on the above matter, which is included on next week's board meeting agenda solely as a closed session item. As background to this particular issue, we are attaching the last board report, dated May 17, 2000, which properly provides information to the public regarding MWD's involvement in the Omega Chemical Corp Superfund Site. There is no reason that a similar board report should not have been provided as part of this month's board packet, updating both board members and importantly, the public.

Transparency lies at the heart of government's obligation to share information with citizens, enabling those citizens to hold their public officials accountable. While the law does allow closed sessions in very limited, narrow circumstances, both the law and MWD's civic duty compels full disclosure of how public business is being conducted, information that affects our decision-making, and how public dollars are being spent.

For these same reasons, we do not believe it is adequate or appropriate to provide only an open session PowerPoint on the day of the board meeting as part of a board item that is listed solely as closed session. The public has no way of knowing, and should not have to figure out on its own, what the closed session is about or whether a public presentation will be made before the board adjourns to closed session.

We ask that this subject matter be placed on the agenda of the next Legal and Claims Committee meeting so that the Board may consider and establish appropriate protocols for the conduct of MWD's business in closed session.

Sincerely,

Michael T. Hogan
Director

Keith Lewinger
Director

Fern Steiner
Director

Yen C. Tu
Director

OTHER REPRESENTATIVE

County of San Diego

Attachment: MWD Board Memo 10-3 Dated May 17, 2000
cc: Jeff Kightlinger, MWD General Manager

A public agency providing a safe and reliable water supply to the San Diego region

- **Board of Directors**
Legal and Claims Committee

May 17, 2000 Board Meeting

10-3**Subject**

Omega Chemical Corporation Superfund Site – U.S. v. Abex Aerospace Division, et al., Consent Decree

Description

This letter describes the settlement with the United States Environmental Protection Agency (EPA) relating to Metropolitan's participation in the cleanup of the Omega Chemical Corporation Site located in the city of Whittier. Metropolitan has agreed to execute a consent decree and participate as a member of the potentially responsible party (PRP) work group in the required site cleanup work at an estimated total cost to Metropolitan of \$68,107. This matter comes under the General Manager's settlement authority as provided under Metropolitan's Administrative Code.

In 1995, EPA issued Administrative Order 95-15 requiring Metropolitan and 169 other named PRPs to undertake immediate cleanup of the Omega site under provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Other PRPs named in the order included the University of California, Cal-Trans, the cities of Los Angeles, Santa Maria and Whittier, Southern California Edison, JPL, Pacific Gas & Electric, Pacific Bell and the Metropolitan Transit Authority. Metropolitan, in compliance with the order, has participated in the cleanup as a member of the PRP group. EPA, Metropolitan, and the other PRP group members have now concluded negotiation of a consent decree and work plan permitting settlement of the pending civil matter, U.S. v. Abex Aerospace Division, et al., in which Metropolitan is named as a party.

Chronology

Between 1989 and 1991 Metropolitan shipped approximately 20.6 tons of hazardous waste to the Omega Chemical site for recycling and disposal. Omega was, at the time, fully permitted by both the California Department of Toxic Substances Control (DTSC) and EPA as a hazardous waste treatment, storage and disposal facility. Manifests signed by Omega indicate that the material was received and recycled in accordance with all applicable laws.

Following the time that Metropolitan shipped waste to the site, Omega was cited by the DTSC for failure to properly manage the facility. Eventually its permits were revoked and operations at the site were suspended. Criminal charges were brought against the facilities owner/operator. The site became a Superfund in 1999 with its addition to the National Priorities List. Under CERCLA provisions both the owner/operator of a hazardous waste facility and all waste generators sending material to the site for treatment and disposal are liable for cleanup of the site.

Since May of 1995, Metropolitan has participated with the organized PRP group in the negotiations and decision-making on the cleanup of the site. To date, work on the site has included removal of all hazardous waste drums from the site, completion of the site characterization and preparation of a work plan, which EPA has now approved. Metropolitan's contribution to the cleanup effort so far totals \$11,107. The approved work plan calls for the design and implementation of a groundwater containment and treatment system, implementation of a remedial investigation/feasibility study for contaminated soils at the site and installation of three sentinel wells to monitor the site. The budgeted cost for the work to be performed by the group is \$15 million, and it is estimated that the operation of the groundwater treatment system will be in operation for up to 20 years.

In November of 1999 a buyout proposal was presented by the large quantity generators to small quantity generators such as Metropolitan. The offer provided that for a substantial premium of the anticipated

contribution, a party could withdraw from the work group and receive limited indemnity for compliance costs, costs associated with performing the cleanup work, and any administrative penalties associated with the compliance order, should any be imposed. The offer did not contain any indemnity for claims for natural resource damages pursuant to CERCLA or equivalent state law, third party actions, or Proposition 65 actions. Because of the limited nature of the indemnity provisions and the additional cost associated with the buyout proposal, it was determined that a better alternative was to continue as an active member of the PRP work group.

Terms of Consent Decree

By signing the decree, Metropolitan, as a member of the settling work group, is obligated to participate in the implementation and completion of the agreed upon cleanup work. Metropolitan makes no admission of liability as part of the settlement. Additionally, EPA covenants not to sue or to take further administrative action against Metropolitan and all group members receive protection against potential CERCLA contribution actions or claims brought by third parties. Members of the work group also mutually agree to waive any claim or cause of action related to the response costs or work to be performed under the decree against any other member of the group.

Metropolitan's projected share of total cleanup costs, based on an allocated share of 0.38%, is \$57,000. This amount may increase to some extent although the work area and scope of work to be performed are carefully defined by the consent decree. The amount may also be reduced if current efforts by the organized group to obtain financial contribution from entities and individuals, which sent waste to the site but have not contributed to the cleanup, are successful.


Policy

This settlement is authorized under MWD Administrative Code § 6433, which permits the General Manager, with the approval of the General Counsel, to settle any claim or suit against the District if the amount to be paid does not exceed \$125,000.

Fiscal Impact

Metropolitan's allocated 0.38% share of the estimated \$15 million project budget translates into an anticipated cost of \$57,000, which, when added to the \$11,107 paid to date, equals a total payment by Metropolitan of \$68,107.

	4/25/2000
General Counsel	Date

	4/27/2000
General Manager	Date