

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SPPI-SOMERSVILLE, INC., *et al.*,
Plaintiffs,
v.
TRC COMPANIES, INC., *et al.*,
Defendants.

No. C 04-2648 SI

**ORDER RE: FURTHER
BRIEFING/QUESTIONS ON RCRA
CLAIM**

Several of the motions for summary judgment which are scheduled for a hearing on August 21, 2009 address plaintiffs' RCRA claims relating to surface contamination. Defendants contend that they are entitled to summary judgment on these claims because, *inter alia*, the City of Antioch has removed all waste from Parcel 34 "Area D," and because the remediation of Markley Creek has been completed pursuant to the Regional Board's 2003 CAO. The parties' dispute centers on the current presence of a "wedge" of waste and debris, which is encapsulated by a layer of structural fill. The City of Antioch contends that plaintiffs are not entitled to relief under RCRA because the wedge design was approved by the Regional Board. Plaintiffs claim that notwithstanding the Regional Board's approval of the wedge, the wedge nevertheless presents an "imminent and substantial endangerment" to health or the environment, and has submitted an expert declaration to that effect.¹


The Court directs the parties to be prepared to address the following questions at the hearing, and if possible, to file written responses prior to the August 21, 2009 hearing. First, does the Regional Board's approval of the "wedge" design mean, as a matter of law, that the wedge does not present an

¹ The Court is aware that defendants have objected to Mr. Isham's declaration.

1 “imminent and substantial endangerment” to health or the environment? Second, as a factual matter,
2 is there evidence in the record showing that the wedge does not present an “imminent and substantial
3 endangerment?”
4

5 **IT IS SO ORDERED.**

6
7 Dated: August 19, 2009



SUSAN ILLSTON
United States District Judge

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28