


1 consolidated schedule moving forward. Because these two cases are so similar in almost every
2 aspect, the parties' proposed stipulated schedule will not simply be "rubber stamped."

3 Additionally, the parties are reminded that *no* motions to dismiss for lack of subject matter
4 jurisdiction are currently pending before the undersigned with respect to either of these
5 consolidated actions. As such, protests over whether plaintiff has properly satisfied the notice
6 requirements for its RCRA claims — which is required for federal subject matter jurisdiction —
7 cannot be used as a shield against discovery.*

8
9 **IT IS SO ORDERED.**

10 Dated: December 23, 2009.

11 
12 _____
13 WILLIAM ALSUP
14 UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22

23 _____
24 * A brief comment on this topic. Defendants, in their opposition brief to this
25 discovery dispute, argue that plaintiff failed to give notice to the California Department of
26 Toxic Substances Control, which defendants claim is the "state solid waste management
27 agency" to whom notice must be given under the RCRA (Dkt. No. 47 at 2). However, a
28 brief glance at California Public Resources Code Section 40508 indicates that the
California Integrated Waste Management Board — to whom notice *was* given — has been
"designated as the state solid waste management agency for all purposes stated in the
[RCRA]." While this comment does not constitute a final determination of this issue,
defendants should consider this designation before raising the argument again.