



# California Regional Water Quality Control Board

## San Francisco Bay Region



Alan C. Lloyd, Ph.D.  
Agency Secretary

1515 Clay Street, Suite 1400, Oakland, California 94612  
(510) 622-2300 • Fax (510) 622-2460  
[http://www. waterboards.ca.gov/sanfranciscobay](http://www.waterboards.ca.gov/sanfranciscobay)

Arnold Schwarzenegger  
Governor

**TO:** Interested parties

**FROM:** Stephen I. Morse  
Assistant Executive Officer  
**SAN FRANCISCO BAY  
REGIONAL WATER QUALITY CONTROL BOARD**

**DATE:** November 3, 2005

**SUBJECT: RESPONSES TO OCTOBER 25, 2005 COMMENTS ON STAFF'S  
SEPTEMBER 30, 2005 MEMORANDUM REGARDING PROCEDURAL  
OPTIONS FOR 327 MOFFETT BOULEVARD, MOUNTAIN VIEW, CA**

Staff issued a memorandum dated September 30, 2005 regarding procedural options for 327 Moffett Boulevard, Mountain View. We received written comments on October 25, 2005, from Raytheon Company (Raytheon), Rheem Manufacturing Company (Rheem), and Union Bank of California (Union Bank). Many of these comments reiterated comments made by the same parties before the Board's March meeting. Those comments were summarized and responded to in staff's March 2, 2005, memorandum (attached). This memorandum summarizes the October 25, 2005, comment letters and provides responses *in italics* to each substantial new comment. References to staff's March 2, 2005, memorandum are provided for comments that have been previously addressed.

**Raytheon, represented by Kathleen Goodhart, attorney at Cooley Godward – 2 pages**

1. The facts compel the conclusion that the contamination occurred during Innerconn's tenancy. Paul and Patricia Zebb are correctly identified as an indispensable party. All potentially responsible parties must be given an opportunity to participate in any proceeding to adjudicate responsibility for Site contamination (pg. 1, paragraph 2).

*The phrase "indispensable party" is typically used in litigation but not in proceedings before the Board. It may be inferred that the commenter means that it is necessary to include Paul and Patricia Zebb in any proceeding to determine whether or not to name additional responsible parties. In the event that the Board elects to hold a hearing process in this matter, the purpose of the hearing would be to determine which parties are responsible; thus it is premature to determine that Paul Zebb or Patricia Zebb should be named as responsible parties. The proceeding would be adjudicatory in nature and would determine which parties would be considered to be dischargers for purposes of Water Code 13304.*

2. Additional parties will complicate the process significantly and it will require significant additional staff and Board resources (pg. 1, paragraph 3).

*We agree that conducting an adjudicatory process in this matter will be complicated and time consuming for the Board and its staff. We also agree that it is likely to be more complicated and time consuming to include the current property owner and the Zebbs than was previously estimated based on just including Union Bank, Rheem and Raytheon.*

3. Deferring action is appropriate considering 1) the impending trial date and court ordered mediation between Union Bank and Rheem, and 2) the low risk status of site (pg. 2, paragraph 2).

*Impending court actions were addressed in Response #8 in the March 2,2005, memorandum. Regarding court-ordered mediation, it is unclear from the comment whether the mediation in which Union Bank and Rheem are involved would resolve the issues before the Board regarding responsibility for completion of cleanup under the Board's order. In the event that Union Bank and any other parties that may be responsible for the discharges are able to settle the issues within the jurisdiction of the Board then it would not be necessary for the Board to hold a trial type hearing to adjudicate the same issues.*

*Regarding site status, staff previously concluded that no active remedial action is needed at the site, due to past remedial action and natural attenuation of site contaminants. However, the Board has not been presented with all evidence needed to determine whether this is a low-risk site where no further action is needed. At this point, the remaining tasks include groundwater monitoring and risk management (to prevent human exposure to contaminants prior to attainment of cleanup standards). The Board has the discretion to consider site status in determining whether it wishes to defer action (option 1).*

4. Union Bank can continue to seek remedies in court without burdening the limited resources of the Board and its staff (pg. 2, paragraph 2).

*This comment recommends that the Board elect option 1, which would entail deferring action pending the occurrence of one or more of several possible events, including resolution of litigation between Union Bank and Rheem. The Board may elect to pursue that option.*

**Rheem, represented by James L. Meeder, attorney at Allen, Matkins, Leck, Gamble & Mallory – 5 pages**

5. Staff has made no substantive progress towards resolution of the matter in the ten months since initiation of the proceedings (pg. 1, paragraph 3).

*We do not entirely agree. Staff has made progress on a number of procedural steps needed to bring this matter before the Board for an evidentiary hearing. However, the commenter is correct that the process will take significant time. The timeframe is certainly affected by the Board's desire to minimize the overall duration of the Board hearing, which requires that the parties and Board staff invest substantial time beforehand in preparing for the hearing.*

6. The Board should defer action until April 30, 2006, considering impending trial date and court ordered mediation between Union Bank and Rheem, and because of the low risk status of site (pg. 2, paragraph 1).

*Impending court actions addressed in Response # 8 of the March 2, 2005, memorandum. This issue is addressed above in response to Raytheon's comment 2.*

7. Section II: History of Proceedings Before the Regional Board. This section summarizes the major events of this matter since January 2005 (pages 2-4).

*Comments noted.*

8. Lack of progress over the past 10 months demonstrates how difficult and time-consuming the process is. It is not an effective use of staff and party resources (pg. 4, paragraph 5).

*It requires a long time to conduct a formal administrative hearing process. That is particularly true when the Board elects to have a relatively short hearing by having the parties and staff do substantial preparation in advance. It is likely that it will take more time to conduct the prehearing process as well as the hearing before the Board if the number of the parties increases beyond that contemplated by the Board in March.*

9. Board should reverse March decision considering the low-risk status (pg. 4, paragraph 6).

*This issue is addressed above in response to Raytheon's comment 3.*

10. Board should reconsider matter after April 30, 2006, because the potential for Board hearing will encourage parties settle through direct negotiation and mediation (pg. 4, paragraph 7).

*This comment is a variation on option 1 which would involve deferring action regarding naming additional parties until one of the specified events occur. In the event that the parties settle the issues that are within the Board's jurisdiction, then it appears possible that the Board could use a much more abbreviated hearing process in this matter—or that no hearing would be required.*

**Union Bank, represented by Rupert P. Hansen, attorney at Cox, Wooton, Griffin, Hansen & Poulos – 8 pages**

11. Board staff should follow up on its September 2001 letters to Rheem and Raytheon. These letters indicate that staff intended to release a tentative order naming both Rheem and Raytheon as responsible parties (pg. 1, paragraph 2).

*Addressed by Response #11 of the March 2, 2005, memorandum.*

12. This section explains why Union Bank expanded its original request that the Board name two parties to a request to name ten additional responsible parties. Union Bank has withdrawn its July 20, 2005 request to name ten additional parties, and they are now requesting to name only three parties, Rheem, Raytheon, and LBD Development (LBD) (page 2).

*Comment noted. As discussed above, Raytheon commented that it would be necessary for any Board hearing concerning this matter to include two other parties in addition to those requested by Union Bank, which would mean that a Board hearing process would involve Union Bank plus five other parties.*

13. Board should proceed with its March decision because only one of the new parties, LBD, is indispensable. LBD is indispensable only because it is the current owner. They were not an owner or operator at the time of discharge, so they will have very little involvement in evidentiary hearing process. LBD will not burden the process or extend time needed for hearing (pg. 3, paragraphs 1-3).

*It is unclear what level of involvement any party may have; thus it is not possible to say at this time whether involvement by LBD, the current owner, would extend the time required for the prehearing preparation and the hearing before the Board. Raytheon has commented that two other responsible parties must also be included in any Board process because it believes that the facts indicate that the contamination at the site occurred during the operation of a company owned by those parties. It is possible that involvement by those parties would further extend the time necessary to resolve an administrative hearing process in this matter.*

14. Important Policy Issues and Due Process. Union Bank has cooperated and complied with the Board even though it didn't cause discharge. Board should not set bad precedent by rewarding recalcitrant dischargers. The Board should follow State Board policy regarding naming dischargers (pages 3&4).

*Addressed by Responses #12, #13, and #14 of the March 2, 2005, memorandum.*

15. Union Bank's Comment on Proposed Procedural Options. This section provides detailed comment for each the four proposed procedural options (pages 5-7).

*Addressed by Responses #18, #19, #21, #22, #23, & #24 of the March 2, 2005, memorandum.*

Attachment: March 2, 2005, Memorandum