

LAW OFFICES OF DONALD B. MOONEY

DONALD B. MOONEY

129 C Street, Suite 2
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June 25, 2012

Via Electronic Mail
(pcreedon@waterboards.ca.gov)
and Facsimile

Pamela C. Creedon
Executive Director
California Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Re: Comments on the Cease and Desist Order R5-2012-XXX for Clark Structural, LLC and Clark Pacific Corporation former Spreckels Sugar Company Facility, Yolo County

Dear Ms. Creedon:

This office represents Brenda Cedarblade, Ted Wilson, and the Historic Nelson Ranch. Pursuant to the June 1, 2012, notice of a Public Hearing concerning Cease and Desist Order for Clark Structural, LLC and Clark Pacific Corporation former Spreckels Sugar Facility, Ms. Cedarblade and Mr. Wilson submit comments on the proposed Cease and Desist Order (CDO). Ms. Cedarblade and Mr. Wilson own The Historic Nelson Ranch, which is adjacent to and downwind of the property owned by Clark Structural and Clark Pacific ("Clark Pacific" or "Dischargers") known as the former Spreckels Sugar Facility. As the owners of the Historic Nelson Ranch, their health, business and property interests have been severely impacted by the existence of the PCC piles, the Dischargers' failure to comply with the March 14 2003, Central Valley Water Board's Waste Discharge Requirements Order R5-2003-0047, the callous disregard to the adjacent property owners' regarding the method and timing of removing the PCC piles. These comments incorporate the comments and documents submitted by Brenda Cedarblade and Ozone Process Consultants, Inc. In addition to those comments, the following comments and evidence is provided regarding the proposed Cease and Desist Order.

Clark Pacific's operation regarding the removal of the piles of precipitated calcium carbonate ("PCC") has resulted in significant impacts to the health of individuals living and working at the Historic Nelson Ranch, as well as to the horses that are boarded at the Ranch. (See Comments submitted by Brenda Cedarblade and Ozone Process Consultants, Inc.) When the wind blows from the west, the PCC dust encases the Ranch resulting in a trespass and nuisance, which causes significant health impacts to individuals and horses. The current removal of the PCC piles deviates substantially from historic practices. While Clark Pacific has been under the current WDRs from the

Regional Water Quality Control Board to remove the PCC piles, Clark has proceeded in a manner that has violated the WDRs, results in a continuing nuisance to the adjacent property owners, and is injurious to the public health. The CDO and enforcement of the WDRs fails to adequately address the impacts to individuals and animals that are downwind from the PCC piles.

1. The Cease and Desist Order Fails to Impose any Civil Penalties.

While the Cease and Desist Order identifies the longstanding and continuing violations of the current WDRs, the Regional Board does not propose imposing any administrative civil penalties against the Discharger. The Discharger failed to meet the 2007 deadline for removal of the PCC piles, has repeatedly failed to provide the Regional Board an accurate estimate of the quantity of remaining PCC and has allowed the PCC piles to be in a loose, uncompacted state that makes the PCC subject to wind and precipitation events. Moreover, the Dischargers failed to meet the informal deadline with the Regional Board staff when staff agreed to take no enforcement action if the Discharger removed the remaining piles by 2011. Not only did the Dischargers fail to remove the required amount of PCC, the Dischargers failed to provide an accurate accounting of the amount of PCC remaining. The assessment of an Administrative Civil Liability would ensure that the Discharger is not rewarded for its repeated violations and the misrepresentations as to the amount of PCC remaining. By not assessing any such penalty, the Regional Board has effectively provided the Dischargers a financial windfall for its noncompliance. The CDO should be amended to provide for a significant Administrative Civil Liability that reflects the Dischargers' continuing failure to comply with its legal obligations under the CDO.

2. The Dischargers Have Repeatedly Misrepresented the Quantity of PCC Remaining

As a result of the Discharger's continuous misrepresentations as to the quantity of PCC remaining, the Discharger has failed to meet the removal requirements in the WDR. The proposed CDO states that the Discharger conducted the most recent survey May 2012. As the Discharger has repeatedly underestimated the amount of PCC, the Regional Board should direct that an independent third party consultant, selected by the Regional Board, and paid for by the Discharger, conduct an investigation as to the quantity of PCC remaining. In order for the Regional Board's Cease and Desist Order to be effective, the Regional Board must have an accurate accounting of the quantity of PCC that remains at the site.

3. The Dischargers' Removal of PCC Has Resulted in Significant Contamination of the Adjacent Property.

The Dischargers have failed to properly remove the PCC which has resulted in significant emissions from the site and contamination of the Historic Nelson Ranch. In

April 2012, on behalf of Ms. Cedarblade and Mr. Wilson, dust and soil samples were performed at the Historic Nelson Ranch. (See April 17, 2012 Letter from Grayland Environmental to Donald B. Mooney, attached to this comment letter.) The samples were taken at a time when Clark Pacific and its contractor were actively disturbing the PCC piles as a result of excavation and hauling. It should be noted that the samples were taken on April 3, 2012, eight days prior to the staff's April 11th inspection wherein the staff observed a significant volume of PCC remained in a loose, uncompacted state that could be subject to wind and precipitation events. (See Draft Cease and Desist Order at page 2, paragraph 11.) The soil sample was collected from a small residual pile of soil on Ranch's property, but adjacent to Clark Pacific's property. The soil material was slightly yellowish, brownish white color and had a very fine-grained (powdery) texture. Dust samples were collected from inside the residence at the Ranch.

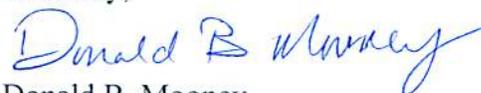
The samples were analyzed for total chromium, total alkalinity as calcium carbonate (CaCO_3), ammonia (NH_3) and for the hydrogen ion concentration (pH). The laboratory results for the soil sample indicated that all three analytes were present in the soil greater concentrations than the reporting limits. The dust samples in the house, all three analytes were detected at much higher concentrations. Thus, the emissions generated from removal of the PCC piles have resulted in significant contamination to the Historic Nelson Ranch.

The CDO should be amended to ensure that the continuing removal of the PCC will not contaminate nearby properties. The CDO should also be amended to require independent testing of the materials and contaminants contained in the remaining PCC piles at the site.

4. The CDO's Should Direct that Copy of Reports Be Submitted to Adjacent Property Owners

Paragraphs 3 through 11 of the proposed CDO provides for the Discharger to submit reports to the Regional Board. The proposed CDO should be amended to require that copies of all such reports be mailed directly to Ms. Cedarblade and Mr. Wilson, or their designated representative. As the adjacent property owners, they should be notified immediately of the progress of the removal and the compliance with the mandatory requirements contained in the CDO.

Sincerely,



Donald B. Mooney
Attorney

Ms. Pamela C. Creedon

June 25, 2012

Page 4

Attachment: April 17, 2012 Letter from Grayland Environmental to Donald B. Mooney

cc: Brenda Cedarblade
Ted Wilson
Frederick Moss, Assistant Executive Officer
Wendy Wyels, Supervisor, Compliance and Enforcement Section
Todd Del Frate, Regional Board (tdelfrate@waterboards.ca.gov)

April 17, 2012

Project No.: 156-010

Mr. Donald Mooney
Law Offices of Donald Mooney
129 "C" Street, Suite 2
Davis, California 95616

Subject: Outdoor Soil and Indoor Dust Sample Results
Historic Nelson Ranch, 41070 County Road 18C, Woodland, California 95776

Dear Mr. Mooney:

At your request, Grayland Environmental (*Grayland*) has prepared this letter report regarding the environmental sample collection work conducted at the property located at 41070 County Road 18C in Woodland, California (site). The purpose of the work was to evaluate outdoor soil and indoor dust at the site for potential contamination, which may be present as a result of the apparent disturbance of large volumes of soil at the adjacent property, where sugar beets were once processed. This environmental sample collection work was conducted by a State of California registered Professional Geologist (PG).

The three tasks completed for the site included:

- Task 1 Collect a sample of soil from near the property line and a sample of dust from inside of the residential structure at the site for laboratory testing.
- Task 2 Analyze both samples at a California State accredited environmental laboratory for alkalinity (CaCO₃), ammonia (NH₃), total chromium (Cr) and pH.
- Task 3 Prepare this letter report documenting the sample collection work and analytical results of the laboratory samples.

Grayland arrived at the site on April 3, 2012, to conduct a brief site inspection, prior to performing the aforementioned Task 1. A walk through of the horse ranch facility indicated that the apparent disturbance of large volumes of exposed soil at the adjacent property had created the occurrence of widespread, wind-dispersed dust across much of the property, including a significant accumulation inside of the site structures. Areas observed during the site inspection included the horse stalls, arena building, business office and site residence.

Mr. Donald Mooney

April 17, 2012

Following the brief site inspection, a soil sample was collected from a small residual pile of soil present along the property line of the horse ranch, adjacent to the former sugar beet processing facility. The soil material was a slightly yellowish, brownish white color and had a very fine-grained (powdery) texture. The sample was collected in a stainless steel sample sleeve by driving the sleeve through the surface of the pile using a percussion core sampler. The filled sample sleeve was sealed with plastic end caps, labeled (SSP-1) and placed immediately in iced storage for delivery to an environmental laboratory.

To compare this soil material to dust observed inside of the site residence, a sample of dust was collected mainly from the floor and furniture surfaces present in the living room of the residence. An inspection of the dust indicated that there was a strong similarity in grain size (powdery) and color to the soil observed along the property line. The dust was collected using a plastic scraping device and was placed in a sealed plastic bag. The bag sample was placed in a glass sample jar, labeled (SID-1) and placed in iced storage for delivery to an environmental laboratory.

Both of these environmental samples were listed on a chain of custody record and submitted to SunStar Laboratories, Inc., of Lake Forest, California, for chemical analysis. The samples were analyzed for the total threshold limit concentration (TTLC) of total chromium using Environmental Protection Agency (EPA) method 6010B, total alkalinity as calcium carbonate (CaCO₃) using EPA method 310.1, ammonia (NH₃) using EPA method 350.2 and for the hydrogen ion concentration (pH) using EPA method 9045B. SunStar is accredited by the State of California Health Department to performed these laboratory methods.

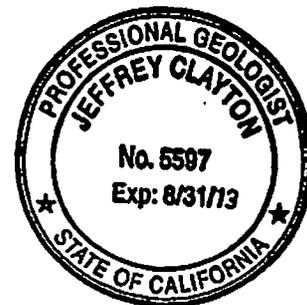
The laboratory analytical results of the environmental samples indicated that reportable concentrations (greater than the method reporting limit) of all three analytes were present in the soil sample (Table 1). In addition, all three of these analytes also were detected in the dust sample, however, at much greater concentrations (Table 1).

If you have any questions regarding this environmental sample collection work and letter report or need additional information, please do not hesitate to contact our office. Thank you for the opportunity to provide our environmental consulting services.

Sincerely,
Grayland Environmental



Jeffrey A. Clayton, P.G.
Principal Geologist



attachment: Laboratory Report #T120597

TABLE 1 LABORATORY RESULTS OF SOIL AND DUST SAMPLE ANALYSES SITE INVESTIGATION 41070 COUNTY ROAD 18C, WOODLAND, CALIFORNIA						
ANALYTE	SAMPLE DESIGNATION					
	SSP-1	SID-1	MRL			
CAM 17 Metals (TTLC)						
Chromium	5.0	32	2.0			
Physical Properties						
Alkalinity (CaCO ₃)	1,350	7,000	60.0			
Ammonia (NH ₃)	17.2	407	5.00			
Hydrogen Ion Concentration						
pH	8.4	7.6	0.1*			
TTLC = Total Threshold Limit Concentration Samples reported in mg/kg = milligrams/kilogram or mg/l = milligrams per liter (parts per million) MRL = Method Reporting Limit * pH units						



25712 Commercentre Drive
Lake Forest, California 92630
949.297.5020 Phone
949.297.5027 Fax

13 April 2012

Jeff Clayton
Grayland Environmental
1807 Valdora Street
Davis, CA 95618
RE: 156-010

Enclosed are the results of analyses for samples received by the laboratory on 04/06/12 09:00. If you have any questions concerning this report, please feel free to contact me.

Sincerely,

Wendy Hsiao
Project Manager

SunStar Laboratories, Inc.
 25712 Commercentre Dr
 Lake Forest, CA 92630
 949-297-5020

Chain of Custody Record

Client: Grayland Environmental
 Address: 1807 Valdora St, Davis CA 95618
 Phone: 520 756-1441 Fax: _____
 Project Manager: Jeff A. Clayton

Date: 4-5-12 Page: 1 of 1
 Project Name: _____
 Collector: AK Client Project #: 156-010
 Batch #: 7120527 EDF #: None

Sample ID	Date Sampled	Time	Sample Type	Container Type	8260	8260 + OXY	8260 BTEX, OXY only	8270	8021 BTEX	8015M (gasoline)	8015M (diesel)	8015M Ext./Carbon Chain	8010/7000 Title 22 Metals	CaCO ₃	NH ₃ Ammonia 350.1	Total Chromium	Laboratory ID #	Comments/Preservative	Total # of containers
SSP-1	4-3-12	14:45	Soil	sleeve													01		1
SID-1	4-3-12	14:30	dust	jar										XX	XX	XX	02		1

SID. TAT
4-6-12

Relinquished by: (signature) <i>[Signature]</i>	Date / Time 4-5-12 / 13:10	Received by: (signature) <i>[Signature]</i>	Date / Time 4-5-12 / 13:10	Total # of containers 2	Notes Analyze SID-1 for CaCO ₃ first NH ₃ second Or third in case there is not enough sample
Relinquished by: (signature) <i>[Signature]</i>	Date / Time 4-6-12 / 9:00	Received by: (signature) <i>[Signature]</i>	Date / Time 4-6-12 / 9:00	Chain of Custody seals (Y/N/A) Seals intact (Y/N/A) Received good condition/cold (Y/N/A)	
Relinquished by: (signature)	Date / Time	Received by: (signature)	Date / Time	Turn around time: <u>STND</u>	

Sample disposal instructions: Disposal @ \$2.00 each _____ Return to client _____ Pickup _____



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Lake Forest, California 92630
949.297.5020 Phone
949.297.5027 Fax

Grayland Environmental 1807 Valdora Street Davis CA, 95618	Project: 156-010 Project Number: 156-010 Project Manager: Jeff Clayton	Reported: 04/13/12 16:16
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ANALYTICAL REPORT FOR SAMPLES

Sample ID	Laboratory ID	Matrix	Date Sampled	Date Received
SSP-1	T120597-01	Soil	04/03/12 14:45	04/06/12 09:00
SID-1	T120597-02	Dust	04/03/12 14:30	04/06/12 09:00

SunStar Laboratories, Inc.

Wendy Hsiao, Project Manager

The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.



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 Lake Forest, California 92630
 949.297.5020 Phone
 949.297.5027 Fax

Grayland Environmental 1807 Valdora Street Davis CA, 95618	Project: 156-010 Project Number: 156-010 Project Manager: Jeff Clayton	Reported: 04/13/12 16:16
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SSP-1
T120597-01 (Soil)

Analyte	Result	Reporting Limit	Units	Dilution	Batch	Prepared	Analyzed	Method	Notes
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SunStar Laboratories, Inc.

TTLRCRA Metals by EPA 6010B

Chromium	5.0	2.0	mg/kg	1	2040911	04/09/12	04/09/12	EPA 6010B	
Conventional Chemistry Parameters by APHA/EPA/ASTM Methods									
Total Alkalinity	1350	60.0	mg/l	1	2040914	04/09/12	04/09/12	EPA 310.1	
Ammonia as NH3	17.2	5.00	mg/kg	-	2040915	04/09/12	04/13/12	EPA 350.2	
pH	8.4	0.1	pH Units	-	2041308	04/13/12	04/13/12	EPA 9045B	1-02

SunStar Laboratories, Inc.

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Wendy Hsiao, Project Manager

Grayland Environmental 1807 Valdora Street Davis CA, 95618	Project: 156-010 Project Number: 156-010 Project Manager: Jeff Clayton	Reported: 04/13/12 16:16
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SID-1
T120597-02 (Dust)

Analyte	Result	Reporting Limit	Units	Dilution	Batch	Prepared	Analyzed	Method	Notes
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SunStar Laboratories, Inc.

TTL RCRA Metals by EPA 6010B

Chromium	32	2.0	mg/kg	1	2040920	04/09/12	04/10/12	EPA 6010B	
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Conventional Chemistry Parameters by APHA/EPA/ASTM Methods

Total Alkalinity	7000	60.0	mg/l	1	2040914	04/09/12	04/09/12	EPA 310.1	
Ammonia as NH3	407	50.0	mg/kg	10	2040915	04/09/12	04/13/12	EPA 350.2	
pH	7.6	0.1	pH Units	1	2041308	04/13/12	04/13/12	EPA 9045B	1-02

SunStar Laboratories, Inc.

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Wendy Hsiao

Wendy Hsiao, Project Manager



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Grayland Environmental 1807 Valdora Street Davis CA, 95618	Project: 156-010 Project Number: 156-010 Project Manager: Jeff Clayton	Reported: 04/13/12 16:16
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TTLRC RCRA Metals by EPA 6010B - Quality Control
SunStar Laboratories, Inc.

Analyte	Result	Reporting Limit	Units	Spike Level	Source Result	%REC	%REC Limits	RPD	RPD L. Unit	Notes
Batch 2040911 - EPA 3051										
Blank (2040911-BLK1) Prepared & Analyzed: 04/09/12										
Chromium	ND	2.0	mg/kg							
LCS (2040911-BS1) Prepared & Analyzed: 04/09/12										
Chromium	46.4	2.0	mg/kg	50.0		92.8	75-125			
Matrix Spike (2040911-MS1) Source: T120597-01 Prepared & Analyzed: 04/09/12										
Chromium	79.4	2.0	mg/kg	100	4.96	74.5	75-125			QM-07
Matrix Spike Dup (2040911-MSD1) Source: T120597-01 Prepared & Analyzed: 04/09/12										
Chromium	83.9	2.0	mg/kg	100	4.96	78.9	75-125	5.40	20	
Batch 2040920 - EPA 3051										
Blank (2040920-BLK1) Prepared: 04/09/12 Analyzed: 04/10/12										
Chromium	ND	2.0	mg/kg							
LCS (2040920-BS1) Prepared: 04/09/12 Analyzed: 04/10/12										
Chromium	104	2.0	mg/kg	100		104	75-125			
LCS Dup (2040920-BSD1) Prepared: 04/09/12 Analyzed: 04/10/12										
Chromium	103	2.0	mg/kg	100		103	75-125	0.925	20	

SunStar Laboratories, Inc.

Wendy Hsiao

Wendy Hsiao, Project Manager

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Grayland Environmental
 1807 Valdora Street
 Davis CA, 95618

Project: 156-010
 Project Number: 156-010
 Project Manager: Jeff Clayton

Reported:
 04/13/12 16:16

Conventional Chemistry Parameters by APHA/EPA/ASTM Methods - Quality Control
SunStar Laboratories, Inc.

Analyte	Result	Reporting Limit	Units	Spike Level	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 2040914 - General Preparation										
Duplicate (2040914-DUP1) Source: T120597-01 Prepared & Analyzed: 04/09/12										
Total Alkalinity	1380	60.0	mg/l		1350			2.20	25	
Batch 2040915 - General Preparation										
Blank (2040915-BLK1) Prepared: 04/09/12 Analyzed: 04/13/12										
Ammonia as NH3	ND	5.00	mg/kg							
LCS (2040915-BS1) Prepared: 04/09/12 Analyzed: 04/13/12										
Ammonia as NH3	25.4	5.00	mg/kg	25.0		102	90-110			
Matrix Spike (2040915-MS1) Source: T120597-01 Prepared: 04/09/12 Analyzed: 04/13/12										
Ammonia as NH3	44.2	5.00	mg/kg	25.0	17.2	108	90-110			
Matrix Spike Dup (2040915-MSD1) Source: T120597-01 Prepared: 04/09/12 Analyzed: 04/13/12										
Ammonia as NH3	43.2	5.00	mg/kg	25.0	17.2	104	90-110	2.52	25	
Batch 2041308 - General Preparation										
Duplicate (2041308-DUP1) Source: T120597-01 Prepared & Analyzed: 04/13/12										
pH	8.41	0.1	pH Units		8.44			0.356	20	

SunStar Laboratories, Inc.

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Wendy Hsiao, Project Manager

Grayland Environmental
1807 Valdora Street
Davis CA, 95618

Project: 156-010
Project Number: 156-010
Project Manager: Jeff Clayton

Reported:
04/13/12 16:16

Notes and Definitions

- QM-07 The spike recovery and or RPD was outside acceptance limits for the MS and/or MSD. The batch was accepted based on acceptable LCS recovery.
- I-02 This result was analyzed outside of the EPA recommended holding time.
- DET Analyte DETECTED
- ND Analyte NOT DETECTED at or above the reporting limit
- NR Not Reported
- dry Sample results reported on a dry weight basis
- RPD Relative Percent Difference

SunStar Laboratories, Inc.

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Wendy Hsiao, Project Manager

SAMPLE RECEIVING REVIEW SHEET

BATCH # T120587

Client Name: GREYLAND ENV.

Project: 156-010

Received by: Jimmy

Date/Time Received: 4-6-12 / 9:00

Delivered by: Client SunStar Courier GSO FedEx Other

Total number of coolers received 1 Temp criteria = 6°C > 0°C (no frozen containers)

Temperature: cooler #1 7.0 °C +/- the CF (-0.2°C) = 6.8 °C corrected temperature

cooler #2 _____ °C +/- the CF (-0.2°C) = _____ °C corrected temperature

cooler #3 _____ °C +/- the CF (-0.2°C) = _____ °C corrected temperature

Samples outside temp. but received on ice, w/in 6 hours of final sampling. Yes No* N/A

Custody Seals Intact on Cooler/Sample Yes No* N/A

Sample Containers Intact Yes No*

Sample labels match COC ID's Yes No*

Total number of containers received match COC Yes No*

Proper containers received for analyses requested on COC Yes No*

Proper preservative indicated on COC/containers for analyses requested Yes No* N/A

Complete shipment received in good condition with correct temperatures, containers, labels, volumes preservatives and within method specified holding times. Yes No*

* Complete Non-Conformance Receiving Sheet if checked Cooler/Sample Review - Initials and date JK 4-6-12

Comments:
