

California Regional Water Quality Control Board
North Coast Region

COMPLAINT NO. R1-2003-0072

FOR

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

PACIFIC GAS & ELECTRIC COMPANY
THE 137 SANTA ROSA GROUP PARTNERSHIP
MADELINE L. MUSCO
GEORGE LAWRY
RICHARD COLOMBINI
KENNETH COKER
JOEL DeSILVA
UPWAY PROPERTIES

First and B Streets
Santa Rosa, California

Sonoma County

For

Failure to Comply with Cleanup and Abatement Order No. R1-2002-0115

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) gives notice that:

1. This Complaint is issued to Pacific Gas & Electric Company (PG&E), Madeline Musco, George Lawry, Richard Colombini, Kenneth Coker, Joel DeSilva, the 137 Santa Rosa Group Partnership (Partnership) and Upway Properties (hereinafter collectively referred to as Dischargers) based on violations of Cleanup and Abatement Order No. R1-2002-0115 (Attachment A) and on provisions of California Water Code Section 13350, which authorizes the imposition of Administrative Civil Liability for violations of a Cleanup and Abatement Order.
2. In 1876, the Santa Rosa Light Company erected a coal gas manufacturing plant at First and B Streets (hereinafter Site) in Santa Rosa [Assessor's Parcel Number (APN) 10-068-17]. The plant was converted to an oil gas manufacturing plant around the turn of the century. PG&E operated the gas manufacturing plant until 1924. The Site remained vacant from 1924 to 1987. In November 1987, the Partnership finalized the purchase agreement; the Partnership includes Madeline Musco, George Lawry, Richard Colombini, Kenneth Coker and Joel DeSilva. The Site (as APN 10-068-17) was split into two parcels: APN 10-068-21 and 22. Upway Properties purchased APN 010-068-021 and the Partnership retained APN 010-068-022.
3. On July 31, 1987, the Regional Water Board issued Cleanup and Abatement Order (CAO) No. 87-112 to PG&E. On January 13, 1988, CAO No. 88-11 was issued amending CAO No. 87-112 to recognize the change in property ownership and included the Partnership as a Responsible Party. On April 18, 1988, CAO No. 88-63 was issued, which ordered:

- The submittal of a plan to define the extent of groundwater contamination.
 - The installation of additional groundwater monitoring wells.
 - The design, installation and operation of a groundwater extraction and treatment system.
 - The submittal of a report evaluating system effectiveness.
4. From 1986 to 1996, work conducted on the Site included the collection of soil samples, the installation of groundwater monitoring wells, the drilling of soil borings, the removal of some impacted soil, and the removal of two coal tar pits. Groundwater monitoring revealed the presence of separate phase hydrocarbons on groundwater. An underground oil storage tank (described as a railroad tanker car) was discovered and abandoned in place. Testing of soil and groundwater revealed contamination that included heavy range petroleum hydrocarbons (diesel and oil), polynuclear aromatic hydrocarbons (PAHs), and lead. However, the extent of contamination was not defined and a treatment system was not designed, installed and operated.
 5. In 1995, the City of Santa Rosa collected soil samples along the banks of Santa Rosa Creek immediately adjacent to the Site. The analytical results of these samples revealed elevated concentrations of PAHs.
 6. In 1996, the City of Santa Rosa collected sediment and groundwater samples in the bottom of Santa Rosa Creek. The results revealed the presence of petroleum hydrocarbons and PAHs in sediment and water.
 7. On December 19, 1996, CAO 96-102 was issued. The Order reflected changes in the Partnership membership and required the Dischargers to submit a work plan to define the extent of contamination, both on and off site, and to submit a remedial action plan (RAP). The work plan was due by January 31, 1997. The RAP was due by March 31, 1997. The work plan was submitted on February 25, 1997. The RAP was not submitted.
 8. In April 1997, additional soil borings were drilled along the southern portion of the property adjacent to Santa Rosa Creek. In these borings, significant soil concentrations of diesel, motor oil and oil and grease were detected. Field observations documented in the boring logs include strong odors, stained soil, sheen, coal dust and an oily substance at the soil/groundwater interface. The report of completed work was submitted on June 5, 1997 and included a work plan to conduct additional investigative work. On June 27, 1997, Regional Water Board staff concurred with the June 5, 1997, work plan to conduct additional work to define the extent of contamination.
 9. Between June 1997 and December 2000, Regional Water Board staff continued to work with the Dischargers towards compliance. Two groundwater-monitoring wells were installed that replaced two previously abandoned wells. Ongoing sampling and monitoring was conducted. The work plan submitted on June 27, 1997, which proposed to conduct additional drilling to define the extent of contamination behind the creek concrete lining, was not implemented.
 10. On April 10, 2001, Regional Water Board staff contacted representatives of the Partnership to inquire about the status of work plan implementation. The representatives stated that they were not authorized to complete the plume definition work and were directed only to complete a work plan to coordinate soil removal with the City of Santa Rosa during construction of the Prince Memorial Greenway Project (PMGP).

11. The PMGP is a Santa Rosa Creek restoration and linear park project that is intended to enhance creek access, provide recreational opportunities, conserve and restore natural habitats, enhance aesthetics values, provide educational opportunities, maintain hydraulic capacity, and establish alternative transportation modes including pedestrian and bicycle pathways. The PMGP generally involves the removal of the concrete creek floor and walls and restoration of natural plant and animal habitats. The Regional Water Board issued Waste Discharge Requirements (WDRs) Order No. R1-2000-05 to the City of Santa Rosa for the construction of the PMGP.
12. On April 12, 2001, a document identified as a Corrective Action Plan (CAP) was submitted on behalf of the Partnership. The document only proposed offsite work to remove impacted soil and PAHs during the construction of the PMGP. The substance known as lamp-black, which is a waste by-product of the gas manufacturing process, contains PAHs. The coordination of work with the PMGP during the removal of the north creek wall was acceptable. However, in a letter dated October 16, 2001, Regional Water Board staff rejected the CAP because it did not contain provisions for onsite soil and groundwater remediation and did not meet the requirements of Title 23, Division 3, Chapter 16, Article 11, Section 2725 (California Code of Regulations).
13. An acceptable CAP must (1) include an assessment of the impacts, a feasibility study and applicable cleanup levels and (2) must be designed to adequately protect human health, safety and the environment, and restore or protect current or potential beneficial uses of water including ground and surface water. In this case, the CAP must also include a method to abate the discharge to Santa Rosa Creek.
14. Removal of the north concrete wall of Santa Rosa Creek, which the City completed in July 2002 to permit construction of a pedestrian path for the PMGP, revealed the presence of lamp-black, extending east near the Santa Rosa Avenue bridge and west beyond the current Site property line. The City also reported the presence of separate-phase oil on groundwater at the base of the creek during the drilling of retaining wall footings. The historical maps show that the lamp-black separators were located on the southern portion of the property adjacent to Santa Rosa Creek.
15. Soil samples were collected on behalf of the Partnership from the north creek bank, which partially completed the plume definition work. The work plan for the remaining work was revised and approved on October 29, 2002.
16. On September 30, 2002, the City of Santa Rosa removed portions of the concrete floor of Santa Rosa Creek to evaluate the presence or absence of contamination. Regional Water Board staff and City of Santa Rosa representatives observed obvious signs of discharges from the Site, including PAH odors (described as mothball-like odors) and a petroleum sheen on water immediately under the concrete lining of the floor of Santa Rosa Creek adjacent to the Site. Regional Water Board staff collected water samples. Staff from the City of Santa Rosa gathered soil and water samples at these locations to evaluate PMGP design, scheduling, and cost considerations, including the potential for violations of WDRs No. R1-2000-05 to occur due to the presence of the contamination. The analytical results of those water samples confirmed the presence of PAHs and petroleum hydrocarbons in Santa Rosa Creek. Therefore, the removal of the concrete floor by the City of Santa Rosa and/or their contractors would result in a violation of WDRs No. R1-2000-05.

17. The presence of contaminated groundwater adjacent to and beneath Santa Rosa Creek and the lack of effective and timely remediation is adversely affecting the design, scheduling and costs of the PMGP.
18. On December 18, 2002, CAO No. R1-2002-0115 was issued in response to the significant discharges to ground and surface water and the ongoing delays. That Order reflects the change in property ownership.
19. CAO No. R1-2002-0115 ordered the Dischargers to complete the following:

Extent of Contamination

- D. Complete the entire scope of work identified in the revised February 19, 2002 work plan, the October 2, 2002 work plan addendum, November 26, 2002 revised drilling locations and any additional addendum within 45 days of issuance of this Order. The work must define the extent of petroleum hydrocarbon and PAH contamination.*
- E. Submit a report of findings for the work identified in Task D within 30 days of work plan completion. The report must include the north creek bank sampling work that was coordinated with the City of Santa Rosa during the Prince Memorial Greenway Project. The report must also include an adequate work plan for any additional effort necessary to define the extent of contamination including the extent of petroleum hydrocarbon and PAH contamination in water beneath the concrete floor of Santa Rosa Creek.*

Source Identification

- G. Submit a plan within 30 days of issuance of this Order to investigate the presence, or absence, of any remaining subsurface sources of contamination including underground storage tanks, piping and or buried waste.*
20. The deadline for submittal of the plan required by Provision G was January 18, 2003. On January 10, 2003, Lanahan & Reilley, LLP, submitted a 30-day extension request on behalf of the Partnership to complete Provision G. The request was made pursuant to Section L of Cleanup and Abatement Order No. R1-2002-0115, included the extension justification and a revised compliance date. The extension request indicated that “no other deadlines would be impacted by the requested time extension.” The Regional Water Board Executive Officer determined that the extension request was justified and on January 29, 2003, extended the deadline to February 18, 2003. The plan was not submitted. The failure to timely submit the plan is a violation of CAO No. R1-2002-0115.
 21. The deadline for completion of the scope of work as required in Provision D was February 2, 2003. The work was completed on February 4, 2003. Failure to timely complete the scope of work as required by Provision D is a violation of CAO No. R1-2002-0115.
 22. The compliance date for submittal of the report of findings described in Provision E, was March 6, 2003. On January 22, 2003, EnviroNet Consulting submitted the “Request for Extension for Additional Investigation,” on behalf of the Partnership, which requested an extension of the March 6, 2003, deadline to April 1, 2003. The Regional Water Board Executive Officer determined that the extension request was not justified and was not granted as follows:

- The due date for the report of findings, pursuant to Provision E, was 30 days from work plan implementation (the dated of drilling).
 - The extension request identified drilling impediments, but failed to provide justification why the report of findings could not be completed by March 6, 2003. Since the submittal date of the report was not related to the drilling impediments, the reasons provided for the extension request were irrelevant.
 - Therefore, an extension to April 1, 2003 for report submittal was not justified.
23. The report of findings required by Provision E was submitted on February 28, 2003, in advance of the March 6, 2003 compliance date. However, the report lacked the required work plan to define the extent of contamination, including in water beneath the concrete floor of Santa Rosa Creek. Without the specified work plan, the report of findings did not satisfy Provision E. Failure to timely submit a complete report of findings is a violation of CAO No. R1-2002-0115.
24. The results of the investigative work revealed the presence of oil on groundwater adjacent to Santa Rosa Creek extending east to the Santa Rosa Avenue Bridge and the extensive presence of lamp-black, which contains PAHs. The extent of petroleum hydrocarbon and PAHs contamination has not been defined.
25. On March 4, 2003, Regional Water Board staff contacted representatives of the Partnership and inquired on the status of work plan submittal. Regional Water Board staff were informed that the Partnership had not authorized the preparation of either the Provision E or Provision G work plans.
26. The Dischargers failed to:
- Complete the plume definition work by February 2, 2003, as required by Provision D.
 - Submit a report including an adequate work plan to define the extent of contamination by March 6, 2003, as required by Provision E.
 - Submit a work plan to investigate additional sources of contamination by February 18, 2003, as required by Provision G.
27. There has been a total of: (2) days of violation from March 3, 2003, to March 4, 2003, for violation of Provision D; fifty-six (56) days of violation from March 7, 2003, to May 1, 2003, for violation of Provision E; seventy-two (72) days of violation from February 19, 2003, to May 1, 2003, for violation of Provision G for a total of 130 days of violations.
28. Under Section 13350(e)(1) of the CWC, the Regional Water Board may impose civil liability on any person who intentionally or negligently violates any cleanup and abatement order in an amount not to exceed five thousand dollars (\$5,000) for each day the violation occurs. Where there is a discharge, Section 13350(e)(1)(B) of the CWC states that the minimum civil liability shall be five hundred dollars (\$500) for each day in which the violation occurs. If the Regional Water Board chooses to impose less than this minimum civil liability, it must make express findings setting forth the supporting reasons based on the specific factors to be considered pursuant to CWC Section 13327. The maximum potential administrative civil liability for 130 days of violation is \$650,000.00; the minimum potential administrative civil liability is \$65,000.00.

29. The issuance of an Administrative Civil Liability Complaint does not have the potential to result in a physical change in the environment and is therefore not a "project" subject to the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.). It is also exempt from CEQA in accordance with Title 14, California Code of Regulations, Section 15321(a)(2).
30. In determining the amount of the civil liability, pursuant to CWC Section 13327, the Regional Water Board took into account the nature, circumstance, extent and gravity of the violations; and with respect to the violators, the ability to pay, the ability to continue in business, voluntary cleanup efforts, prior history of violations, the degree of culpability, economic benefit or savings resulting from the violation, and other matters as justice may require.

A. Nature, Circumstance, Extent, and Gravity of the Violations

Site investigative work revealed the presence of heavy petroleum hydrocarbons in soil and groundwater, a significant amount of separate phase oil on groundwater, and a significant amount of gas manufacturing process waste (lamp-black) throughout the southern portion of the property adjacent to Santa Rosa Creek. Some contaminated soil has been removed, but excavation was limited by the presence of underground utilities. Additionally, a significant amount of product and impacted soil remains onsite in the vicinity of the underground storage tank, on groundwater and behind the north bank retaining wall. Other unidentified sources of contamination may exist. The on-site contaminants have migrated and continue to migrate into Santa Rosa Creek.

Failure to submit and implement an acceptable work plan to investigate the presence of additional sources of contamination allows for ongoing discharges. Failure to submit a work plan to define the extent of contamination, including beneath the concrete floor of the creek, delays the preparation and implementation of a corrective action plan and allows for the ongoing discharge of waste to ground and surface water.

The delays adversely affect the City of Santa Rosa PMGP design, construction schedule and costs and the City's ability to comply with WDRs No. R1-2000-05. Construction of the project as designed will result in the City of Santa Rosa violating WDRs R1-2000-05.

Consideration of the nature, circumstance, extent, and gravity of the violations does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

B. Susceptibility to Cleanup or Abatement

Site conditions are susceptible to cleanup and abatement through the preparation and implementation of an acceptable Corrective Action Plan that abates the discharge to Santa Rosa Creek, removes and/or treats any remaining sources of contamination and addresses the impact to ground and surface water. Technically feasible cleanup alternatives exist that may be implemented with success in a timely manner.

Consideration of susceptibility to cleanup or abatement does provide a reason for reduction from the maximum amount of Civil Liability to be imposed.

C. Degree of Toxicity

Site contaminants include petroleum hydrocarbons in the diesel and motor oil range and polynuclear (polycyclic) aromatic hydrocarbons including naphthalene, chrysene, acenaphthene, acenaphthylene anthracene, fluoranthene, fluorene and pyrene. Diesel and motor oil are each composed of numerous individual compounds. Several PAHs are human carcinogens. The toxicity of the individual and cumulative fuel components, and PAHs, to biological and aquatic life in Santa Rosa Creek is not completely known.

Generally, the contamination is not visible and migratory fish do not come into contact with the area of contamination due to the overlying concrete floor and walls of Santa Rosa Creek. However, the concrete floor of the creek has been breached and a condition currently exists whereby the impacted water is co-mingling with the unaffected surface flow. The concrete floor must be repaired. In addition, human and aquatic life exposure and nuisance conditions may be significant depending upon the final design and construction of the PMGP.

Consideration of the degree of toxicity does not provide reason for reducing the amount of Civil Liability to be imposed.

D. Ability to Pay

An assets search has not been conducted for the individual members of the Partnership or Upway Properties Inc. Therefore, Regional Water Board staff has no knowledge concerning these Dischargers' ability to pay the maximum civil liability.

PG&E has filed for Chapter 11 bankruptcy, but Regional Water Board staff has no specific knowledge of PG&E's ability to pay the maximum civil liability.

However, consideration of the Dischargers' ability to pay may provide reason for reducing the amount of Civil Liability.

E. Effect on Ability to Continue Business

An assets search has not been conducted. Therefore, Regional Water Board staff has no knowledge concerning the Dischargers' ability to continue in business.

Consideration of effect on the Dischargers' ability to continue business may provide reason for reducing the amount of Civil Liability.

F. Voluntary Cleanup Efforts

Voluntary cleanup actions have included the collection of soil samples to investigate the extent of soil contamination associated with site characterization and property transaction prior to the issuance of Cleanup and Abatement Order No. 87-112 and subsequent Orders.

Consideration of voluntary cleanup efforts may provide reason for reducing the amount of Civil Liability.

G. Prior History of Violations

Cleanup and Abatement Order No. 87-112 was issued to PG&E on July 31, 1987. The Order required PG&E to submit a plan to determine the extent of contamination, provide regular updates and provide a plan to clean up and abate the effects of contamination. The extent of contamination has not been defined and the effects of contamination have not been abated. The Dischargers therefore violated CAO No. 87-112.

Cleanup and Abatement Order No. 88-63 was issued to PG&E and the Partnership on April 18, 1988. The Order required the installation of groundwater monitoring wells, the design, installation and operation of a groundwater extraction system, and the submittal of a work plan to define the extent of contamination. The extent of contamination has not been defined. A treatment system was not designed, installed or operated. The Dischargers therefore violated CAO No. 88-63.

Cleanup and Abatement Order No. 96-102 was issued to PG&E and the Partnership on December 19, 1996. The Order required a plan to define the extent of contamination, both on- and off-site including in Santa Rosa Creek and the submittal of a remedial action plan. The extent of contamination has not been defined and a remedial action plan has not been submitted. The Dischargers therefore violated CAO No. 96-102. Despite these past violations, on December 18, 2002, the Executive Officer issued Cleanup and Abatement Order No. R1-2002-0115 in hopes that the Dischargers would rectify past noncompliance. Instead, the Dischargers violated that new order, which prompted the issuance of this Complaint.

Consideration of past violations does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

H. Degree of Culpability

Pacific Gas & Electric Company is culpable as the former owner of the Site and operator of the gas manufacturing plant at the time of the discharge. The Partnership is culpable as former owners of the Site. Upway Properties is culpable as the current property owner.

Consideration of culpability does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

I. Economic Savings

Delay in completing site investigative work and implementing an appropriate corrective action delays expenditures and could result in an economic savings.

Consideration of economic savings does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

J. Other Matters as Justice May Require

Significant Regional Water Board staff hours have been dedicated to this site in an effort to gain compliance including the preparation of enforcement Orders to protect ground and surface water quality.

Partial funding for cleanup activities is available through the State Water Resources Control Board, Petroleum Underground Storage Tank Cleanup Fund. However, compliance with the California Underground Storage Tank Regulations (Title 23, Division 3, Chapter 16, Article 11) is an eligibility requirement and non-compliance jeopardizes funding from the State of California.

Consideration of other matters as justice may require does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

31. A hearing to affirm, reject, or modify this Complaint may be held before the Regional Water Board unless the Dischargers waive their right to a hearing and pay the imposed civil liability.
32. Payment of the Civil Liability does not satisfy the Discharger's obligation to comply with the tasks required by Cleanup and Abatement Order No. R1-2002-0115. That Order remains in full force and effect.

Proposed Civil Liability

Based on the above factors, I hereby propose that the Dischargers collectively pay the Administrative Civil Liability in the amount of \$650,000.00.

I also hereby propose that the Dischargers collectively pay \$75,000.00 of the total Administrative Civil Liability now and the remaining \$575,000.00 of the Administrative Civil Liability shall be permanently suspended contingent upon compliance with Cleanup and Abatement Order No. R1-2002-0115 to the satisfaction of the Regional Water Board Executive Officer as follows:

- Two hundred eighty seven thousand five hundred dollars (\$287,500.00) shall be permanently suspended upon submittal of an adequate work plan by July 7, 2003, for any additional efforts necessary to define the extent of contamination including the extent of petroleum hydrocarbons and PAHs contamination in water beneath the concrete floor of Santa Rosa Creek (Provision E).
- Two hundred eighty seven thousand five hundred dollars (\$287,500.00) shall be permanently suspended upon submittal of an adequate work plan by July 7, 2003, to investigate the presence, or absence, of any remaining subsurface sources of contamination including underground storage tanks, piping and/or buried waste (Provision G).

If at any time, the Executive Officer determines that the Dischargers, or any successor of the Dischargers, are in violation, the full and outstanding portion of the suspended Administrative Civil Liability shall be immediately due and payable.

Waiver of Hearing

Pacific Gas & Electric Company, the 137 Santa Rosa Group Partnership, Madeline Musco, George Lawry, Richard Colombini, Kenneth Coker, Joel DeSilva and Upway Properties may waive their right to a hearing. If these parties wish to waive the hearing, they or their duly authorized representatives should sign the enclosed waiver and return it together with a cashier's check or money order, made payable to the "State Water Resources Control Board," for the amount of civil liability proposed above by July 7, 2003 to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403.

Ordered by _____

Susan A. Warner
Executive Officer
June 4, 2003