

California Regional Water Quality Control Board  
North Coast Region

CLEANUP AND ABATEMENT ORDER NO. R1-2009-0097

for

WAYNE BARE TRUCKING, INCORPORATED  
Highway 299 Accident

Trinity County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. On July 8, 2009, at approximately 1240 hours, a truck owned and operated by Wayne Bare Trucking, Incorporated was involved in an accident on Highway 299, west of Junction City. Wayne Bare Trucking, Incorporated is hereinafter referred to as Discharger. The accident location is hereinafter referred to as Site, and is within 300 feet of the Trinity River. The accident resulted in the discharge of diesel fuel from truck saddle tanks, and potentially other vehicle fluids.

Efforts to cleanup the discharge (including excavation of contaminated soil and pumping out groundwater) have not been sufficient, and residual soil contamination at the Site exists at levels identified up to 4,900 micrograms per gram (parts per million, or ppm) of diesel, and 1,500 ppm of motor oil. Groundwater samples from an excavation in the area of a culvert indicated residual contamination up to 180 micrograms per liter (parts per billion, or ppb) of diesel. Groundwater wells for domestic use have been reported by nearby property owners and migration of residual contamination poses a threat to this beneficial use.

2. The Water Quality Control Plan for the North Coast Region (Basin Plan) designates beneficial uses of the waters of the State, establishes water quality objectives to protect those uses, and establishes implementation policies to attain water quality objectives. The beneficial uses of areal groundwater include domestic, agricultural, and industrial supply.
3. The existing and potential beneficial uses of the Trinity River include:
  - a. Municipal and Domestic Supply
  - b. Agricultural Supply
  - c. Industrial Service Supply
  - d. Industrial Process Supply
  - e. Groundwater Recharge
  - f. Freshwater Replenishment
  - g. Navigation
  - h. Water Contact Recreation
  - i. Non-Contact Water Recreation
  - j. Commercial and Sport Fishing

- k. Cold Freshwater Habitat
  - l. Wildlife Habitat
  - m. Rare, Threatened, or Endangered Species
  - n. Migration of Aquatic Organisms
  - o. Spawning, Reproduction, and/or Early Development
  - p. Shell Fish Harvesting
  - q. Native American Culture
4. The Basin Plan includes numeric water quality objectives for groundwater and surface waters, e.g., state drinking water maximum contaminant levels that are incorporated by reference. The Basin Plan also includes narrative water quality objectives, e.g., a narrative taste and odor water quality objective for groundwater, which states "Groundwater shall not contain taste or odor producing substances at concentrations which cause nuisance or adversely affect beneficial uses."
  5. The applicable water quality objectives in the Basin Plan have been exceeded and constitute pollution, as defined by Water Code Section 13050(l). Where the Dischargers have caused or permitted, cause or permit, or threaten to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution, Water Code 13304 gives the Regional Water Board the authority to issue an order to the Discharger to clean up the waste and abate the effects of the waste.
  6. The State Water Resources Control Board Resolution (State Water Board) has adopted Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304", setting forth the policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Board Resolution 68-16, the "Statement of Policy with Respect to Maintaining High Quality of Waters in California". Resolution 92-49 requires cleanup and abatement of the effects of discharges in a manner that promotes attainment of either background water quality levels, or the best water quality which is reasonable if background levels of water quality cannot be restored, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.
  7. Alternative cleanup levels greater than background concentrations shall be permitted only if the discharger demonstrates that: it is not feasible to attain background levels; the alternative cleanup levels are consistent with the maximum benefit to the people of the State; alternative cleanup levels will not unreasonably affect present and anticipated beneficial uses of such water; and they will not result in water quality less than that prescribed in the Basin Plan and Policies adopted by the State and Regional Water Board. Attachment A includes those water quality objectives that the Regional Water Board believes are necessary to protect the water for its beneficial uses, including domestic water supply and to protect human health and the environment.

8. Section 13267(b) of the Water Code provides that “in conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region ... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including the costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring these reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”
9. The findings in this order provide the evidence to require the Discharger to provide the technical reports required by this Order. The technical reports required by this Order are necessary to assure cleanup of the Site in compliance with 13304 of the Water Code. The burden of providing the required technical reports bears a reasonable relationship to the need for the report and the benefits to be obtained from the reports.
10. The Regional Water Board will ensure adequate public participation at key steps in the remedial action process, and shall ensure that concurrence with a remedy for cleanup and abatement of the discharges at the Site shall comply with the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) (“CEQA”).
11. The issuance of this cleanup and abatement order is an enforcement action being taken for the protection of the environment and, therefore, is exempt from the provisions of CEQA in accordance with Title 14, California Code of Regulations, Sections 15308 and 15321.
12. Reasonable costs incurred by Regional Water Board staff in overseeing cleanup or abatement activities are reimbursable under Water Code section 13304(c)(1).
13. Any person affected by this action of the Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If the Discharger chooses to appeal the Order, the Discharger is advised that it must comply with the Order while the appeal is being considered. The appeals process is enclosed as Attachment B

14. This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the facility consistent with the Water Code. This Order may be revised by the Regional Water Board Executive Officer as additional information becomes available.
15. Failure to comply with the terms of this Order may result in enforcement under the Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to Water Code section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267(b) and 13304, the Discharger shall cleanup and abate the discharge and threatened discharge forthwith, and shall comply with the following provisions of this Order:

1. The Discharger shall conduct all work under the direction of a California registered civil engineer or professional geologist experienced in surface water, soil, and groundwater investigation and remediation. All work plans and technical reports submitted to the Regional Water Board shall be signed and stamped by the licensed engineer or geologist.
2. The Discharger shall submit by September 11, 2009, a report that describes the interim cleanup and investigative work completed to date. This report shall contain all laboratory analysis reports of investigative samples collected to date. The report shall contain recommendations to conduct additional cleanup and confirmation sampling at the Site, and must include 1) removal of contaminated soil to the extent feasible, and 2) containment, cleanup or removal of contaminated water to the extent feasible. The report shall also contain a workplan to implement the recommendations.
3. The Discharger shall implement the workplan required in #2 above within 15 days of Executive Officer's concurrence with the workplan.
4. The Discharger shall submit by September 30, 2009, a sensitive receptor survey that analyzes the area within 1,000 feet of the known extent of the discharge. The sensitive receptor survey must include identification of, at a minimum, locations of water supply wells, preferential pathways, sensitive environmental habitats, and the identification of any potential health and safety issues.

5. The following information shall be submitted electronically to the State Water Board's GeoTracker database, within 30 days of being generated:
  1. All chemical analytical results for soil, water and vapor samples.
  2. The latitude and longitude of any permanent sampling point for which data is reported, accurate to within 1 meter and referenced to a minimum of two reference points from the California Spatial Reference System, if available.
  3. The surveyed elevation relative to a geodetic datum of any permanent sampling point.
  4. The elevation of groundwater in any permanent monitoring well relative to the surveyed elevation.
  5. A site-map or maps showing the location of all sampling points.
  6. The depth of the screened interval and the length of screened interval for any permanent monitoring well.
  7. PDF copies of boring logs.
  8. PDF copies of all reports, work plans, and other documents, including the signed transmittal letter and professional certification by a California Licensed Civil Engineer or a Registered Geologist,
  
6. If, for any reason, the Discharger is unable to perform any activity or submit any documentation in compliance with the directives contained in this order or submitted pursuant to this order and approved by the Executive Officer, the Discharger may request in writing, an extension of time. The extension request must be submitted five days in advance, if possible, of the due date and shall include justification for this delay, including demonstration of the good faith effort performed to achieve compliance with the due date. The extension request shall also include a proposed time schedule with new performance dates for the due date in question and all subsequent dates dependent on the extension. A written extension may be granted for good cause, in which case the order will be revised accordingly.

Ordered by: \_\_\_\_\_  
Catherine Kuhlman  
Executive Officer

August 27, 2009

Attachment A: Water Quality Objectives  
Attachment B: Appeals Process