

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement and 13267 Order No. R1-2013-0033

For
Recology Humboldt County
and
Humboldt Waste Management Authority
For
Discharges and Threatened Discharges of Solid and Liquid Wastes from
Cummings Road Burn Ash Site to
Surface Water and Groundwater in the Ryan Creek Watershed

Humboldt County

WDID# 1B13039CNHU

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

1. Recology Humboldt County (RHC) and the Humboldt Waste Management Authority (HWMA), (hereinafter Dischargers¹), own adjacent parcels of land upon which are located a historic burn dump, known as the Cummings Road Burn Ash Site (hereinafter Site).
2. The Site covers approximately 5.2 acres, and comprises approximately 60,000 cubic yards of burn ash residue, with approximately 49,000 cubic yards located on RHC property and the remaining approximately 11,000 cubic yards located on HWMA property.
3. The Site is located two miles southeast of Eureka, California, at the end of Cummings Road, and adjacent to the Cummings Road Class III Solid Waste Disposal Site (SWDS). The SWDS is owned and operated by the HWMA, and is currently undergoing closure, with closure Waste Discharge Requirements (WDRs) scheduled to be considered for the Regional Water Board in May 2013. Per the proposed WDRs, the Class III WMU may accept waste from the off-footprint burn dump prior to final capping²; this waste must be placed in areas of the Subtitle D liner that have not yet reached full build-out.

¹ In 1975, RHC (at that time known as City Garbage Company of Eureka, a subsidiary of Norcal Waste Systems, Inc.) acquired property which included the entire burn ash site and the Solid Waste Disposal Site (SWDS). In 2000, RHC sold a portion of the burn ash site, and the SWDS to HWMA. Apportioning responsibility is not a function of the Regional or State Water Boards. Responsibility for cleanups under the Porter-Cologne Water Quality Control Act is generally joint and several as applied to past and current owners of contaminated property. (See In the Matter of the Petition of Union Oil Company of California, (SWRCB Order No. WQ 90-2).) The landowner is responsible for discharges on their property, regardless of whether that person caused or contributed to the discharge. (See e.g. In the Matter of the Petition of Wenwest (SWRCB Order No. WQ 92-13).)

² While some of the burn ash material at the Site is considered hazardous per California definition (see Finding 4), placement of this material in the Cummings Road Class III WMU, as allowed under the WDRs, constitutes a consolidation of burn ash onto a contiguous parcel that already contains ash, since the footprint of the WMU includes burn ash waste upon which waste was subsequently placed under WDRs. This is a burn ash dump remediation scenario that is exempt from hazardous waste management requirements, per March 3, 1995 correspondence from the California Department of Toxic Substances Control (DTSC) regarding the regulation of burn dump ash. See also CalRecycle Local Enforcement Advisory #56.

4. In January 2011, RHC submitted an Environmental and Geotechnical Investigation Report for the Site confirming that some burn ash material at the Site exceeds the levels of California hazardous waste for various constituents, including cadmium, copper, and lead. The investigation also confirmed that burn ash material from the Site is eroding from and being deposited into surface waters, and that leachate from burn ash material is impacting both surface and ground waters.
5. The Site is located in the Ryan Creek watershed, tributary to Freshwater Creek, which flows into Humboldt Bay and the Pacific Ocean.
6. The Basin Plan identifies the following existing and potential beneficial uses for Humboldt Bay and the Pacific Ocean:
 - a. MUN – Municipal and Domestic Supply
 - b. AGR – Agricultural Supply
 - c. IND – Industrial Service Supply
 - d. FRSH – Freshwater Replenishment
 - e. NAV – Navigation
 - f. REC-1 – Water Contact Recreation
 - g. REC-2 – Non-Contact Water Recreation
 - h. COMM – Commercial And Sport Fishing
 - i. AQUA – Aquaculture
 - j. COLD – Cold Freshwater Habitat
 - k. MAR – Marine Habitat
 - l. WILD – Wildlife Habitat
 - m. RARE – Preservation of Rare, Threatened, or Endangered Species
 - n. MIGR – Migration of Aquatic Organisms
 - o. SPWN – Spawning, Reproduction, and/or Early Development
 - p. SHELL – Shellfish Harvesting
 - q. EST – Estuarine Habitat
 - r. CUL – Native American Culture
 - s. POW – Hydropower Generation
 - t. PRO – Industrial Process Supply.
7. The Basin Plan identifies the following existing and potential beneficial uses for surface water in the vicinity of the Site:
 - a. MUN – Municipal and Domestic Supply
 - b. AGR – Agricultural Supply
 - c. IND – Industrial Service Supply
 - d. GWR – Groundwater Recharge
 - e. FRSH – Freshwater Replenishment
 - f. NAV – Navigation
 - g. REC-1 – Water Contact Recreation
 - h. REC-2 – Non-Contact Water Recreation
 - i. COMM – Commercial And Sport Fishing
 - j. AQUA – Aquaculture
 - k. COLD – Cold Freshwater Habitat
 - l. WILD – Wildlife Habitat
 - m. RARE – Preservation of Rare, Threatened, or Endangered Species
 - n. MIGR – Migration of Aquatic Organisms

- o. SPWN – Spawning, Reproduction, and/or Early Development
 - p. EST – Estuarine Habitat
 - q. CUL – Native American Culture
 - r. POW – Hydropower Generation
 - s. PRO – Industrial Process Supply
8. Beneficial uses of areal groundwaters include:
- a. domestic water supply
 - b. agricultural water supply.
9. The State Water Resources Control Board (State Water Board) Board has adopted Resolution No. 92-49, the Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under California Water Code section 13304. This Policy sets forth the policies and procedures to be used during an investigation or cleanup of waste and requires that cleanup levels be consistent with State Water Board Resolution 68-16, Statement of Policy with Respect to Maintaining High Quality of Waters in California (the antidegradation policy). Resolution 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution 92-49 requires the waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with California Code of Regulations, title 23, section 2550.4. Any cleanup level alternative to background must (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Board.
10. Actions taken to clean up or abate conditions of pollution or nuisance resulting from unintentional or unauthorized releases of waste are exempt from regulations governing discharges to land (Cal. Code Regs., tit. 23, chapter 15, §§2510-2601 (Hazardous Waste) and tit. 27, §§ 20005-22278 (Non-Hazardous Solid Waste)) provided that removed materials are discharged in accordance with chapter 15 and title 27. Actions other than removal, such as containment or in-situ treatment are subject to applicable provisions of chapter 15 and title 27 regulations, to the extent feasible. (Cal. Code Regs., tit. 23, § 2511(d), tit. 27, § 20090(d).)
11. The conditions on the Site are subject to cleanup and abatement under Water Code section 13304. Water Code section 13304, subdivision (a) provides, in relevant part: “Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and creates, or threatens to create a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.”
12. Pursuant to Water Code section 13304, subdivision (c)(1), the Regional Water Board is entitled to and can seek reimbursement for reasonable costs incurred to investigate the unauthorized discharge of wastes, to oversee cleanup of the wastes,

supervising cleanup and abatement activities, or taking other remedial actions required by this Order.

13. Water Code section 13267, subdivision (a), authorizes the Regional Water Board to investigate the quality of any waters of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation, may require Dischargers to furnish, under penalty of perjury, technical or monitoring program reports. A technical report, and restoration and monitoring work plan required by this Order, pursuant to Water Code section 13267, is necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly assessed, abated, and controlled. Due to the importance of protecting water resources as explained herein, the costs associated with developing the information and closure required herein bears a reasonable relationship to the benefits that will be realized once the closure plan is implemented.
14. This is an enforcement action taken by a regulatory agency for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, section 21000 *et seq.*), in accordance with California Code of Regulations, title 14, sections 15308 and 15321.
15. Failure to comply with the terms of this Order may subject the Dischargers to administrative civil liability, pursuant to sections 13350 of the Water Code in an amount of up to five thousand dollars (\$5,000) per day of violation or ten dollars (\$10) per gallon of waste discharged. Failure to provide the technical reports required by this Order may also subject Dischargers' to administrative civil liability in the amount of up to \$1000 per day pursuant to section 13268 of the Water Code.
16. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations, sections 2050-2068. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. If you choose to file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is under consideration.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code sections 13304 and 13267, the Dischargers shall provide the following information and perform the following cleanup and abatement actions:

1. By not later than **November 1, 2013**:
 - a. A cleanup plan for the Site, in conformance with the State Board's Resolution No. 92-49 and the Basin Plan, including an erosion control plan to be implemented during and following Site cleanup activities;
 - b. A concise project description for use in the applicable CEQA document;
 - c. A cleanup plan implementation schedule.
2. Progress reports are due the 15th of each month starting **June 15, 2013**.

3. Following Executive Officer written concurrence, and consistent with the directives of and in compliance with any necessary approvals and/or permits from other relevant agencies, the Dischargers shall implement the cleanup plan. The Dischargers must complete Site cleanup by **September 30, 2014**, and submit a Cleanup Verification Report within 60 days of the completion of cleanup plan implementation. Erosion controls shall be monitored and maintained for a minimum of one full rainy season after Site cleanup.
4. If the Dischargers are unable to perform any activity or submit any documentation in compliance with the deadlines in this Order, the Dischargers may request, in writing to the Executive Officer, an extension of the time schedule as specified. In the written extension request describe why the delay is beyond the reasonable control of the Dischargers; the request must be received by the Regional Water Board no less than 15 calendar days prior to the respective deadline. The Executive Officer, for good cause, may grant an extension.
5. This Order in no way limits the authority of this Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the Site consistent with the Water Code.

Ordered by:

Matthias St. John
Executive Officer

April 26, 2013