

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement and 13267 Order No. R1-2014-0062

to
James Reifeiss and Hank Brown
for
Discharges and Threatened Discharges of Waste
to
Receiving Waters
in
Hayfork Creek in the South Fork Trinity River Watershed
On Trinity County Assessor's Parcel Number 017-430-26
End of East Road off Highway 3

Trinity County
WDID No. 1A13149CNTR

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

1. On November 8, 2013, Regional Water Board staff (Staff) inspected property located at the end of East Road off Highway 3, near Hayfork, identified as Trinity County Assessor's Parcel Number 017-430-26 (hereinafter "Site"), accompanied by representatives from the California Department of Fish and Wildlife, and Trinity County Environmental Health, and observed the following:
 - a) A 1 to 2 acre area covered in trash and debris, and residue from a reported automobile crushing operation. Vehicle fluid stains were visible on soils throughout this area; the onsite caretaker confirmed that vehicles had recently been crushed onsite using a portable crusher from Redding.
 - b) 25 55-gallon barrels containing fluids that appeared to be petroleum products including gasoline and motor oil. 23 barrels were full; 5 barrels did not have bungs in their tops.
 - c) Miscellaneous scrap metal, refuse, derelict vehicles and car parts, foam rubber, motor homes and pieces of motor homes and campers, and other debris stacked, piled, and strewn throughout the area.
2. Trinity County Assessor records indicate that James Reifeiss is the Site owner of record.
3. Mr. Reifeiss reportedly rents or leases the subject property to Hank Brown. Mr. Brown stores miscellaneous materials, and, on at least one occasion, has reportedly engaged or allowed a portable car crushing operator to crush vehicles on site.
4. For the purposes of this Order, Mr. James Reifeiss, Site owner; and Mr. Hank Brown, Site tenant, are hereinafter referred to as the "Dischargers."
5. The Site is located adjacent to Hayfork Creek. Soils on the site appear to be primarily streambed materials from gravels, to cobbles and up to small boulders in size, and may include old dredge mine tailings.
6. The Water Quality Control Plan for the North Coast Region (Basin Plan) designates the following beneficial uses for the Hayfork Valley Hydrologic Subarea of the South Fork Trinity River Hydrologic Area:

- a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial service supply
 - d. Industrial process supply
 - e. Groundwater recharge
 - f. Freshwater replenishment
 - g. Hydropower generation
 - 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. Aquaculture
7. The Basin Plan includes numeric water quality objectives for chemical constituents in groundwater and surface waters, which incorporate the state drinking water maximum contaminant levels. The Basin Plan also includes narrative water quality objectives for toxicity for surface waters and a narrative taste and odor water quality objective for surface water and groundwater. The groundwater taste and odor objective states that: "Groundwater shall not contain taste or odor producing substances at concentrations which cause nuisance or adversely affect beneficial uses."
8. The State Water Resources Control Board (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 Water Board Resolution 68-16, the "Statement of Policy with Respect to Maintaining High Quality of Waters in California," also known as the Anti-degradation Policy. Resolution No. 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.
9. The California Water Code, and regulations and policies developed thereunder, require cleanup and abatement of discharges, and threatened discharges of waste to the extent feasible. Cleanup to background levels is the presumptive standard. Alternative cleanup levels greater than background concentrations shall be permitted only if the Dischargers demonstrate 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 prescribed in the Basin Plan and Policies adopted by the State and Regional Water Board. Any proposed alternative that will not achieve cleanup to background levels, must be supported with evidence that it is technologically or economically infeasible to achieve background levels, and that the pollutant will not pose a substantial present or potential hazard to human health or the environment for the duration of the exceedance of background levels (State Water Board Res. Nos. 68-16 and 92-49, Title 23, California Code of Regulations Section 2550.4, subs. (c), and (d)).

10. The U.S. Environmental Protection Agency (US EPA) has identified auto crushing operations (Facilities Engaged in Dismantling or Wrecking Used Motor Vehicles for Parts Recycling or Resale and for Scrap, Standard Industrial Code 5015) as a type of facility that is subject to coverage under an NPDES permit and required to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm discharges. The appropriate NPDES permit for such an operation is the State's General Permit for Discharges of Storm Water Associated with Industrial Facilities (Facilities (IGP, Order 97-03-DWQ expires June 30, 2015 and Order 2014-0057-DWQ effective July 1, 2015). There is no record that any party has enrolled for coverage under the IGP for activities occurring on the subject property nor any evidence that the Dischargers have taken any measures to implement management practices or pollutant control technologies to prevent or minimize discharges of pollutants to receiving waters or to where they can enter or be transported to receiving waters.
11. In addition to conducting industrial activities such as auto crushing without coverage under or compliance with provisions of the IGP, the Dischargers have apparently conducted operations and activities in general at the Site without any type of mitigation plan, water quality protection strategy, or spill contingency plan, and have consequently allowed waste materials to deposit on the ground in a position where such materials have the potential to enter groundwater and surface waters, and may have already migrated to groundwater or discharged to surface waters.
12. The conditions on the Site are therefore 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."
13. Pursuant to Water Code section 13304 (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.
14. 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 clean up and monitoring workplan 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, cleaned up, abated, and controlled. Due to the importance of protecting water resources as explained herein, the costs associated with developing a technical report and clean up workplan bear a reasonable relationship to the benefits that will be realized once the workplan is implemented.

15. 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.
16. Permits and approvals from other local, state and/or federal agencies may be necessary to perform the work required under this Order.
17. Failure to comply with the terms of this Order may subject the Dischargers to administrative civil liability, pursuant to sections 13350 and 13385 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 and up to \$10,000 per day of violation and ten dollars (\$10) per gallon of the volume discharged but not cleaned up that exceeds 1,000 gallons. Furthermore, 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.
18. 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, section 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. Note that filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. Additionally, if a discharger files a petition with the State Water Board, the Discharger must comply with the Order while his/her 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. 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.
2. Assess the site for hazardous wastes commonly associated with auto crushing operations, and to develop a cleanup plan (plan), including a map of the site areas reviewed and locations of hazardous wastes, to remove hazardous wastes with the potential to impact receiving waters and to dispose of those wastes at appropriate locations. The plan must indicate the volume of material to be removed, and must include a provision specifying that waste will be screened and assessed for hazardous wastes prior to removal, and that hazardous wastes will be segregated and properly disposed of. Dischargers shall submit the plan to the Regional Water Board Executive Officer for review and approval by **March 30, 2015**. Upon approval by the Executive Officer, dischargers shall implement and complete the cleanup plan no later than **October 15, 2015**. Copies of all receipts and trucking manifests for disposal of wastes, including hazardous wastes, shall be provided to the Regional Water Board as generated with each monthly progress reports.
3. Develop a site assessment plan (assessment plan) that maps out the entire site area where waste and debris have been stored and industrial activities have been conducted and identifies sampling locations for soil samples to a depth of 3 feet. Soil samples should be collected in those areas that appear the most likely to be contaminated with

waste oil, gasoline, diesel, antifreeze, and heavy metals, with samples taken at 1 foot intervals to a depth of 3 feet starting with surface soils. In the event that hydrocarbons, solvents, or heavy metals in concentrations higher than background are discovered at any particular sampling location at a depth of 3 feet, additional samples must be collected down to groundwater and the lateral and vertical extent of the migration of vehicle fluids and other contaminants shall be mapped. Sampling and cleanup efforts shall be conducted in accordance with Chapter 15, Division 3, Title 23, section 2550.4 of the California Code of Regulations. Provide the assessment plan to the Regional Water Board Executive Officer for review and approval by **April 30, 2015**. Following approval of the assessment plan by the Executive Officer, the plan must be implemented and a final report provided by **January 30, 2016**.

- a. Prior to conducting sampling, the Executive Officer of the Regional Water Board must approve the sampling plan.
 - b. All chain of custody and sampling results must be provided to the Regional Water Board.
 - c. Cost Recovery: The discharger shall be liable, pursuant to Water Code section 13304, to the Regional Water Board for all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. If the site addressed by this Order is enrolled in a State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the discharger over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program. Cost recovery invoices shall be submitted on 30 day intervals in accordance with Water Code section 13304. Pay all cost recovery invoices within 30 days of receipt
 - d. In the event that sampling conducted under the workplan confirms contamination of soils or ground water requiring further cleanup, the Dischargers have the option of participating in a voluntary cleanup program. Please contact Craig Hunt at (707) 570-3767 for additional information. In the event the Dischargers choose not to participate in a voluntary cleanup program, the CAO may be amended to require additional work depending upon the results of this investigation.
 - e. In the event background water quality levels cannot be restored, then the Designated Methodology for Waste Classification and Cleanup Level Determination may be used and is available at the following link:
http://www.waterboards.ca.gov/rwqcb5/plans_policies/guidance/dlm.pdf.
4. Progress reports are due the first of each month starting **January 1, 2015**, until the completion of restoration efforts triggers the required monitoring and reporting program described above.
 5. 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.

6. Following Executive Officer written concurrence, and consistent with the directives of and in compliance with any necessary approvals and/or permits from the CDFW, and other agencies, the Dischargers shall implement the work plan. The Dischargers must complete all sampling and cleanup work by **October 15, 2015**. A Summary Report of all work and remediation efforts is due **January 30, 2016**.
7. 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.
8. 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:

Original Signed By

Matthias St. John
Executive Officer

December 23, 2014