

California Regional Water Quality Control Board  
North Coast Region

CLEANUP AND ABATEMENT ORDER No. R1-2015-0053

For

Eel River Fuels Inc.  
and  
William G. Hay, Jr.

Hay Industrial Park  
43451 Eureka Hill Road  
Point Arena, CA

Case #1NMC633

Mendocino County

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

1. Eel River Fuels, Inc. (Eel River Fuels) operated fuel storage facilities at 43451 Eureka Hill Road (APN 027-221-18-00) in Mendocino County (hereinafter referred to as the "site"). The property consists of a generally flat 44.3 acre parcel that is developed for occupancy by industrial business operations and is known as the Hay Industrial Park. Eel River Fuels, Inc. leased a portion of the property for fuel storage and distribution operations.
2. William G. Hay Jr. is the owner and operator of the Hay Industrial Park. Eel River Fuels Inc. and William G. Hay Jr. are hereinafter collectively referred to as the "Dischargers."
3. The Dischargers placed or allowed to be placed four 10,000-gallon aboveground tanks at the site to store petroleum fuel products. On or before Monday, February 23, 2015, one of the tanks leaked and released an unknown quantity of diesel fuel to surrounding soil and groundwater. The fuel release was discovered by Eel River Fuels staff and reported to the Office of Emergency Services at 1:12 PM on February 23, 2015.
4. On February 23, 2015, Eel River Fuels implemented interim cleanup measures under the regulatory supervision of Mendocino County Environmental Health Division. The interim measures included the recovery of spilled diesel from the leaking secondary containment structure, excavation of soil to the depth of groundwater in portions of the impacted area, and the extraction of free-product diesel fuel and contaminated groundwater from the subsurface.
5. Approximately 6,000 cubic yards of excavated fuel-impacted soil are stockpiled at the site pending a plan for either off-site disposal or for treatment at the site. Based on the analytical results for soil samples collected from the excavation, Eel River Fuels, Inc. proposes to excavate approximately 450 additional cubic yards of petroleum-impacted soil from the floor and sidewalls of the excavation.

6. On August 27, 1992, the Regional Water Board adopted General Waste Discharge Requirements Order No. 92-66 to regulate the storage and treatment of soil contaminated by petroleum hydrocarbons and other biodegradable substances. Order 92-66 specifies that contaminated soil aeration or treatment activities, including storage, which are not located on an impermeable surface are prohibited. The contaminated soil stockpiled at the site is not located on an impermeable surface, as required by Order No. 92-66.
7. Groundwater and separate-phase diesel fuel that were recovered from the release area are being stored on site in one of the 10,000-gallon aboveground storage tanks formerly used to store fuel. This tank is underlain with sheet plastic elevated on its perimeter by bales of straw. Because a permanent and secure secondary containment structure is not in place to contain a potential release of the tank contents, the untreated wastewater and waste fuel contained in the tank pose a threat of additional discharges to soil and groundwater at the site.
8. Between February 23, 2015, and April 20, 2015, groundwater and storm water accumulated in the excavated area downslope from the fuel release area and covered approximately one-quarter of the excavation. In a report dated July 1, 2015, submitted on behalf of Eel River Fuels, LACO Associates estimated that approximately 70,000 gallons of water were contained in the excavation. Analytical results for a water sample collected from the excavation on April 17, 2015, showed the presence of diesel-range hydrocarbons at 91 micrograms per liter. Contaminated water impounded in the excavation poses a threat to water quality in nearby Point Arena Creek and to groundwater. In addition, water impounded in the excavation would prevent additional removal of petroleum-impacted soil from the fuel release area, and would likely pose problems for completing the backfilling of the excavation.
9. Stockpiled petroleum-impacted soil and the contaminated water stored in the excavation and aboveground storage tanks without adequate secondary containment are potential sources of additional unauthorized discharges that threaten the beneficial uses of nearby groundwater and surface waters. Appropriate disposal plans for contaminated soil and groundwater stored at the site have not been identified.
10. Eel River Fuels submitted the "Corrective Action Progress Report, Summary of Work-to-Date, and Discharge Waiver Request" (Progress Report) dated July 1, 2015. The Progress Report identifies two alternative plans for the disposal of treated water impounded in the excavation at the site. To implement either of the alternatives proposed for the disposal of impounded wastewater, the Dischargers must submit appropriate reports of waste discharge to apply for regulatory approval and permits to discharge the treated waste, pursuant to Section 13260 of the California Water Code.
11. A plan to remove or treat contaminated soil that is stockpiled at the site has not been submitted. Any plan to treat the contaminated soil at the site or at an alternative location requires authorization by the Regional Water Board under an appropriate

Waste Discharge Requirements Order or waiver. To obtain such regulatory authorization, the Dischargers must submit a Report of Waste Discharge to apply for prior regulatory approval, pursuant to Section 13260 of the California Water Code.

12. Point Arena Creek, a tributary to the Pacific Ocean, is located approximately 800 feet down-slope from the site.

13. The existing and potential beneficial uses of Point Arena Creek 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) Hydropower Generation
- i) Water Contact Recreation
- j) Non-Contact Water Recreation
- k) Commercial and Sport Fishing
- l) Warm Freshwater Habitat
- m) Cold Freshwater Habitat
- n) Wildlife Habitat
- o) Rare, Threatened, and Endangered Species
- p) Migration of Aquatic Organisms
- q) Spawning, Reproduction, and/or Early Development of Fish
- r) Shellfish Harvesting
- s) Aquaculture

14. The existing and potential beneficial uses of areal groundwater include:

- a) Municipal and Domestic Supply
- b) Agricultural Supply
- c) Industrial Service Supply
- d) Industrial Process Supply
- e) Freshwater Replenishment

15. The Discharger has caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged 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.

The discharge and threatened discharge of contaminants may unreasonably affect water quality in that the discharge or threatened discharge is deleterious to the above described beneficial uses of state waters, and may impair water quality to a degree which creates a threat to public health and public resources and therefore, constitutes

a condition of pollution or nuisance. These conditions threaten to continue unless the discharge or threatened discharge is permanently cleaned up and abated.

16. 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 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 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 (SWRCB Res. Nos. 68-16 and 92-49; California Code of Regulations, title 23, section 2550.4, subds. (c), and (d)).
17. This Order requires the Dischargers to investigate the extent of the fuel impacts in groundwater and soil, to abate further migration of the contamination, to remove the residual sources of groundwater contamination from soil, to restore surface drainage conditions for effective storm water management, and to restore water quality in the area of impacted groundwater.
18. 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 Dischargers choose to appeal the Order, the Dischargers are advised that they must comply with the Order while the appeal is being considered.
19. The issuance of this 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 sections 15308 and 15321, title 14 of the California Code of Regulations. In addition, initial cleanup activities required by this order will be occurring in a previously disturbed area are subject to an emergency exemption for repairs essential to the public health, safety and welfare. (Cal. Code Regs., tit. 14, §15269, subd. (b).) The Regional Water Board will ensure that prior to concurrence with any long-term cleanup actions

required under this Order, it has complied with the requirements of CEQA as appropriate. Until the site has been investigated and a workplan proposed, it is impossible for the Regional Water Board to identify and mitigate potentially significant adverse impacts associated with the long-term cleanup of the Site.

20. 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 clean up 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 California Water Code sections 13267(b) and 13304, the Dischargers shall clean up and abate the discharge and threatened discharges forthwith and shall comply with the following provisions of this Order:

1. All deliverables required by this Order shall be submitted electronically to the State Water Resources Control Board's Geographic Environmental Information Management System database (GeoTracker) as required by title 23, Division 3, Chapter 30 of the California Code of Regulations.
2. All deliverables required by this Order shall be prepared under the direction of a California registered civil engineer or professional geologist experienced in surface water, soil, and groundwater investigation and remediation.
3. A copy of any written communications regarding the site investigation and clean up from either Discharger or their representatives to Regional Water Board staff shall be communicated to the other Discharger by email transmittal. Each Discharger shall include the other Discharger on the recipient list for all email communications to Regional Water Board staff regarding the site.
4. Soil stockpiled at the site shall be maintained with covers and other means to prevent rain infiltration, erosion by water, and migration by wind.
5. By August 24, 2015, remove from the site the wastewater and petroleum wastes contained in aboveground storage tanks and submit waste manifests to document disposal of the wastewater at an appropriately permitted facility.
6. Submit by September 8, 2015, either a plan for off-site disposal of contaminated water impounded in the excavation, or an acceptable plan and Report of Waste Discharge for the treatment and disposal of the impounded contaminated water, if such water is still

present in the excavation. If water is not present in the excavation, documentation of that condition shall be submitted by September 3, 2015.

7. Submit by August 24, 2015, a winterization plan for stockpiled soils that will remain on the site after September 30, 2015. Following written concurrence by the Executive Officer, implementation of the stockpile winterization plan implementation must be completed by October 1, 2015.
8. Submit by November 9, 2015, either a plan for the off-site disposal of stockpiled soil at an appropriately permitted waste management facility, or a plan and Report of Waste Discharge for the treatment and disposal of the stockpiled soil.
9. By October 6, 2015, backfill the excavated area and restore surface conditions in a manner consistent with the storm water pollution prevention plan approved for the Hay Industrial Park, or alternatively submit by August 19, 2015, a plan to satisfactorily winterize the excavated and associated disturbed areas such that sediments and contamination will not be mobilized by rain. If the Executive Officer concurs with such a plan in writing, implementation of the plan must be completed by October 1, 2015.
10. Submit a weekly report to the Regional Water Board staff providing updates on the status of compliance with this Cleanup and Abatement Order No. R1-2015-0053. The first weekly report is due on August 25, 2015.
11. Submit by September 3, 2015, a workplan for defining the extent of contamination in soil and groundwater. Implementation of the workplan shall begin within 30 days following written concurrence by the Executive Officer.
12. Submit by September 8, 2015, a sensitive receptors survey. The survey shall be conducted within one-half mile of the known extent of the discharge. The sensitive receptors survey shall include locations of surface water bodies, water supply wells and water supply intake structures, preferential pathways for contaminant migration, sensitive environmental habitats, and the identification of any potential health and safety issues.
13. Coordinate investigation and cleanup activities associated with soils, surface waters, and groundwater with Regional Water Board staff, Mendocino County Environmental Health staff, California Department of Fish and Wildlife, and other regulatory agencies with permitting authority for the site cleanup activities.
14. All workplans and reports submitted to the Executive Officer of the Regional Water Board shall be signed and stamped by a licensed professional as specified in Provision 1, above.

15. Pay all oversight cost recovery invoices within 30 days of issuance of the invoice.
16. Complete any additional work deemed reasonably necessary by the Regional Water Board's Executive Officer to abate and clean up the discharge of waste or threatened discharge of waste, restore water quality in groundwater, and protect the beneficial uses of surface and groundwater, human health and the environment.
17. If, for any reason, the Dischargers are 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 Dischargers may request, in writing, an extension of time as specified. The extension request must be submitted five days in advance, if possible, of the due date and shall include justification for this delay including 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.
18. 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 state and federal law. This Order may be revised by the Executive Officer as additional information becomes available.

Ordered by: \_\_\_\_\_  
Matthias St. John  
Executive Officer

August 5, 2015