

**California Regional Water Quality Control Board
San Francisco Bay Region**

RESPONSE TO WRITTEN COMMENTS

On the Revised Site Cleanup Requirements and Rescission of Order No. 94-017 for the
Pacific Rod and Gun Club and City and County Of San Francisco
San Francisco Public Utilities Commission

For The Property Located At 520 John Muir Drive, Lake Merced,
San Francisco, San Francisco County

The Regional Water Board received written comments on a tentative order distributed for public comment from the following parties:

1. San Francisco Public Utilities Commission (SFPUC) (letter dated May 17, 2013)
2. Pacific Rod & Gun Club (letters dated May 17, May 30 and June 3, 2013)

This response to those comments quotes paraphrases each comment followed by a staff response. For the full context and content of each comment, refer to the comment letters.

Comments from the SFPUC:

1. Revise Finding 4 to say that targets containing PAHs were found throughout the site, not just between the ranges and the Lake.
2. Revise Finding 4 to remove reference to other asphaltic materials containing PAHs being detected on the site as no other materials have been observed.
3. Revise Finding 19 to note that SWRCB Resolution 92-49 was subsequently amended in 1994 and 1996.
4. Revise Task 4 to remove compliance date of January 1, 2016 for reporting the completion of remedial action for the Lake sediments, given the uncertainties over the level of actual work needed.

Regional Water Board response:

Upon review of the Gun Club's comments (discussed more below), we do not concur with comments 1 and 2. We concur with comment 3 and have made the requested changes to the tentative order. With respect to comment 4, we have replaced the deadline with a more flexible deadline that will take into account the uncertainties the SFPUC mentions.

Comments from the Pacific Rod & Gun Club

1. The Gun Club questioned staff's use of a common-sense exemption to CEQA as there has been no evidence that the upcoming remedial action will have no adverse impacts.
2. States that the State of California is an owner of the bed of Lake Merced, and so should be added as a discharger in the Order.
3. The SFPUC submitted comments which incorrectly assert that fragments of clay targets have been found all throughout the site.
4. The SFPUC submitted comments which incorrectly assert that no asphaltic materials containing PAHs have been found at the Site.

Regional Water Board response:

With respect to comment 1, it would be premature for the Board to undertake additional CEQA analysis at this time because remedial alternatives are still being considered, and there is no single remedial proposal on the table. We have revised Task 2 (submittal of a Remedial Action Plan for the upland soil cleanup) and Task 6 (submittal of a Remedial Action Plan for the Lake sediments) to state that the Dischargers will submit documentation demonstrating compliance with CEQA in the selection of the remedial action plans. We have attached a legal analysis supporting this position.

With respect to comment 2, the City's attorney has stated that the State Lands Commission has claimed ownership of a portion of the Lake, but this area does not appear to include the Gun Club's facilities or the offshore areas impacted by Gun Club activities. The State Land Commission's claims appear to conflict with other documents showing that the entire Lake was purchased by the City from a prior water purveyor. The City has requested a title report from the State Land Commission to help resolve this issue, but this will take a couple of months to complete. While this is being resolved, we believe there is no compelling need to add the State Lands Commission to the tentative order as a discharger, given that the City has been acting as the manager of the Lake and has taken responsibility to conduct the remedial investigation and cleanup. We have the ability to add the State Lands Commission as a discharger in the future if it is demonstrated that the Commission does own the land containing the Club and the offshore sediments, but it would be inappropriate to slow implementing the tasks in the Revised Tentative Order while awaiting a more definitive determination of ownership that may never come.

Finally, staff modified Finding 2 to note that the Order requires the Dischargers to evaluate if sediment cleanup will be necessary, as we have already modified the tasks to require submittal of a sediment remedial action plan if necessary (Task 6), depending upon the outcome of the ecological risk assessment (Task 5).

With respect to comments 3 and 4, upon a review of the Gun Club's June 3 letter, and the *Supplemental Investigation and Health Risk Assessment Report*, dated April 9, 2012 on which it is based, we concur with comments 3 and 4 and will replace Finding 4 in the Tentative Order to read as follows:

Broken clay targets continue to be deposited into the Lake and adjoining upland areas between the ranges and the Lake. Prior to 2000, clay targets manufactured using asphaltic materials or petroleum pitch (typically containing polycyclic aromatic hydrocarbons (PAHs)) were used at the Site. Fragments of targets containing PAHs can be found in soil at the Site between the ranges and the Lake. Asphaltic materials with PAHs were found in some locations, and PAHs were found in soil throughout the Site. Clay targets used since 2000 do not contain petroleum pitch and are designed to be biodegradable.

ATTACHMENT: Legal Analysis of CEQA Issues

“Common Sense” Exemption

The Pacific Rod & Gun Club questions whether the “common sense” exemption to CEQA is appropriate for this revised SCR, noting that “there is no analysis in the record that the remedy chosen by the PUC will have no adverse impacts.”

Response: The common sense exemption is appropriate here. Under CEQA, “agencies must not take any action that significantly furthers a project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.” (*City of Santee v. County of San Diego* (2010) 186 Cal.App.4th 55, 64.) At this point in time, the Regional Water Board does not even have cleanup standards for the site. (*See* tasks 4 & 5 in the Revised Tentative Order requiring the Dischargers to analyze risks to human health and wildlife and propose cleanup standards) In addition, the Revised Tentative Order does not require a specific approach to remediation but rather has left the development and proposal of a remedial action design up to the Dischargers (subject to Board approval). Although the SFPUC has developed one possible approach to remedial action, it is clear from the letter from the Pacific Rod & Gun Club that other alternative remedial action plans are being proposed that may be considered as alternatives as part of the CEQA process (currently anticipated to involve a full EIR) that the SFPUC will undertake.

To perform any additional CEQA analysis at this point would be premature because there is no single proposal – or even cleanup standards - before the Regional Water Board that are sufficiently defined to allow for a meaningful environmental assessment. (Cal. Code Regs., tit. 14, § 15004.) Approval of the Revised Tentative Order will not commit the Regional Water Board to a definite course of action in regard to the Site. (*Sustainable Transportation Advocates, supra*, 179 Cal. App.4th at p. 117.) In these circumstances, the common sense exemption is appropriate because the Regional Water Board is not taking any action that will have a significant effect on the environment. (Cal. Code Regs., tit. 14, § 15378 and 14061, subd. (b) (3).)

To clarify that the final remedial action plan will be subject to a full CEQA review, consistent with *City of Santee* and *Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Ass’n* (2009) 179 Cal. App.4th 113, 119-122, the Regional Water Board will add a sentence to Task 2 (submittal of Upland Soil Remedial Action Plan), and Task 6 (submittal of Lake Sediments Remedial Action Plan) to say:

“The Dischargers shall also submit documentation demonstrating compliance with CEQA in the selection of the remedial action plan.”

Categorical Exemption §15308

The Pacific Rod & Gun Club also commented that the tentative order does not qualify for the categorical exemption for actions to ensure the maintenance, restoration, enhancement, or protection of the environment. (Cal. Code Regs., tit. 15, §15308.)

Response: We agree. Because this site is listed on the Cortese list, it is not eligible for a categorical exemption from CEQA, and the Regional Water Board has not cited section 15308 as an exemption. That said, it is also true that the tasks in the Revised Tentative Order – requiring definition of cleanup standards and development of a plan to remediate - will ultimately “assure the maintenance,

restoration, and enhancement of a natural resource and protection of the environment,” which is why that statement appears in the CEQA finding.