



California Regional Water Quality Control Board

Central Valley Region

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12 July 2005

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TENTATIVE CLEANUP AND ABATEMENT ORDER, DIXON BUSINESS PARK, DIXON, SOLANO COUNTY, CALIFORNIA

This letter serves to acknowledge receipt of your April 29, 2005 letter and constitutes the Regional Board's response to comments raised therein. These comments were also prepared with the input of the Regional Board's legal counsel on this matter, Mr. David Coupe. Also, enclosed is the *Tentative Cleanup and Abatement (Order), Dixon Business Park, Dixon, Solano County*. Staff of the Central Valley Regional Water Quality Control Board (Regional Board) request that parties named in the Order review it and submit comments to this office by **12 August 2005** in order that consideration maybe given prior to the Regional Board Meeting. Regional Board staff anticipate that a hearing for this Order will be conducted during the September 15 and 16, 2005 Regional Board Meeting.

I. REQUEST FOR A HEARING

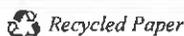
In response to a request for a hearing, the Regional Board at this time has chosen to schedule a hearing prior to issuance of the Final Cleanup and Abatement Order (Order). The purpose of sending Draft Orders is specifically to gather additional information concerning the findings in the Order and we do believe that a hearing is warranted..

II. GENERAL LEGAL COMMENTS

You next claim that William H. MacLaughlin should not be referenced in the Order as having had an ownership interest in the property.

We specifically asked for additional information concerning whether William H. MacLaughlin had an ownership interest in the property. You have failed to provide additional information that would change our factual finding that William H. MacLaughlin did not have an ownership interest in the property.

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More specifically, you have provided no information, aside from your assertion, that precisely at the time that Mr. William H. MacLaughlin signed a sales agreement with Monfort, Inc. that he immediately assigned his rights under it to Dixon Commercial Properties. Similarly, you have provided no evidence that DCP took "immediate title" from Monfort, Inc. under an assignment from William H. MacLaughlin. To the contrary, the factual record supports that William H. MacLaughlin entered into a sales agreement with Monfort Inc.

You next claim that Dixon Commercial Properties should be named as a secondary responsible party because it is a current innocent landowner and should only be required to assume cleanup responsibilities when and if the past owners and operators directly responsible for the contamination fail to conduct a cleanup.

In response to your request, although the Regional Board has the discretion to name primary and secondary responsible parties (see, e.g., *In the Matter of Arther Spitzer*, WQ Order 89-8, the Regional Board is neither required nor mandated to make such a distinction. In contrast to Spitzer, for example, there has been no real progress towards cleanup at the Dixon site. Assuming that the directly responsible parties are identified and making some progress towards cleanup, the Regional Board may then choose to exercise its discretion through the principle of equity and name DCP as a secondarily responsibility party. Because those conditions have not been satisfied, DCP will remain as a responsible party and no distinction will be made between primary and secondary responsible parties.

III. COMMENTS SPECIFIC TO THE TEXT OF THE DRAFT ORDER

Many of your comments address specific wording in the Order, particularly as it pertains to primary and secondary responsibility. Because the Regional Board has chosen to make no such designations at this time, the requests for word changes in designating primary and secondary responsible parties will not be made. This is the case particularly in light of the fact that there has been no progress made by directly responsible parties for the cleanup.

As to other comments specific to the text of the draft order, these comments are specifically addressed below.

Page 1; Page 2, paragraph 6; Page 2, paragraph 7; Pages 2-4, paragraphs 8-11, Page 5, New Paragraph

Comment noted. Please see **General Legal Comments** above.

Page 4, paragraph 13:

Comment noted. Finding 13 will be modified to indicate that Regional Board staff concurred with the spreading of pond sediment across portions of the property.

Page 4, paragraph 15:

Comment noted. Regional Board staff has been provided with information from others indicating that the on-site water supply wells were destroyed in 1989 with oversight from the Solano County Department of Environmental Management. Finding 15 will be removed from the Order.

Page 9, paragraph 2; Page 9, paragraph 4; Page 9-10, paragraph 7; Page 10 (paragraph 8-10):

The submittal dates for the Site Assessment Work Plan, Site Assessment Report and Health Risk Assessment Report will be based on the date the Order is adopted. The adopted Order will contain submittal dates, which will provide a reasonable time frame that is similar to the Draft Order. Regional Board staff will consider extending the Health risk assessment submittal date, discussed in Health Risk Assessment paragraph 8 –10, if the Dischargers provide a reasonable explanation and justification for extending submittal dates after the work plan for the HRA is submitted.

The following sentence in Health Risk Assessment, paragraph 7 will be removed from the Order.

“Inhalation of the volatile components of the waste (e.g., halogenated and aromatic solvents) must be considered an exposure pathway.”

Page 9, paragraph 5:

Comment noted. As requested, the submittal date implementing the work plan for an additional site assessment, to be submitted after the initial Site Assessment investigation is completed, will be extended from 30 to 60 days.

Page 10, paragraph 11:

The submittal date for the Feasibility Study/Remedial Options Evaluation Report will be dependent upon the Order adoption date. The date described in the Draft Order will be adjusted to provide a reasonable time frame for submittal of the subject report after the Final Site Assessment Report is completed.

The Regional Board staff has distributed and received comments in response to two draft orders. If you have any questions regarding this letter or need additional information, you may contact Robert Reeves at (916) 464-4651 or at reeves@waterboards.ca.gov.

John Russell
Senior Engineering Geologist

cc: Mr. David Coupe, Office of the Chief Counsel, Sacramento
Mr. Terry Schmidtbauer, Solano County Department of Environmental Management
Ms. Lida Kvashina, City of Dixon