

ADMITTED IN:
CALIFORNIA
TEXAS

LAW OFFICES OF
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March 16, 2006

Pamela C. Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Dr., #200
Rancho Cordova, CA 95670-6114

Re: **Humboldt Road Burn Dump
Areas 7 and 8**

Dear Executive Officer Creedon:

I am writing to you on behalf of Virginia L. Drake, Trustee of the Drake Revocable Trust, in response to the March 10, 2006 directive of Chairman Schneider for the submission of a written status report on the progress toward cleanup of Areas 7 and 8 of the Humboldt Road Burn Dump.

As requested, this report identifies and discusses the efforts undertaken by Ms. Drake as to cleanup of Areas 7 and 8 since the November 2005 hearing of the Regional Water Quality Control Board—Central Valley Region. Since that time, Ms. Drake has convened meetings with the interested and affected parties; one immediately after the November 2005 hearing that was not attended by the City of Chico and a subsequent meeting held in December in Chico that the City did attend. In January, there were further discussions as to the participation of the parties in the required cleanup. As a result of those discussions, Ms. Drake's co-owners, James E. Simmons and the Simmons Family Trust, through Darwin and Nina Simmons, the trustees, have agreed to participate in funding the cleanup. The City has not.

Since November there have also been ongoing discussions on Ms. Drake's behalf with Regional Water Quality Control Board staff as to the necessary steps to be taken toward cleanup. At the request of Ms. Drake's biologist, Dr. Bruce Barnett, a meeting was held on February 28, 2006, with the Army Corps of Engineers, U.S. Fish and Wildlife Service, representatives of the California Department of Fish and Game, and Regional Water Quality Control Board staff. The purpose of the meeting was to discuss the second season biological assessment for Butte County Meadowfoam, as well as the steps necessary to obtain the Section 404 permit. That permit will also require the Regional Water Quality Control Board's concurrence in accordance with the requirements of Section 401. As of this writing, it is anticipated that permit application will be submitted either by the end of this week or early in the week beginning March 20, 2006.

1. Butte County Air Quality Management District

One of the key permits for the remedial action will be an air quality permit through the Butte County Air Quality Management District. District representatives have been contacted and an appointment has been set for an initial meeting with Jim Powers of Risk-Based Decisions, Inc., Ms. Drake's remediation consultant, for the week of March 20. That meeting will include discussions as to the scope and extent of the permit associated with the remedial action. Some of the information required by the District will be dependent upon the outcome of the pending biological survey.

2. Biological Survey

As noted above, part of the Section 404 process is a completion of the survey of Butte County Meadowfoam located in Areas 7 and 8. The properties are being checked every other day for the anticipated Meadowfoam bloom. Once bloom has occurred, the survey will commence. Portions of the cleanup plan will be dictated by the results of the survey as to the location of the Meadowfoam. Thereafter, the necessary steps for finalization of the cleanup plan can be undertaken. That information will also be incorporated into the Section 404 permit application to the Army Corps of Engineers.

In addition to Butte County Meadowfoam, there is an existing vernal pool on Area 8 which will be part of the Section 404 permit. A Section 7 consultation with U.S. Fish and Wildlife Service is anticipated to address this additional feature. The result of the consultation will dictate the specific requirements that may affect the total scope of the remediation this summer. Board staff is aware of this issue. We will be working closely with Board Staff throughout the Section 404 process.

3. Discussions with Water Board Staff

In follow up to the Army Corps meeting, Dr. Barnett and the remediation consultants met with Regional Water Quality Control Board staff on March 9, 2006, to further discuss technical issues associated with the remediation. Those discussions included revisions to the Areas 7 and 8 Cleanup Plan. It is estimated that those revisions will be submitted to Board staff for review and comment on or before April 28, 2006.

4. Other Issues

A. California Environmental Equality Act (CEQA)

Ms. Drake is seeking clarification from Regional Water Quality Control Board's staff as to the scope and applicability of CEQA to the pending remedial action. While an EIR was prepared for the Fogarty remediation, paragraph 63 of the Cleanup and Abatement Order suggests these actions are categorically exempt. Alternatively, if CEQA is applicable, it is the intention of the Trustee to utilize the Fogarty EIR and, to the extent necessary, supplement with the Areas 7 and 8 remediation. A telephonic request to staff counsel to clarify this issue was made last week.

Pamela C. Creedon
Executive Officer
March 16, 2006
Page 3

In addition to this status report that was directed by Chairman Schneider, enclosed is a copy of the monthly status report submitted to Regional Water Quality Control Board staff on March 15, 2006, in accordance with the requirements of Cleanup and Abatement Order No. R5-2003-0707.

Respectfully submitted,



Jeffery J. Scharff

JJS/hv

Enclosure

cc: Client
James Pedri/Karen Clementsen
Randall Nelson, Esq.
David R. Frank
Francis M. "Mac" Goldsberry, II, Esq.
Michael Brady, Esq.
Risk Based Decisions, Inc.

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March 15, 2006

Via Facsimile & U.S. Mail

James E. Pedri, P.E.
California Regional Water Quality Control Board
Central Valley Region – Redding Office
415 Knollcrest Drive, Suite 100
Redding, CA 96002

Re: Cleanup and Abatement Order No. R5-2003-0707
Humboldt Road Burn Dump Areas 7 and 8

Dear Mr. Pedri:

As you know, this office has undertaken representation of Virginia L. Drake, Trustee of the Drake Revocable Trust (the "Drake Trust"), in connection with the above-referenced Cleanup and Abatement Order (the "Order") as it relates to Areas 7 and 8 of the Humboldt Road Burn Dump. On behalf of the Drake Trust, the following information is submitted in compliance with paragraph 9 of the "Required Actions" section of the Order.

On February 28, 2006, a meeting was requested by Ms. Drake's biological consultant, Dr. Bruce Barnett, through her former counsel, K. Greg Peterson. The meeting was attended by representatives of the Regional Water Quality Control Board, Army Corps of Engineers, U.S. Fish and Wildlife Service, as well as the Department of Fish and Game. The purpose of the meeting was to discuss the scope of biological assessment for endangered species, as well as wetlands and vernal pools. Presently, the site is being inspected every other day in anticipation of the pending Butte County Meadowfoam bloom. Once bloom has occurred, the biological assessments will commence.

Thereafter, a follow up meeting with representatives from Risk-Based Decisions, Inc. ("RBDI") and Karen Clementsen of your staff on March 9, 2006, was held to further discuss the schedule and technical steps required to achieve the required cleanup. Dr. Barnett also attended this meeting and addressed the regulatory and permitting issues pertaining to the biological concerns, notably the Meadowfoam species. Dr. Barnett's upcoming survey of the distribution of these endangered plant species later this month (when they are expected to bloom) will be critical to finalizing the remediation plan so as to preclude or minimize any impacts to these plant species during any remediation activities.

RBDI proposed the following steps be undertaken in preparation for mitigation of the contaminated soil on Areas 7 and 8:

James E. Pedri, P.E.

March 15, 2006

Page 2

1. Selection of an excavation contractor as soon as possible in order to facilitate planning. Potential contractor candidates are Jeff Pluim, Waters Excavation and Pacific States Environmental
2. Immediately upon selection of an excavation contractor, the excavator will be provided with two copies of the Remedial Design and Implementation Plan ("RDIP") dated February 15, 2005. One copy is for the excavator. The other copy is to be provided to the RCRA hazardous waste landfill so that they can plan to receive the waste.
3. Retention of a traffic engineer for traffic control planning and permitting, who must be a licensed professional civil engineer who specializes in traffic safety, e.g., the Sacramento office of Traffic Management, Inc.
4. Perform a public file review at the Butte County Air Quality Management District to obtain a copy of the file for the Fogarty permitting. Jim Powers of RBDI is currently scheduled to conduct this review during the week of March 20 - 24, 2006. RBDI recommended utilization of the Fogarty permit protocols to the extent applicable and practical to facilitate and expedite permit approval.
5. A decontamination pad will need to be constructed on Areas 7 and 8 for the planned offsite disposal. This work will need to be done in the next month to ensure approval of the air permit. Tentative locations for these pads have been identified and shared with Ms. Clementsen.
6. RBDI also recommended additional soil sampling in order to meet the acceptance criteria for the Ostrom Road (Class II) and Clean Harbors (in Buttonwillow) and Kettleman City (Class I) Landfills. RBDI advises that this additional sampling is essential since they understand that on-site stockpiling and segregation will not be permitted during the removal action and the cost differentials between disposal at a Class I versus a Class II landfill are substantial. Typically, the landfills will require one composite sample for 250 cubic yards of soil, approximately 30 to 50 samples, for TTLC/STLC and WET for CAM-17 metals, and 8015/8260 analyses. The transportation and disposal cost for Ostrom Landfill is considerably lower than for either the Kettleman or Buttonwillow RCRA-hazardous waste landfills, so the additional sampling is cost-justified based on whatever soil meets the criteria for disposal there. If it turns out that no soil meets acceptance criteria at Ostrom Landfill and all soils might have to be shipped to a RCRA hazardous waste landfill, that economic information will be used in a feasibility study of onsite disposal alternatives.
7. RBDI has begun the process of revising the HRBD Areas 7 and 8 Cleanup Plan to address the written comments previously provided by the RWQCB. It is my understanding that the Cleanup Plan will include a feasibility study for capping and containing the soil in Areas 7 and 8, or mixing it with a stabilizer, compacting and using it to form a storm water retention basin.

James E. Pedri, P.E.
March 15, 2006
Page 3

If you have any questions or require additional information, please contact me.

Sincerely,



Jeffery J. Scharff
Legal Counsel to Virginia L. Drake, as Trustee
of the Drake Revocable Trust

JJS:klj

cc: Via e-mail only:
Client
Karen Clementsen
Randall Nelson, Esq.
David R. Frank
Francis M. "Mac" Goldsberry, II, Esq.
Michael Brady, Esq.
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