

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. R2-2002-0091

ADOPTION OF SITE CLEANUP REQUIREMENTS FOR:

CAL-STEEL COATING

U.S. ARMY CORPS OF ENGINEERS

ALAMEDA AND OAKLAND HARBOR CHANNEL
ALAMEDA COUNTY

for the property located at:

USACE property adjacent to 2241 Clement Avenue

Alameda

Alameda County

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter, the "Board") finds that:

FINDINGS:

1. **SITE LOCATION:** The USACE-owned property is located adjacent to 2241 Clement Avenue, between Ordinary High Water (OHW) and Mean High Water (MHW) in the City of Alameda, Alameda County (Figure 1). The northeast boundary of the property is Alameda Estuary, in the Oakland Harbor Channel. The southeast boundary is delineated approximately by a bulkhead that separates it from the remainder of the property at 2241 Clement Avenue (Figure 2). The geographic coordinates are approximately 37° 46' 23" N and 122° 14' 24" W.
2. **SITE DESCRIPTION:** The site is located adjacent to the Oakland Harbor Channel in a predominantly industrial and commercial area. The property line varies from 30 to 48 feet inland of the MHW mark. It is a small triangular-shaped "sliver" about one-quarter acre in size between MHW and OHW, sloping from the bulkhead down about ten feet in elevation. A floating wooden boat dock is

situated approximately 15 to 20 feet offshore from the property waterfront. The site contains a collapsed concrete wharf and other debris. The debris consists of sand blast waste on top of and mixed with soil. Currently, the site is not in use. The debris originated from disposal of waste by previous operators of the property above OWH at 2241 Clement Avenue. These waste piles and debris have the potential to migrate into Waters of the State.

3. NAMED DISCHARGERS: The named dischargers include the current owners and a previous operator of the site. These named dischargers are: Cal-Steel Coating and the USACE.

Cal-Steel Coating is named as a discharger because of previous operations at the site during the time when debris was deposited on the USACE-owned property.

The USACE is named as a discharger because it owns and has jurisdiction for the shoreline and channel portion of this property below OHW. The USACE has not, at any time, performed or authorized any activity that caused waste to occur on the site, and is named solely because of ownership of the property.

If additional information is submitted indicating that other parties caused or permitted any waste to be discharged on the site where it entered or could have entered waters of the State, the Board will consider adding those parties' names to this Order.

4. SITE CHARACTERIZATION: The USACE has identified the extent of the USACE property in this area. The area of the collapsed concrete wharf has been identified as a potential threat to water quality or public health because of debris and waste related to the concrete wharf and onshore property. The USACE has volunteered to undertake removal of debris/deposits located on the USACE property in order to reduce the risk of exposure from these materials to public health or welfare or the environment. This action is limited to the area owned by the USACE between OHW and MHW where there is visible debris above ground on exposed soil. This action is the subject of this Order.

5. REGULATORY STATUS: This site is not currently subject to a Board Order because no business is currently using the site. The site is not currently subject to any enforcement action under provisions set forth in Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C.A. 9601 et seq. (CERCLA). The USACE considers the Nelson Marine cleanup as a voluntary, non-time critical removal action, as set forth in paragraph 300.415b(2) of Executive Order 12580, 52 FR 2923, January 23, 1987 in the National Contingency Plan. This Order provides guidance for undertaking the removal action.

6. BASIN PLAN: The Board adopted a revised Water Quality Control Plan for the San Francisco Bay Basin (Bay Plan) on June 21, 1995. This updated and

consolidated plan represents the Board's main water quality control planning document. The revised Basin Plan was approved by the State Water Resources Control Board and the Office of Administrative Law on July 20 and November 13, 1995, respectively. A summary of regulatory provisions is contained in 23 CCR 3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwaters.

The existing and potential beneficial uses of San Francisco Bay Lower, of which Oakland Harbor Channel and Alameda Estuary are part of, include:

Ocean, Commercial and Sport Fishing	Estuarine Habitat
Industrial Service Supply	Fish Migration
Preservation of Rare and Endangered Species	Navigation
Water Contact Recreation	Shellfish Harvesting
Noncontact Water Recreation	Wildlife Habitat

At present, there is no known use of groundwater underlying the site.

7. STATE WATER BOARD POLICIES: State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge and requires attainment of background levels of water quality, or the highest level of water quality which is reasonable if background levels of water quality cannot be restored. Cleanup levels other than background must be consistent with the maximum benefit to the people of the State, to not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality objectives.

State Water Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304," applies to this discharge. This order and its requirements are consistent with the provisions of Resolution No. 92-49, as amended.

8. CEQA COMPLIANCE: This order is an action to enforce the Water Quality Control Plan and as such is exempt from the California Environmental Quality Act pursuant to Section 15321 of the Resources Agency Guidelines.

9. COST RECOVERY: Pursuant to the California Water Code (Porter-Cologne), section 13304, the Board is allowed to recover reasonable expenses for overseeing the investigation and cleanup of illegal discharges, contaminated properties, and other unregulated releases adversely affecting or threatening to adversely affect the State's waters. It is our intent to recover such costs for regulatory oversight work conducted in accordance with California Water Code section 13304. To assure that sufficient Board staff resources are available to conduct the necessary reviews and approvals, we intend to include this site in the Region's SLIC Cost Recovery Program, more fully described in the attached Reimbursement Process

for Regulatory Oversight enclosure. Reimbursement costs will be assessed proportionally to those costs already expended to cleanup the site.

10. BASIS FOR 13304 ORDER: Pursuant to California Water Code (Porter-Cologne), section 13304 and based on the above findings, the Board finds that the dischargers have caused or permitted waste to be discharged or deposited where it threatens to be and has been discharged into Waters of the State and created and threatens to continue to create a condition of pollution. This order, therefore, contains tasks for mitigating existing and potential future impacts to the Alameda Estuary, Oakland Harbor Channel and San Francisco Bay.

11. CERCLA COMPLIANCE: The USACE is authorized as a lead agency in execution of site cleanups under CERCLA and other applicable provisions of federal law to the extent possible. Pursuant to CERCLA, the USACE considers the Clean Water Act and the Porter Cologne Act as Applicable or Relevant Requirements (ARARs). The Board is issuing this order to guide application of those ARARs.

The California Water Code (Porter-Cologne) does not authorize the Board to determine liability under CERCLA. As such, issuance of this Order shall not constitute an assignment of liability under CERCLA. Further, compliance by the USACE of the provisions of this Order shall not constitute an admission of liability under CERCLA by USACE.

12. NOTIFICATION: The Board has notified the dischargers and all interested parties of its intent under California Water Code 13304 to prescribe site cleanup requirements for the discharge, and has provided them with an opportunity to submit their written comments.

13. PUBLIC HEARING: The Board, at a public meeting, heard and considered all comments pertaining to this discharge.

IT IS HEREBY ORDERED, pursuant to Section 13304, of Division 7 of the California Water Code, that the Dischargers shall cleanup the waste deposited and discharged, abate the effect of the discharge, and take other remedial actions as follows:

A. PROHIBITIONS

1. The discharge of waste or hazardous materials in a manner which will degrade water quality, adversely affect beneficial uses of Waters of the State, or in a way that is contrary to the specifications of this Order is prohibited.
2. Further migration of pollutants by surface transport to waters of the State is prohibited.

3. Activities associated with surface and subsurface investigation and cleanup, which will cause significant adverse migration of pollutants, are prohibited.
4. Wastes shall not be disposed of, in any way, where they can be carried from the site, or temporary storage site, and discharged into Waters of the State.
5. The treatment or storage of waste shall not cause pollution or nuisance as defined in Section 13050 of the California Water Code, and shall not degrade the quality of any water.
6. Disturbance of the Oakland Channel shall be minimized during operation of soil-excavating equipment by appropriate use of silt fencing, shoring, or pilings, as needed.

B. TASKS

Task 1. Corrective Action Plan. DUE DATE: October 30, 2005

The USACE shall submit a Corrective Action Plan acceptable to the Executive Officer that shall include a time schedule no longer than one year for the removal of waste and debris piles from the site. Given the limits of appropriated public funds to this cleanup project at this time, The remedial action will focus on removing contaminated surface debris no more than two feet below the surface, including the concrete wharf, waste sandblasting slag piles, and soil in the vicinity of the concrete wharf.

Task 2. Corrective Action. DUE DATE: within one year of completion of Task 1

The Corrective Action shall consist of the activities described in the approved Corrective Action Plan submitted in Task 1.

Task 3. Corrective Action Completion Report. DUE DATE: within 60 days of completion of Task 2

The USACE shall submit a technical report acceptable to the Executive Officer following completion of the Corrective Action. The report shall identify any area(s) excavated and volume of soils removed. The report shall also document actions undertaken to confirm completion of activities, such as sampling and analysis procedures and results of analyses.

Task 4. Site Restoration. DUE DATE: within 90 days of completion of activities described in Task 3

Upon completion of the corrective action, the USACE shall restore impacted areas of the site in a manner acceptable to the Executive Officer. Excavated areas may be backfilled, compacted, and either repaved or seeded with native grasses. Existing pavement may also require replacement or repair.

Task 5. Site Restoration Report. DUE DATE: within 60 Days of completion of Restoration Activities

The USACE shall submit a report acceptable to the Executive Officer to document the completion of the restoration.

C. PROVISIONS

1. The use of controlled work zones and personal protective equipment shall be used to mitigate on-site worker exposure to potentially hazardous materials at the site. Appropriate dust control measures shall be used to minimize fugitive dust.
2. The proposed removal action will be conducted in compliance with all applicable federal, state, and local environmental laws.
3. If the dischargers are delayed, interrupted or prevented from meeting one or more of the completion dates specified in this Order, the dischargers shall promptly notify the Executive Officer in writing and if accepted, the new dates shall be an addendum to this Order.
4. No nuisance: The storage, handling, treatment, or disposal of polluted soil or other debris shall not create a nuisance as defined in California Water Code Section 13050(m).
5. Good O & M. The dischargers shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.
6. Cost Recovery. The dischargers shall be liable, pursuant to California Water Code Section 13304, to the Board for all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and the 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 Board managed reimbursement program,

reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.

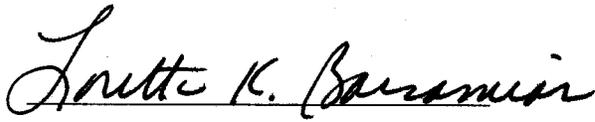
7. Access to Site and Records. In accordance with the California Water Code Section 13267, the discharges shall permit the Board or its authorized representative:
 - a. Entry upon premises in which any pollution source exists, or may potentially exist, or in which any required records are kept, which are relevant to this Order.
 - b. Access to copy any records required to be kept under the requirements of this Order.
 - c. Inspection of any monitoring or remediation facilities installed in response to this Order.
 - d. Sampling of any groundwater or soil which is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the dischargers.
8. Contractor/Consultant Qualifications: All technical documents shall be signed by and stamped with the seal of a California registered geologist, a California certified engineering geologist, or a California registered civil engineer.
9. Laboratory Qualifications: All samples shall be analyzed by State certified laboratories or laboratories accepted by the Board, using approved EPA methods for the type of analysis performed. All laboratories shall maintain quality assurance/quality control records for Board review. This provision does not apply to analyses that can only be reasonably be performed onsite (e.g., temperature).
10. Reporting of Hazardous Substance Release. If any hazardous substance is discharged in or on any water of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the dischargers shall report such discharge to the Regional Board by calling (510) 622-2300 during regular office hours (Monday through Friday 8:00 to 5:00). A written report shall be filed with the Board within five working days. The report shall describe: the nature of the hazardous substance, estimated quantity involved, duration of incident, cause of release, estimated size of affected area, nature of effect, corrective action taken or planned, schedule of corrective actions planned, and persons/agencies notified. This report is in addition to reporting to the

Office of Emergency Services required pursuant to the Health and Safety Code.

11. Document Distribution. Copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the appropriate parties.
12. Periodic Order Review. The Board will review this Order and may periodically revise it when necessary.

Pursuant to California Water Code Sections 13304 and 13350, if a discharger fails to comply with the provisions of this Order, the Board may schedule a hearing to consider assessing civil monetary penalties and to consider requesting the Attorney General to take appropriate enforcement action against the discharger, including injunctive and civil monetary penalties.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted on September 18, 2002 by the California Regional Water Quality Control Board, San Francisco Bay Region.



Loretta K. Barsamian
Executive Officer