

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

ORDER NO. R2-2002-0115

WASTE DISCHARGE REQUIREMENTS AND CLEAN WATER ACT SECTION 401  
WATER QUALITY CERTIFICATION FOR:

RHODIA, INC PEYTON SLOUGH REMEDIATION PROJECT, MARTINEZ, CONTRA  
COSTA COUNTY

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

1. Rhodia, Inc. (hereinafter the Discharger) proposes to implement the Rhodia, Inc. Peyton Slough Remediation Project (hereinafter Project), the purpose of which is to remediate contaminated sediments in and adjacent to Peyton Slough (Slough), as required by the Regional Board's (Board) Site Cleanup Requirements Order No. 01-094, adopted on August 15, 2001. The primary objectives are to maintain the existing functions of Peyton Slough, prevent future recontamination of the Slough, remediate the contamination associated with Peyton Slough and the dredge spoil piles, and enhance the existing and potential beneficial uses of the slough. The Project consists of:
  - a. Removing or managing all identified Areas of Concern (AOCs) which are areas of elevated copper and zinc levels and/or low pH;
  - b. Excavating a new alignment for Peyton Slough east of the existing Slough and rerouting the water flow;
  - c. Dewatering and capping the existing Slough in-situ; and
  - d. Implementing a restoration plan that would revegetate the impacted wetlands and the new cap.
2. Peyton Slough is located in the Peyton Slough Marsh system in and near the city of Martinez, between Waterfront Road and the Carquinez Strait. The project site is located within an approximately 100-acre area in the Peyton Slough Marsh System, which consists of the following four sub-units: North Peyton Marsh, Shore Terminals Marsh, Rhodia Marsh, and McNabney Marsh.
3. Peyton Slough is the dominant hydrologic feature of the Peyton Slough Marsh System, carrying freshwater flows out of the marsh sub-units to the Carquinez Strait and transporting tidal flow to the North Peyton Marsh. The key hydrologic functions of Peyton Slough are flood/stormwater control, mosquito control, conveyance of treated sanitary effluent (approximately 3 million gallons per day) from the Mt. View Sanitary District, and inland (upstream) conveyance of tidal water to the Peyton Marsh system.
4. Peyton Slough contains a tide gate structure that controls freshwater and tidal flows. The tide gate structure consists of five tide gates: three flap gates, which only allow

downstream flow and two nekton gates, which can allow bi-directional flow. The gates were designed to operate in a bi-direction manner, to allow tidal flow inland of the tide gate. The tide gates, as currently operated, do not allow tidal flow inland of the tide gate, due to the potential for transport of the contaminated sediments in the Slough. The tide gates will be operated to allow tidal flow inland of the tide gates following the completion of the Project.

5. The project site is located mostly in wetlands and other waters of the U.S. The Project will have temporary and permanent impacts to waters of the U.S. totaling 23 acres. Approximately 6.01 acres of non-wetland waters will be impacted (0.72 acres temporarily and 5.30 acres permanently). Approximately 17 acres of wetlands will be impacted (12.25 acres temporarily and 4.63 acres permanently). The impacts to non-wetland waters are primarily due to capping the existing Slough. The wetland impacts are due to excavating the new alignment and remediating the AOCs, which are located in wetlands.
6. The permanent loss of non-wetland waters and wetlands is due primarily to the conversion of non-wetland waters to wetlands and vice versa. The Project will create 4.69 acres of waters and 10.11 acres of wetlands, resulting in a net loss of waters of 0.60 acres and a net gain of 5.46 acres of wetlands. The net gain of wetlands is due primarily to the excavation of contaminated upland areas and their conversion to wetlands.
7. The Project site provides habitat to the following special status species: the federally-listed endangered Salt Marsh Harvest Mouse (SMHM, *reithrontomys raviventris*), state-listed threatened California Black Rail (*Laterallus jamaicensis coturniculus*), and federally-listed threatened Sacramento splittail (*Pogonichthys macrolepidotus*). The project will temporarily impact or remove habitat for these special status species, as well as other wildlife, through vegetation removal, excavation, and human disturbance.
8. To mitigate for the Project's permanent and temporary fill and other direct impacts to waters of the U.S. as described in Findings 5, 6, and 7, the Discharger will complete the following:
  - a. Create a net gain of 5.46 acres of wetlands. Much of this acreage is due to the conversion of uplands (the dredge spoil piles) to wetlands;
  - b. Reestablish SMHM habitat. SMHM habitat will be compensated at a ratio of 3:1 for high quality habitat, and 2:1 for low quality habitat. Approximately 17 acres of SMHM habitat will be re-established;
  - c. Increase the hydraulic capacity of the new alignment by at least 20% and providing one-time funding for Contra Costa Mosquito Vector Control District (CCMVCD) to remove debris and excess vegetation from the railroad culvert, located where Peyton Slough crosses Waterfront Road. This is expected to enhance the quality of all the marshes in the Peyton Slough Marsh system by increasing water circulation and tidal range;
  - d. Making the new alignment more sinuous than the existing slough. The sinuosity would provide increased habitat for species that utilize tidal sloughs, including

- SMHM and black rail, and would benefit the Sacramento splittail by providing a more diverse flow regime;
- e. Improve the circulation of Rhodia Marsh, located in the southwest corner of the project site, by creating first order channels. The creation of first order channels is expected to increase tidal influence;
  - f. Enhance the marsh north of the tide gate structure by providing 1,400 linear ft. of first order channels. This is expected to improve water circulation and provide additional habitat for juvenile salmonids and other species that utilize shallow tidal environments;
  - g. Enhance the 9-acre south spread area (area between the existing Slough and the proposed new alignment, to the south of the levee, where dredge spoil piles have spread due to erosion) by raising the elevation to create tidal marsh habitat; and
  - h. Install remote controlled actuators on the new tide gates to optimize the operation of the tide gates and the management of the Peyton Slough/McNabney Marsh system.
9. The Discharger applied to the Board for Water Quality Certification, pursuant to Section 401 of the Clean Water Act on March 25, 2002. The application was deemed complete on September 17, 2002. Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, the Discharger applied for a U.S. Army Corps of Engineers Individual Permit. In April 2002, the U.S. Army Corps of Engineers issued a Public Notice for a proposed Individual Permit for the Project.

#### Regulatory Authority

10. The Project requires a federal permit, as described in Finding No. 9, and will result in a discharge to waters of the U.S. Pursuant to Section 401 of the Clean Water Act, the Discharger must obtain a water quality certification from the State that the project will not violate state water quality standards.
11. The Board has determined to also regulate the proposed discharge of fill materials into waters of the State by issuance of WDRs pursuant to Section 13263 of the California Water Code (CWC).
12. The Board, on June 21, 1995, adopted, in accordance with Section 13244 et. seq. of the CWC, a revised Water Quality Control Plan, San Francisco Bay Basin (Basin Plan). This updated and consolidated revised Basin Plan was approved by the State Water Resources Control Board and the Office of Administrative Law on July 20, 1995, 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. This Order is in compliance with the Basin Plan.
13. Peyton Slough is a tributary to Carquinez Strait. The Basin Plan does not specifically identify beneficial uses for Peyton Slough. However, the Basin Plan states "the beneficial uses of any specifically identified water body generally apply to all of its tributaries." The

Basin Plan designates the following beneficial uses for the Carquinez Strait: COMM (Ocean, Commercial, and Sport Fishing), EST (Estuarine Habitat), IND (Industrial Service Supply), MIGR (Fish Migration), NAV (Navigation), RARE (Preservation of Rare and Endangered Species), REC-1 (Water Contact Recreation), REC-2 (Non-Water Contact Recreation), SPWN (Fish Spawning), and WILD (Wildlife Habitat).

The Peyton Marsh System is part of the Point Edith Wetland Area identified in the Basin Plan. The Basin Plan designates the following beneficial uses for the Point Edith Wetland Area: EST (Estuarine), RARE (Preservation of Rare and Endangered Species), REC-2 (Non-Water Contact Recreation), SPWN (Fish Spawning), and WILD (Wildlife Habitat).

14. The Basin Plan Wetland Fill Policy (policy) establishes that there is to be no net loss of wetland acreage and no net loss of wetland value when the Project and any proposed mitigation are evaluated together. The policy further establishes that wetland disturbance should be avoided whenever possible, and if not possible, should be minimized, and only after avoidance and minimization of impacts should mitigation for lost wetlands be considered.
15. The goals of the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) include ensuring "no overall loss" and achieving a "...long-term net gain in the quantity, quality, and permanence of wetland acreage and values..." Senate Concurrent Resolution No. 28 states that "[i]t is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend on them for benefit of the people of the State." Section 13142.5 of the CWC requires that the "[h]ighest priority shall be given to improving or eliminating discharges that adversely affect...wetlands, estuaries, and other biologically sensitive areas."

#### Proposed Project

16. This Order applies to the temporary and permanent fill and other impacts to waters of the State associated with the proposed Project, which is comprised of the Project components listed above. Construction of the Project will result in temporary impacts to 0.72 acres of non-wetland waters and 12.25 acres of wetlands. The Project will result in the permanent loss of 5.30 acres of non-wetland waters and 4.63 acres of wetlands. The permanent impact of this fill on waters and wetlands was identified and evaluated in the Mitigated Negative Declaration and Initial Study (State Clearing House No. 2002092006) for the Project, which was certified by the Board on October 16, 2002.
17. The Discharger proposes to complete the construction components of the Project, including its associated fills and dredging, over approximately 2-3 years.
18. Discharges of storm water associated with construction activity will occur. The Discharger is responsible for obtaining appropriate permits for these discharges, including

complying with the rules and regulations of National Pollutant Discharge Elimination System (NPDES) permit requirements. This includes complying with the requirements of State Water Resources Control Board Water Quality Order No. 99-08-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter NPDES Construction General Permit). Because the project will disturb 5 acres or more of land during construction, it must be covered under the NPDES Construction General Permit.

19. The California Environmental Quality Act (CEQA) requires all Projects approved by State agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document for such Projects. The Board finds, after review of the Project's environmental documents, that all environmental impacts have been identified and, with compliance with the conditions of this Order, will be mitigated to a level of insignificance. On October 16, 2002, the Board certified the Mitigated Negative Declaration/Initial Study.
20. This Project is filed at the Board under file numbers 2118.03(TJL) and 2119.1045 (PG) and as Site No. 02-07-C0585.
21. The Board has notified interested agencies and persons of its intent to issue Waste Discharge Requirements and Clean Water Act Section 401 water quality certification for this discharge.
22. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED that Rhodia, Inc., in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following, pursuant to authority under the Clean Water Act and CWC Sections 13263 and 13267:

**A. Discharge Prohibitions**

1. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters, or otherwise adversely impact beneficial uses is prohibited.
2. No debris, soil, silt, sand, cement, concrete, or washings thereof, or other construction related materials or wastes, oil or petroleum products or other organic or earthen material shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the State. When operations are completed, any excess material shall be removed from the work area and any areas adjacent to the work area where such material may be washed into waters of the State.

3. The groundwater in the vicinity of the Project shall not be degraded as a result of the placement of fill for the Project.
4. The discharge of materials other than storm water, which are not otherwise regulated by a separate NPDES permit or allowed by this Order, to waters of the State is prohibited.

## **B. Provisions**

1. The Discharger shall comply with all Prohibitions and Provisions of this Order immediately upon adoption of this Order or as provided below.

### Project Implementation Deadlines

2. Prior to the beginning of construction, the Discharger shall submit a final Mitigation and Monitoring Plan acceptable to the Regional Board Executive Officer and consistent with the San Francisco District Corps of Engineers' 1991 "Habitat Mitigation and Monitoring Plan Proposal Guidelines." The approved Mitigation and Monitoring Plan shall be successfully completed. Any proposed changes to the Mitigation and Monitoring Plan must be approved in writing by the Regional Board Executive Officer.
3. The Discharger shall submit mitigation monitoring reports acceptable to the Regional Board Executive Officer no later than October 15 of years 1, 3, 5, 7 and 10 following construction activities. If the mitigation monitoring program indicates that establishment of the mitigation habitat is not progressing in a manner or rate consistent with that of the proposed success criteria, the mitigation monitoring reports shall evaluate the probable cause(s) of any problems and propose appropriate corrective measures. If it is demonstrated the success criteria cannot be met due to the manner in which the tide gate structure is operated, the applicant shall propose an alternate success criteria and/or revised mitigation implementation schedule. Proposed changes in the Mitigation and Monitoring Plan success criteria or timelines must be approved in writing by the Regional Board Executive Officer.
4. Prior to the commencement of construction activities, the Discharger shall submit a Monitoring Plan for Contaminants of Concern (COCs) acceptable to the Regional Board Executive Officer. The Monitoring Plan for COCs is a required component of the Remedial Design Report, which is the Project design document. The levels of COCs in the new slough shall be monitored for no less than 10 years.
5. The Discharger shall submit quarterly monitoring reports for the COCs, beginning the first quarter following completion of project activities. Monitoring reports shall evaluate the copper, zinc, and pH levels at five locations within the new slough alignment. Reports shall be submitted at the end of each calendar quarter for years 1 through 5. The Discharger shall propose a monitoring frequency for the remaining 10-year monitoring program based on the results of the first five years. The proposed monitoring frequency for years 6-10 must be acceptable to Regional Board staff.

6. Adequate financial assurance (in the form of a bond or a letter of credit to the Board or other appropriate agency) shall be provided that the Mitigation and Monitoring Plan approved by the Regional Board Executive Officer will be implemented. The financial assurance note shall insure the successful completion of the Mitigation and Monitoring Plan, and, in the event of a failure of the on-site mitigation, shall provide for the purchase and implementation of appropriate off-site mitigation. The financial assurance shall be submitted no later than February 1, 2003.

#### Notice of Mitigation Completion

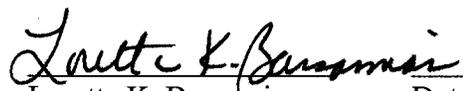
7. When the Discharger has determined that the mitigation has achieved the final success criteria specified in the final Mitigation and Monitoring Plan approved by the Executive Officer, it shall submit a notice of mitigation completion (notice), acceptable to the Executive Officer. The notice shall include a status report on the implementation of the long-term maintenance and management portion of the mitigation plan. Also, separate notices may be submitted for the different portions of proposed mitigation. After acceptance of the notice in writing by the Executive Officer, the Discharger's submittal of mitigation monitoring reports for its mitigation, or for that element of mitigation for which a notice was submitted, is no longer required.
8. Any significant changes to the final mitigation plans and other final plans referenced in the Provisions must be approved in writing by the Executive Officer.

#### Other Provisions

9. All reports pursuant to these Provisions shall be prepared under the supervision of suitable professionals registered in the State of California.
10. The Discharger shall immediately notify the Board by telephone whenever an adverse condition occurs due to the Rhodia, Inc. Peyton Slough Remediation Project. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance, resulting directly from the Rhodia, Inc. Peyton Slough Remediation Project. Pursuant to CWC §13267(b), a written notification of the adverse condition shall be submitted to the Board within two weeks of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Board, for the remedial actions.
11. The Discharger shall at all times fully comply with the engineering plans, specifications, and technical reports submitted with materials submitted as a part of its application for water quality certification.

12. The Discharger is considered to have full responsibility for correcting any and all problems that arise in the event of a failure that results in an unauthorized release of waste or wastewater.
13. The discharge of any hazardous, designated or non-hazardous waste as defined in Title 23, Division 3, Chapter 15 of the California Administrative Code, shall be disposed of in accordance with applicable state and federal regulations.
14. The Discharger shall maintain a copy of this Order at the Project site so as to be available at all times to site operating personnel and agencies.
15. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the California Water Code (CWC) and Section 3867 of Title 23 of the California Code of Regulations (23 CCR).
16. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR Subsection 3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
17. Certification is conditioned upon total payment of the full fee required in State regulations (23 CCR Section 3833) and owed by the applicant. The fee for this certification is \$10,000. A check for \$1,000 was received with the project application. The Discharger needs to submit the remaining balance of \$9,000 prior to the commencement of construction activities.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on October 16, 2002.

 10/18/02  
Loretta K. Barsamian                      Date  
Executive Officer