

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ORDER NO. \_\_\_\_\_

WASTE DISCHARGE REQUIREMENTS  
FOR  
THOMAS V. FOGARTY AND MARY R. FOGARTY, TRUSTEES, AND  
THOMAS V. AND MARY R. FOGARTY REVOCABLE TRUST  
FOR  
POST-CLOSURE MAINTENANCE OF  
HUMBOLDT ROAD PRIVATE PROPERTIES OPERATIONAL UNIT  
BUTTE COUNTY

The California Regional Water Quality Control Board, Central Valley Region (hereafter Regional Water Board) finds that:

1. Waste Discharge Requirements (WDR) Order No. R5-2004-0089, adopted by the Regional Water Board on 9 July 2004, prescribes requirements for Humboldt Road Private Properties Operational Unit.
2. Thomas V. Fogarty and Mary R. Fogarty, Trustees of the Thomas V. and Mary R. Fogarty Revocable Trust dated 25 January 2000 (hereafter Discharger), own and operate Humboldt Road Private Properties Operational Unit (Unit) on part of Assessor's Parcel Number (APN) 011-500-138 (formerly APN 011-030-138). Prior to 26 December 2005, the land was owned by Thomas V. and Mary R. Fogarty Revocable Trust, Ildo L. and Patricia B. Rosellini Trust, and Martin Living Trust.
3. The Unit is located along Humboldt Road, approximately two miles east of the intersection of State Routes 32 and 99 in Chico, in Section 29, T22N, R2E, MDB&M, as shown in Attachment A, which is incorporated herein and made part of this Order. The Unit consists of one landfill covering about 7 acres as shown in Attachment B, which is incorporated herein and made part of this Order.
4. In October 2005, the Unit was closed in accordance with the applicable sections of Title 27, California Code of Regulations (CCR). The purpose of this Order is to rescind WDR Order No. R5-2004-0089 and prescribe post-closure maintenance requirements for the Unit.

**WASTE DESCRIPTION AND UNIT CLOSURE**

5. The Unit contains approximately 100,000 cubic yards of compacted Humboldt Road Burn Dump (HRBD) waste from the Unit and waste from adjacent land, consolidated in the Unit. These wastes include broken glass, bottles, rusted metal, concrete rubble, rocks, soil, and burn ash with elevated concentrations of heavy metals and dioxin. Lead is the predominant waste constituent of concern. Laboratory analysis of samples collected from waste of the adjacent parcels indicates that some heavy metal concentrations exceed hazardous waste criteria. However, extraction tests show that the wastes in the Unit are not soluble to the extent that they pose a threat to groundwater. The limited mobility and

the natural geologic formations are considered adequate for protecting groundwater quality; however, constituents in the waste could threaten beneficial uses and water quality of surface water during the post-closure maintenance period if not adequately contained.

6. In June 2004, the Discharger submitted a Design Plan for the Unit. Construction activities occurred over two years. Between 14 July 2004 and 15 August 2004, approximately 40,000 cubic yards of identified burn ash and waste debris were removed from APN 011-030-138 and APN 011-030-139, transported, and consolidated in the Unit. To prevent potential water quality impacts, a six-inch interim cover of clean fill and hydroseed were placed on the consolidated waste.
7. On 31 May 2005, construction activities resumed. Approximately 140,000 cubic yards of identified burn ash and waste debris were removed from APN 011-030-016, APN 011-030-136, APN 002-180-084, and APN 002-180-086, transported, and consolidated with the existing waste in the Unit. A two-foot compacted foundation layer was placed over the consolidated waste. The 60-mil textured high-density polyethylene (HDPE) liner installation started on 5 August 2005 and was completed on 13 August 2005. The geocomposite drainage layer was installed immediately after the HDPE liner was installed and accepted. Installation of the 18-inch vegetative layer was completed by 25 August 2005. The Unit was hydroseeded in October 2005.
8. Other Unit activities completed in the 2005 season included construction of leachate collection berm and outlet and installation of a passive gas vent, surface water drainage conveyance system, and three groundwater monitoring wells. In November 2005, the Discharger installed two permanent survey monuments on top of the Unit so that the location and elevation of wastes, containment structures, and monitoring facilities can be determined throughout the post-closure maintenance period. On 10 January 2006, Regional Water Board staff approved the *Completion Report and Post-Closure Maintenance Plan* for the Unit.
9. The Discharger is required to maintain financial assurance mechanisms for post-closure maintenance and for corrective action of known or reasonably foreseeable releases from the Unit. On 20 July 2006, Butte County Bank issued the Regional Water Board Letter of Credit No. 0400711993 in the aggregate amount of two-hundred sixty one thousand dollars (\$261,000.00). Letter of Credit No. 040071193 is a financial assurance mechanism that complies with the requirements of Title 27 CCR.
10. At the request of the Discharger, on 7 November 2006, Butte County recorded a *Covenant to Restrict Use of Property* (Deed Restriction) for APN 018-500-138. The Deed Restriction is a requirement of WDR Order No. R5-2004-0089 which runs with the land, identifies the exact location of the Unit, and restricts activities that may adversely impact the integrity or performance of the Unit.

### SITE DESCRIPTION

11. The Unit is located along the westernmost slope of the Sierra Nevada foothills. It is underlain by highly cemented deposits of an unnamed "fanglomerate" present throughout a wide area along the foothills east of Chico. In general, the fanglomerate contains only occasional stringers or lenses of granular material within a very low permeability matrix of volcanic ash and other related materials. Groundwater yields within these lenses tend to be small. Deeper granular and volcanic units of the underlying Tuscan Formation, however, form more significant groundwater aquifers.
12. The measured hydraulic conductivity of the native soils underlying the Unit ranges between  $0.5 \times 10^{-4}$  cm/sec and  $1.5 \times 10^{-4}$  cm/sec as measured during aquifer tests conducted on two monitoring wells located at the adjacent HRBD Operational Unit. Tests on these wells indicate the water bearing zones are of limited extent and volume.
13. The closest Holocene fault, the Cleveland Hill Fault, is approximately 27 miles to the south-southeast. Recorded magnitudes of seismic events along these faults range between 5.7 and 6.4 on the Richter scale. The maximum credible acceleration for the site is 0.45 to 0.60 g.
14. Land uses within 1,000 feet of the Unit are zoned residential, commercial, and open space. Chico Redevelopment Agency HRBD Operational Unit, a closed landfill, is immediately west of the Unit. A junior high school is located less than a half-mile west of the Unit.
15. The Unit is located within the City of Chico, which receives an average of 26.4 inches of precipitation per year. The estimated pan evaporation rate for the Sacramento Valley, including the western half of Butte County, is 64 inches per year. The average evapotranspiration rate for pasture and grassland is approximately 52 inches per year.
16. The 100-year, 24-hour precipitation event for the land is estimated to be 5.5 inches. The maximum 100-year annual precipitation is over 50 inches per year.
17. The estimated 100-year flow in the reach of Dead Horse Slough that passes on the north side of the Unit is 400 cubic feet per second (cfs), based on the Federal Emergency Management Agency's 100-year peak flow calculations. Based on an estimate of the slope and cross section of Dead Horse Slough below the Unit, the water surface will be approximately 50 feet wide at a flow of 400 cfs. The toe of the Unit is approximately 300 feet from Dead Horse Slough.
18. Based on information provided in the *June 2001 Remedial Investigation Report, Geology and Groundwater, HRBD*, four domestic water supply wells are within ½ mile of the Unit, with a well on APN 002-180-083, which has been inactive for many years, being the closest.

## **SURFACE AND GROUNDWATER CONDITIONS**

19. The *Water Quality Control Plan for the Sacramento River and the San Joaquin River Basin, Fourth Edition* (hereafter Basin Plan), designates beneficial uses, establishes water quality objectives, and contains implementation plans and policies for all waters of the Basin.
20. Surface drainage is toward Dead Horse Slough, an ephemeral drainage that is tributary to Little Chico Creek, in the Butte Basin Hydrologic Area (520.40) of the Sacramento Hydrologic Basin.
21. Consistent with the Basin Plan and applicable state and federal law, the beneficial uses of Dead Horse Slough are identified based on the designated uses for the Sacramento River, to which Dead Horse Slough is tributary, via Little Chico Creek, and include domestic and municipal supply, agricultural supply, industrial service supply, water contact and non-contact recreation, warm and cold freshwater habitat, wildlife habitat, groundwater recharge, and freshwater replenishment.
22. Groundwater in the fanglomerate beneath the Unit is sporadic and discontinuous. Aquifer test data from the two monitoring wells located near the adjacent HRBD Operational Unit show the water bearing zones are of limited extent and volume.
23. The designated beneficial uses of groundwater, as specified in the Basin Plan, are domestic and municipal supply, agricultural supply, industrial service supply, and industrial process supply.

## **GROUNDWATER MONITORING**

24. Three monitoring wells (MW-5, MW-6, and MW-7) have been constructed adjacent to the Unit for use in the groundwater detection monitoring system. MW-5 was drilled to 44 feet below ground surface (bgs) with a 20-foot screen interval between 24 feet bgs and 44 feet bgs. This well is located near the toe of the Unit. MW-6 was drilled to 80 feet bgs with a 20-foot screen interval between 60 feet bgs and 80 feet bgs. This well is located on the east side of the Unit. MW-7 was drilled to 100 feet bgs with a 40-foot screen interval between 60 feet bgs and 100 feet bgs.
25. Groundwater has not been observed in MW-6 and MW-7 following their construction. Groundwater samples from MW-5 have contained detectable barium, manganese, vanadium, zinc, nitrate as N, and salts (Electrical Conductivity, Total Dissolved Solids, Chloride, Calcium, Sodium, Sulfate, and Magnesium) at concentrations less than water quality objectives. No dissolved lead, volatile or semivolatile organic compounds, pesticides, herbicides, or dioxin have been detected in the MW-5 groundwater. Monitoring of the wells satisfies the requirements for a detection monitoring program contained in Title 27 CCR Division 2.

26. Leachate is collected behind a berm near the northwesterly toe of the Unit and directed to an outlet pipe that is equipped with a valve that is usually closed. When the valve was opened on 13 December 2006, a small volume of leachate was observed, sampled, and analyzed. The concentration of dissolved lead in the leachate was 3 µg/L, slightly above the laboratory detection limit. Leachate has not been observed at the outlet pipe since December 2006.

### CEQA AND OTHER CONSIDERATIONS

27. The action to revise waste discharge requirements for this existing Unit is exempt from the provisions of the California Environmental Quality Act (CEQA), Public Resources Code Section 21000, et seq., and the CEQA guidelines, in accordance with Title 14 CCR, Section 15301.
28. This Order implements:
- a. *The Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*; and
  - b. The prescriptive standards and performance goals of Title 27 CCR Division 2, Subdivision 1, Chapters 1 through 7, effective 18 July 1997, and subsequent revisions.
29. Section 13267(b) of the California Water Code provides that: "In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of discharging, or who proposed to discharge within its region, or any citizen or domiciliary, or political agency or entity of this state who had discharged, discharges, or is suspected of discharging, or who proposed to discharge waste outside of its region that could affect the quality of the waters of the state within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs of these reports, shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports."
30. The technical reports required by this Order and the attached Monitoring and Reporting Program No. \_\_\_\_\_ is necessary to assure compliance with these waste discharge requirements. The Discharger owns the property where wastes have been discharged and is subject to this Order.

### **PROCEDURAL REQUIREMENTS**

31. All local agencies with jurisdiction to regulate land use, solid waste disposal, air pollution, and to protect public health have approved the use of this site for the discharges of waste to land stated herein.
32. The Regional Water Board notified the Discharger and interested agencies and persons of its intent to prescribe waste discharge requirements for this discharge, and has provided them with an opportunity to submit their written comments.
33. The Regional Water Board, in a public meeting, heard and considered all comments pertaining to this Order.
34. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board to review the action in accordance with Sections 2050 through 2068, Title 23 CCR. The petition must be received by the State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, California 95812, within 30 days of the date of adoption of this Order. Copies of the laws and regulations applicable to the filing of a petition are available on the Internet at [http://www.waterboards.ca.gov/water\\_laws/index.html](http://www.waterboards.ca.gov/water_laws/index.html) and will be provided on request.

IT IS HEREBY ORDERED, pursuant to Sections 13263 and 13267 of the California Water Code, that Order No. R5-2004-0089 is rescinded, and that Thomas V. Fogarty and Mary R. Fogarty, Trustees, and Thomas V. and Mary R. Fogarty Revocable Trust, their agents, successors, and assigns, in order to meet the provisions of Division 7 of the California Water Code and the regulations adopted thereunder, shall comply with the following:

#### **A. PROHIBITIONS**

1. The Unit is closed, therefore all waste disposal activities are prohibited.
2. The discharge of solid or liquid waste or leachate to surface waters, surface water drainage courses, or groundwater is prohibited.

#### **B DISCHARGE SPECIFICATIONS**

1. The Discharger shall contain the waste within the closed Unit at all times.
2. The discharge shall not cause the release of pollutants, or waste constituents in a manner which could cause a condition of nuisance, degradation, contamination, or pollution of groundwater to occur, as indicated by the most appropriate statistical or non-statistical data analysis method and retest method, the Monitoring and Reporting Program, or the Standard Provisions and Reporting Requirements.

### C. POST-CLOSURE MAINTENANCE SPECIFICATIONS

1. The Discharger shall, in a timely manner, remove and relocate any wastes discharged at this facility in violation of this Order.
2. The Discharger shall immediately notify the Regional Water Board of any flooding, unpermitted discharge of waste off-site, equipment failure, slope failure, or other change in site conditions, which could impair the integrity of waste or leachate containment facilities or precipitation and drainage control structures.
3. The Discharger shall maintain in good working order any facility, control system, or monitoring device installed to achieve compliance with this Order.
4. The Discharger shall maintain a minimum three percent grade across the entire final cover system of the Unit.
5. Water used for facility maintenance shall be limited to the minimum amount necessary for dust control and construction.
6. The Discharger shall maintain assurances of financial responsibility for post-closure maintenance and corrective action in the amount of the cost estimates in the approved post-closure maintenance plan or in an amount approved by the Regional Water Board.

### D. PROVISIONS

1. The Discharger shall comply with Monitoring and Reporting Program No. \_\_\_\_\_, which is incorporated into and made part of this Order.
2. The Discharger shall maintain a copy of this Order at the Unit, or at the Discharger's office, and make it available at all times to maintenance personnel, who shall be familiar with its contents, and to regulatory agency personnel.
3. The Discharger shall comply with all applicable provisions of Title 27 that are not specifically referred to in this Order.
4. In the event the Discharger does not comply or will be unable to comply with any prohibition or specification of this Order for any reason, the Discharger shall notify the appropriate Regional Water Board office by telephone **as soon as** it or its agents have knowledge of such noncompliance or potential for noncompliance, and shall confirm this notification in writing **within two weeks**. The written notification shall state the nature, time, and cause of noncompliance, and shall describe the measures being taken to prevent recurrences and shall include a timetable for corrective actions.

5. The Discharger shall comply with the applicable portions of the Standard Provisions and Reporting Requirements for Waste Discharge Requirements for Nonhazardous Solid Waste Discharges Regulated by Title 27 and/or Subtitle D (Title 27 CCR Section 20005 et seq. and 40 CFR 258 et seq.), dated April 2000, which are hereby incorporated into this Order.
6. All reports and transmittal letters shall be signed by persons identified below:
  - a. For a corporation: by a principal executive officer of at least the level of senior vice-president.
  - b. For a partnership or sole proprietorship: by a general partner or the proprietor.
  - c. For a municipality, state, federal or other public agency: by either a principal executive officer or ranking elected or appointed official.
  - d. A duly authorized representative of a person designated in a, b or c above if;
    - 1) The authorization is made in writing by a person described in a, b, or c of this provision;
    - 2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a Unit, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
    - 3) The written authorization is submitted to the Regional Water Board.
  - e. Any person signing a document under this Section shall make the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”
7. The Discharger shall take all reasonable steps to minimize any adverse impact to the waters of the State resulting from noncompliance with this Order. Such steps shall include accelerated or additional monitoring as necessary to determine the nature, extent, and impact of the noncompliance.

WASTE DISCHARGE REQUIREMENTS ORDER NO. \_\_\_\_\_  
THOMAS V. FOGARTY AND MARY R. FOGARTY, TRUSTEES, AND  
THOMAS V. AND MARY R. FOGARTY REVOCABLE TRUST  
FOR POST-CLOSURE MAINTENANCE OF  
HUMBOLDT ROAD PRIVATE PROPERTIES OPERATIONAL UNIT  
BUTTE COUNTY

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8. The owner of the Unit shall have the continuing responsibility to assure protection of waters of the state from discharged wastes and from leachate generated by discharged waste during the post-closure maintenance period of the Unit and during subsequent use of the land for other purposes.
9. To assume ownership or operation under this Order, the succeeding owner or operator must apply in writing to the Regional Water Board requesting transfer of the Order within 14 days of assuming ownership or operation of this facility. The request must contain the requesting entity's full legal name, the State of incorporation if a corporation, the name and address and telephone number of the persons responsible for contact with the Regional Water Board, and a statement. The statement shall comply with the signatory requirements contained in Provision F.6 and state that the new owner or operator assumes full responsibility for compliance with this Order. Failure to submit the request shall be considered a discharge without requirements, a violation of the California Water Code. Transfer of this Order shall be approved or disapproved by the Regional Water Board.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on \_\_\_\_\_.

\_\_\_\_\_  
PAMELA C. CREEDON, Executive Officer

KC/KB: sae  
1/15/2008