

California Regional Water Quality Control Board
North Coast Region

CLEANUP AND ABATEMENT ORDER NO. R1-2001-49

FOR

MARSH COMMONS VENTURE GROUP
ARTHUR C. AND SUSAN M. HUNTER
WAYNE BARE TRUCKING INCORPORATED
VIOLA BARE

SUTTER ROAD
MCKINLEYVILLE

Humboldt County

The Regional Water Quality Control Board, North Coast Region, finds that:

1. On June 3, 1965, the City of Arcata purchased several parcels of land (APN No. 503-241-23 to 36) from the County of Humboldt. The City constructed a building on the parcel as a shop for City activities. On September 13, 1965, Wayne and Viola Bare purchased the site from the City of Arcata. From September 1965 until approximately 1980 Wayne Bare Trucking, Inc., operated at the site. Viola Bare received sole title to the site on July 13, 1973. Arthur C. and Susan M. Hunter purchased the property from Viola Bare on October 21, 1983. Mr. and Mrs. Hunter rented the building to various automotive businesses during their ownership. Marsh Commons Venture Group purchased the site in 1993. The parcel subsequently was subdivided into thirteen individual parcels. Marsh Commons Venture Group, Arthur C. and Susan M. Hunter, Wayne Bare Trucking, Inc., and Viola Bare are hereinafter referred to as the Dischargers.
2. On October 15, 1996, Regional Water Quality Control Board (Regional Water Board) staff received a complaint of petroleum contaminated soils encountered during excavation activities at the Marsh Commons Venture Group (Marsh Commons) development. Contractors for Marsh Commons excavated and stockpiled approximately 2,000 cubic yards of soil onsite and on an adjacent parcel. The excavation measured approximately 260 feet by 70 feet by 3 feet in depth.
3. Laboratory analyses of soil samples collected from the stockpile indicated soil contamination with up to 4900 parts per million (ppm) of Total Petroleum Hydrocarbons as diesel (TPH-d), 11 ppm of Total Petroleum Hydrocarbons as motor oil (TPH-mo), 360 ppm of Total Petroleum Hydrocarbons as gasoline (TPH-g), 67 ppm of chromium, 88 ppm of nickel, 74 ppm of zinc, and 6.9 ppm of lead. Text from the laboratory report indicates that the TPH-d samples contain material similar to degraded or weathered diesel oil, the TPH-mo sample did not have the typical pattern of fresh motor oil, and the TPH-g samples did not have the typical pattern of fresh gasoline. Wayne Bare Trucking, Inc. and leasees of Arthur C. and Susan Hunter used petroleum products at the site during operations.
4. On October 22, 1996, consultants for Marsh Commons collected a grab groundwater sample from beneath the floor of the excavation. Laboratory analysis of this water sample indicated that the sample contained toluene at 0.77 parts per billion (ppb), TPH-g at 240 ppb, TPH-d at 2800 ppb, polynuclear aromatic hydrocarbons at 139.8 ppb, total chromium at 7.7 ppm, total nickel at 11 ppm, total zinc at 39 ppm, and total lead at 1.1 ppm.

5. Between October 1996 and October 1997 contractors for Marsh Commons excavated and stockpiled additional soils. A total of 2800 cubic yards of materials were stockpiled. Approximately 300 cubic yards of the total stockpile contained soil and woody debris of unknown origin, but is assumed to be from site preparation activities.
6. In December of 1996, the Marsh Commons Venture Group proposed treating the soils stockpiled on Marsh Commons property and the adjacent parcel. On January 7, 1997, Regional Water Board staff requested the stockpiled soils be removed to a permitted facility or remediated onsite prior to disposal. Staff also requested an investigation to define the complete vertical and horizontal extent of groundwater contamination at the site.
7. On February 25, 1997 the City of Arcata staff submitted an aerial photograph of the area dated 1967. The photograph indicated a large (estimated to be 25,000 to 30,000 gallon) aboveground storage tank present at the site in 1967. The observed tank was located in the area of the highest soil contamination encountered during Marsh Commons development activities.
8. On September 22, 1997, Regional Water Board received a report of waste discharge and appropriate filing fee from Arthur C. Hunter to bioremediate the Marsh Commons soils on property he owned on Sutter Road in McKinleyville California.
9. On September 24, 1997, Regional Water Board staff informed the Dischargers that the report of waste discharge was generally complete but needed an addendum to address several concerns. The letter also informed the Discharges that any movement of soils prior to issuance of waste discharge requirements would be fully at the risk of the parties involved. If the Regional Water Board did not issue waste discharge requirements, the Regional Water Board advised that all transported soil would require removal, and any associated impacts from the transportation and storage activities would require mitigation.
10. Between September 1997 and October 1997 contractors for Marsh Commons excavated an additional 25 cubic yards of contaminated soils from the Marsh Commons site. Gary Bare transported all of the soils to property owned by Arthur C. and Susan M. Hunter on Sutter Road in McKinleyville (APN No. 509-151-28). Contractors placed the soils on two separate plastic liners and covered the soils with plastic. Mr. and Mrs. Hunter completely fenced the outside property boundary and also placed inside fences around each of the two soil piles.
11. On February 13, 1998 the Humboldt County Planning Department issued a project description for comment on the Special Permit for grading and fill activity for the two stockpiles of soil on the Sutter Road site. On February 18, 1998, the Humboldt County Planning Department denied the Special Permit for grading and fill activity.

12. On February 16, 1999 the Humboldt County Planning Department issued a second project description for comment on a Special Permit for placement of fill adjacent to a wetland and soil bioremediation at the Sutter Road site. On March 18, 1999 the Humboldt County Planning Commission denied the permit for placement of fill adjacent to a wetland and soil bioremediation at the Sutter Road site.
13. On August 2, 1999, Regional Water Board staff requested that Mr. and Mrs. Arthur C. Hunter remove the two soil stockpiles from the Sutter Road site. Regional Water Board staff issued a second letter on September 14, 1999 to all the Dischargers and the City of Arcata that required removal of the two soil stockpiles from the Sutter Road site.
14. On March 13, 2000, a consultant representing Arthur C. and Susan M. Hunter submitted a workplan for the stockpiled soils to be moved and treated at the Arcata/McKinleyville Airport. On March 21, 2000 the Humboldt County Board of Supervisors heard the proposal, but the proponents withdrew the proposal before the vote by the Board of Supervisors.
15. In a letter dated May 10, 2000, Regional Water Board staff concurred with the workplan for the removal of the soils to the McKinleyville Airport. The letter also required evidence of compliance with Humboldt County permit requirements for the bioremediation prior to movement of the soils
16. On July 14, 2000 Regional Water Board staff received information that Mr. and Mrs. Hunter and the Humboldt Waste Management Authority intended to submit an application to Humboldt County Planning Department for a conditional use permit to treat the soils at the Cummings Road landfill. On September 25, 2000 the Humboldt Waste Management Authority withdrew the application.
17. On October 2, 2000 the Executive Order issued a California Water Code Section 13267 order requesting a revised report of waste discharge for the soil treatment that identifies the location for soil treatment. The revised report of waste discharge has not been received.
18. On March 5, 2001 a consultant representing Wayne Bare Trucking, Inc., submitted a letter proposing the removal of the contaminated soils to an acceptable receiving facility by September of 2001.
19. The Dischargers have caused or permitted, cause or permit, or threaten to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance. Continuing discharges are in violation of the Porter-Cologne Water Quality Control Act and provisions of the *Water Quality Control Plan for the North Coast Region*.

20. Beneficial uses of the areal groundwater include domestic, agricultural and industrial supply. The Sutter Road site drains to Mill Creek, tributary to Mad River, which empties into the Pacific Ocean. Beneficial uses of Mad River and its tributaries include:
 - a. municipal supply
 - b. agricultural supply
 - c. industrial supply
 - d. industrial process supply
 - e. groundwater recharge
 - f. hydropower generation
 - g. water contact recreation
 - h. non-contact water recreation
 - i. commercial and sport fishing
 - j. warm fresh water habitat
 - k. cold fresh water habitat
 - l. wildlife habitat
 - m. preservation of rare and endangered species
 - n. fish migration
 - o. fish spawning
 - p. estuarine habitat
 - q. aquaculture
21. Discharge prohibitions contained in the Basin Plan apply to this site. State Water Resources Control Board Resolution No. 68-16 and State Water Resources Control Board Resolution No. 92-49 ("Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Section 13304 of the California Water Code") apply to this site.
22. Water quality objectives exist to ensure protection of the beneficial uses of water. Where multiple beneficial uses of water exist, and the most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions that evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality objectives, need to be considered. Narrative water quality objectives are interpreted through application of available scientific information and numerical limits are thence derived from such information. The following table sets out the water quality objectives, derived from the narrative water quality objectives in the basin plan, for surface and groundwaters at the site:

Constituent of Concern	Background Level ug/l	Water Quality Objective ug/l	Reference for Objective
Total Petroleum Hydrocarbons as gasoline (TPH-g)	≤50.0	50.0	Published literature provides a taste and odor threshold of 5 ug/l which is applied to the narrative TASTE and ODOR objective of the Basin Plan, but detection limit is 50 ug/l and is controlling
Total Petroleum Hydrocarbons as diesel (TPH-d)	≤50.0	56.0	USEPA health advisory of September 4, 1992, Suggested No Adverse Response Level of 56 ug/l which is applied to narrative TOXICITY water quality objective in the Basin Plan
Total Petroleum Hydrocarbons as motor oil	≤50.0	50.0	U.S. EPA National Ambient Water Quality Criteria, Freshwater Aquatic Life Protection, May 1, 1986. SNARL of 0.1 ug/l to 1.0 ug/l is applied to the narrative TOXICITY objective in the Basin Plan and Oil and Grease criteria of the Basin Plan, but detection limit is 50 ug/l and is controlling
Benzene	≤0.5	1.0	California DHS MCL, Title 22 of the California Code of Regulations, § 64444 is 1.0 ug/l; USEPA health advisory for cancer risk is 0.7 ug/l; applied to the narrative TOXICITY objective in the Basin Plan
Toluene	≤0.5	42	California DHS MCL, Title 22 of the California Code of Regulations, § 64444 is 150 ug/l; USEPA taste and odor threshold of 42 ug/l, Federal Register 54(97):22064-22138; applied to the TASTE AND ODOR water quality objective in the Basin Plan
Ethylbenzene	≤0.5	29	California DHS MCL, Title 22 of the California Code of Regulations, § 64444 is 700 ug/l; USEPA taste and odor threshold, Federal Register 54(97):22064-22138; applied to the TASTE AND ODOR water quality objective in the Basin Plan
Xylene	≤0.5	42	California DHS MCL, Title 22 of the California Code of Regulations, § 64444 is 150 ug/l; USEPA taste and odor threshold, Federal Register 54(97):22064-22138; applied to the TASTE AND ODOR water quality objective in the Basin Plan

23. The Regional Water Board will ensure adequate public participation at key steps in the remedial action process, and shall ensure that concurrence with a remedy for cleanup and abatement of the discharges at the site shall comply with the California Environmental Quality Act.

24. The issuance of this cleanup and abatement order is an enforcement action being taken for the protection of the environment and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et. seq.) in accordance with Section 15308 and 15321, Chapter 3, Title 14 of the California Code of Regulations.

THEREFORE, IT IS HEREBY ORDERED that pursuant to California Water Code Sections 13267(b) and 13304, the Dischargers shall cleanup and abate the discharge and threatened discharge of petroleum hydrocarbons, other chemicals, and other wastes forthwith and shall comply with the following provisions of this Order:

1. The Dischargers shall conduct the investigation and cleanup tasks under the direction of a California registered geologist or registered civil engineer experienced in the area of groundwater pollution cleanup.
2. The Dischargers shall take no action that causes or permits or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be discharged to waters of the state.
3. The Dischargers shall submit a plan for the treatment and/or disposal of the soils at a permitted facility to the Executive Officer by June 25, 2001.
4. The Dischargers shall implement the plan for treatment and/or disposal of the soils at a permitted facility by July 9, 2001.
5. All soils shall be treated and/or disposed at a permitted facility by August 31, 2001.
6. If for any reason, the Dischargers are unable to perform any activity or submit any document in compliance with the schedule set forth herein or in compliance with any work schedule submitted in compliance with this Order and concurred in or revised by the Executive Officer, the Dischargers may request, in writing, an extension of the time specified. The extension request must be submitted five days in advance of the due date and shall include justification for this delay including a description of the good faith effort performed to achieve compliance with the due date. The extension request shall also include a proposed time schedule with new performance dates for the due date in question and all subsequent dates dependent on the extension. An extension may be granted for good cause, in which case this Order will be automatically revised.

Ordered by: _____

Lee A. Michlin
Executive Officer

June 1, 2001