

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2004-0033

FOR

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

PACIFIC GAS & ELECTRIC COMPANY
THE 137 SANTA ROSA GROUP PARTNERSHIP
MADELINE L. MUSCO
GEORGE LAWRY
RICHARD COLOMBINI
KENNETH COKER
JOEL DeSILVA
UPWAY PROPERTIES, Inc.

First and B Streets
Santa Rosa, California

Sonoma County

For

Failure to Comply with Cleanup and Abatement Order No. R1-2002-0115

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) gives notice that:

1. This Order is issued to Pacific Gas & Electric Company (PG&E), Madeline L. Musco, George Lawry, Richard Colombini, Kenneth Coker, Joel DeSilva, the 137 Santa Rosa Group Partnership (Partnership) and Upway Properties Inc. (hereinafter collectively referred to as Dischargers) based on violations of Cleanup and Abatement Order No. R1-2002-0115 and on provisions of California Water Code Section 13350, which authorizes the imposition of Administrative Civil Liability for violations of a Cleanup and Abatement Order (CAO).
2. In 1876, the Santa Rosa Light Company erected a coal gas manufacturing plant at First and B Streets (hereinafter Site) in Santa Rosa [Assessor's Parcel Number (APN) 10-068-17]. The plant was converted to an oil gas manufacturing plant around the turn of the century. PG&E operated the gas manufacturing plant until 1924, followed by a natural gas distribution facility until 1969. A Site location map is included as Attachment B.
3. In 1985, PG&E began historical research and title searches to identify former gas plant sites in its service area. Environmental assessments were conducted to evaluate environmental conditions. Investigative work in 1986 revealed the presence of polynuclear aromatic hydrocarbons (PAHs) and lead in shallow soil at this Site. In July 1987, the Regional Water Board issued Cleanup and Abatement Order (CAO) No. 87-112 to PG&E containing directives to determine the extent of contamination and to abate the effects of the discharge.

4. In August 1987, the Partnership, a group of individuals that had previously entered into an agreement to purchase the Site, drilled borings and found PAHs, and diesel and motor oil range hydrocarbons in soils to approximately 15 feet below ground surface. The Partnership also removed approximately 120 cubic yards of soil/coal tar and hazardous waste levels of lead.
5. In November 1987, the Partnership finalized the purchase agreement; the Partnership currently includes Madeline Musco, George Lawry, Richard Colombini, Kenneth Coker and Joel DeSilva. CAO No. 88-11 was issued to reflect the change in title. CAO No. 88-63 was issued at the request of the Partnership and included the Partnership's proposal to install and operate a groundwater extraction system.
6. In 1988, the Partnership installed three additional groundwater- monitoring wells and removed some petroleum hydrocarbon impacted soil. Groundwater monitoring revealed the presence of separate phase hydrocarbons on groundwater. In 1989, an underground oil storage tank (described as a railroad tank car) was discovered and abandoned in place. Testing of soil and groundwater revealed contamination that included heavy range petroleum hydrocarbons (diesel and oil), polynuclear aromatic hydrocarbons (PAHs), and lead. Once the property was redeveloped in 1989, investigative work ceased. The groundwater extraction system was not installed.
7. In 1995 and 1996, the City of Santa Rosa collected soil, sediment and/or water samples along the banks and/or floor of Santa Rosa Creek. The analytical results revealed the presence of petroleum hydrocarbons and PAHs.
8. In 1996, the Executive Officer of the Regional Water Board issued CAO No. 96-102, which required the Dischargers to define the on- and off-site extent of contamination, and submit a remedial action plan by March 31, 1997.
9. In 1997, additional borings were drilled along the southern portion of the Site adjacent to Santa Rosa Creek. In these soil borings, significant concentrations of diesel, motor oil, and oil and grease were detected. Field observations documented in the boring logs included strong petroleum odors, stained soil, sheen, coal dust and oil at the soil/groundwater interface. The extent of contamination remained undefined and a remedial action plan was not submitted.
10. Between June 1997 and December 2000, staff continued to work with the Dischargers towards achieving compliance. On December 18, 2002, following continued non-compliance, the Executive Officer issued CAO No. R1-2002-0115, which also reflected a change in property ownership from the Partnership to Upway Properties, Inc.
11. CAO No. R1-2002-0115 ordered the Dischargers, in part, to complete the following:

"Extent of Contamination"

D. Complete the entire scope of work identified in the revised February 19, 2002 work plan, the October 2, 2002 work plan addendum, the November 26, 2002 revised drilling locations and any additional addendum within 45 days of issuance of this Order. The work must define the extent of petroleum hydrocarbon and PAH contamination.

E. Submit a report of findings for the work identified in Task D within 30 days of work plan completion. The report must include the north creek bank sampling work that was coordinated with the City of Santa Rosa during the Prince Memorial Greenway Project. The report must also include an adequate work plan for any additional effort necessary to define the extent of contamination including the extent of petroleum hydrocarbon and PAH contamination in water beneath the concrete floor of Santa Rosa Creek.

Source Identification

G. Submit a plan within 30 days of issuance of this Order to investigate the presence, or absence, of any remaining subsurface sources of contamination including underground storage tanks, piping and or buried waste.”

12. The deadline for submittal of the plan required by Provision G was January 18, 2003. On January 10, 2003, a 30-day extension request was submitted on behalf of the Partnership to complete Provision G. The request was made pursuant to Section L of CAO No. R1-2002-0115, and included the extension justification and a revised compliance date. The extension request indicated that “no other deadlines would be impacted by the requested time extension.” The Executive Officer determined that the extension request was justified, and on January 29, 2003, extended the deadline to February 18, 2003. The plan was not submitted. The failure to timely submit the plan is a violation of CAO No. R1-2002-0115.
13. The deadline for completion of the scope of work as required in Provision D was February 2, 2003. The work was completed on February 4, 2003. Failure to timely complete the scope of work as required by Provision D is a violation of CAO No. R1-2002-0115.
14. The report of findings required by Provision E was due on March 6, 2003 and was received on February 28, 2003. However, the report lacked the required work plan to define the extent of contamination, including in water beneath the concrete floor of Santa Rosa Creek. Without the specified work plan, the report of findings did not satisfy Provision E. Failure to timely submit a complete report of findings is a violation of CAO No. R1-2002-0115.
15. The Dischargers failed to:
 - Complete the plume definition work by February 2, 2003, as required by Provision D.
 - Submit a report including an adequate work plan to define the extent of contamination by March 6, 2003, as required by Provision E.
 - Submit a work plan to investigate additional sources of contamination by February 18, 2003, as required by Provision G.
16. There were a total of: (2) days of violation from February 3, 2003, to February 4, 2003, for violation of Provision D; fifty-six (56) days of violation from March 7, 2003, to May 1, 2003, for violation of Provision E; seventy-two (72) days of violation from February 19, 2003, to May 1, 2003, for violation of Provision G, for a total of 130 days of violation.
17. Under Section 13350(e)(1) of the CWC, the Regional Water Board may impose civil liability on any person who intentionally or negligently violates any cleanup and abatement order in an amount not to exceed five thousand dollars (\$5,000) for each day the violation occurs. Where there is a discharge, Section 13350(e)(1)(B) of the CWC states that the minimum civil liability shall be five hundred dollars (\$500) for each day in which the violation occurs. If the Regional Water Board chooses to impose less than this minimum civil liability, it must

make express findings setting forth the supporting reasons based on the specific factors to be considered pursuant to CWC Section 13327. The maximum potential administrative civil liability for 130 days of violation is \$650,000.00; the minimum potential administrative civil liability is \$65,000.00.

18. Administrative Civil Liability Complaint No. R1-2003-0072 was issued by the Executive Officer on June 4, 2003 for \$650,000.00. The Executive Officer proposed that the Dischargers collectively pay \$75,000.00 of the total Administrative Civil Liability then and the remaining \$575,000.00 of the Administrative Civil Liability would be permanently suspended contingent upon compliance with Cleanup and Abatement Order No. R1-2002-0115 to the satisfaction of the Regional Water Board Executive Officer as follows:
 - Two hundred eighty seven thousand five hundred dollars (\$287,500.00) shall be permanently suspended upon submittal of an adequate work plan by July 7, 2003, for any additional efforts necessary to define the extent of contamination including the extent of petroleum hydrocarbons and PAHs contamination in water beneath the concrete floor of Santa Rosa Creek (Provision E).
 - Two hundred eighty seven thousand five hundred dollars (\$287,500.00) shall be permanently suspended upon submittal of an adequate work plan by July 7, 2003, to investigate the presence, or absence, of any remaining subsurface sources of contamination including underground storage tanks, piping and/or buried waste (Provision G).
19. The Dischargers submitted acceptable work plans by July 7, 2003, in compliance with Provisions E and G of CAO No. R1-2003-0115. In a letter dated August 14, 2003, the Executive Officer withdrew the provisions of the Complaint and permanently suspended \$575,000.00 of the total proposed administrative civil liability and time schedule. The seventy five thousand dollar (\$75,000.00) administrative civil liability remained due and payable.
20. On July 9, 2003, in a meeting with Regional Water Board and State Water Resources Control Board, Office of Chief Counsel staff, legal counsel for PG&E and the Partnership requested that the Administrative Civil Liability penalty of \$75,000.00 be dismissed. At that meeting, and by letter dated August 14, 2003, the Dischargers options were identified, which included:
 - Signing the public hearing waiver and paying the proposed civil penalty of \$75,000.00.
 - Requesting a public hearing before the Regional Water Board to confirm, modify, or reject the complaint.
 - Entering into settlement negotiations, which may include the completion of a supplemental environmental project (SEP) according to the requirements of the State Water Resources Control Board's Enforcement Policy.
21. On August 20, 2003, staff received the original signed waiver forms from the Dischargers, waiving their right to a hearing within ninety days of the date of issuance of the Complaint and requesting that the hearing be continued to a date mutually agreeable to all parties.

22. On September 8, 2003, legal counsel for the Partnership requested the initiation of face-to-face settlement negotiations with the Executive Officer of the Regional Water Board and further requested that the Executive Officer withdraw the civil liability, making it contingent upon further compliance with Cleanup and Abatement Order No. R1-2002-0115.
23. On December 9, 2003, the Executive Officer informed the Dischargers that the civil penalty would not be withdrawn and unless a meaningful settlement agreement on behalf of the Dischargers was received by January 7, 2004, this item would be heard at the February 2004 Regional Water Board meeting.
24. On December 24, 2003, the Dischargers collectively proposed to identify and complete a SEP and requested assistance from staff. On January 23, 2004, the Executive Officer provided the Dischargers with a copy of the State Water Resource Control Board's Enforcement Policy regarding the preparation of Supplemental Environmental Projects, government agency and private water quality protection organizations, and contact names and phone numbers regarding potential SEP projects. On February 19, 2004, the Dischargers requested an extension for the submittal of an acceptable SEP to March 9, 2004.
25. On March 8, 2004, correspondence was submitted on behalf of the Dischargers. The submittal was not an SEP; it was a letter indicating that they are continuing to prepare an SEP and would submit it in the near future.
26. Due to the lack of meaningful progress, a hearing to affirm, reject, or modify Administrative Civil Liability Complaint No. R1-2002-0115 was scheduled before the North Coast Regional Water Quality Control Board for May 12, 2004.
27. On May 4, 2004, legal counsels for the Partnership and PG&E requested a postponement of the public hearing. The Partnership requested a postponement because they recently engaged the services of new legal counsel and required time to prepare. PG&E requested the postponement because their counsel was scheduled to be out of the country on May 12, 2004. In addition, he did not have time to meet with the Partnership's new counsel. The hearing was rescheduled to October 5, 2004.
28. The issuance of this Order does not have the potential to result in a physical change in the environment and is therefore not a "project" subject to the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.). It is also exempt from CEQA in accordance with Title 14, California Code of Regulations, Section 15321(a)(2).
29. In determining the amount of the civil liability, pursuant to CWC Section 13327, the Regional Water Board took into account the nature, circumstance, extent and gravity of the violations; and with respect to the violators, the ability to pay, the ability to continue in business, voluntary cleanup efforts, prior history of violations, the degree of culpability, economic benefit or savings resulting from the violation, and other matters as justice may require.

A. Nature, Circumstance, Extent, and Gravity of the Violations

Site investigative work has revealed:

- The presence of heavy petroleum hydrocarbons in soil and groundwater,
- The presence of elevated concentrations of lead,
- A significant amount of separate phase oil on groundwater extending from Santa Rosa Avenue to the west along behind the north wall of Santa Rosa Creek,
- A significant amount of gas manufacturing process waste (lampblack) throughout the southern portion of the property adjacent to Santa Rosa Creek.
- Significant levels of PAHs on the northern portion of the property, adjacent to First Street in the vicinity of a former coal tar pit,
- A significant amount of product and impacted soil in the vicinity of the abandoned underground oil tank,
- The presence of two additional underground oil storage tanks and numerous unidentified subsurface features that require further investigation.
- Petroleum hydrocarbons and PAHs in sediment and water in Santa Rosa Creek.

Failure to submit and implement an acceptable work plan in a timely manner allows for ongoing discharges. Failure to submit a work plan to define the extent of contamination delayed the preparation and implementation of a corrective action plan and allowed for the ongoing discharge of waste to ground and surface water.

Consideration of the nature, circumstance, extent, and gravity of the violations does not provide reason for reduction of the amount of civil liability to be imposed.

B. Susceptibility to Cleanup or Abatement

Site conditions are susceptible to cleanup and abatement through the preparation and implementation of an acceptable Corrective Action Plan that abates the discharge to Santa Rosa Creek, removes and/or treats any remaining sources of contamination and addresses the impact to ground and surface water. Technically feasible cleanup alternatives exist that may be implemented with success in a timely manner.

Consideration of susceptibility to cleanup or abatement does not provide a reason for reduction from amount of civil liability to be imposed.

C. Degree of Toxicity

Site contaminants include petroleum hydrocarbons in the diesel and motor oil range and polynuclear (polycyclic) aromatic hydrocarbons (PAHs) including naphthalene, chrysene, acenaphthene, acenaphthylene, anthracene, fluoranthene, fluorene and pyrene. Diesel and motor oil are each composed of numerous individual compounds. Several PAHs are human carcinogens. The toxicity of the individual and cumulative fuel components, and PAHs, to biological and aquatic life in Santa Rosa Creek is not completely known.

Human and aquatic life exposure and nuisance conditions may be significant.

Consideration of the degree of toxicity does not provide reason for reducing the amount of civil liability to be imposed.

D. Ability to Pay

The Dischargers have not provided information regarding their ability to pay the civil liability.

Consideration of the Dischargers' ability to pay may provide reason for reducing the amount of civil liability to be imposed.

E. Effect on Ability to Continue Business

The Dischargers have not provided information regarding their ability to continue in business.

Consideration of effect on the Dischargers' ability to continue business may provide reason for reducing the amount of civil liability to be imposed.

F. Voluntary Cleanup Efforts

Voluntary cleanup actions have included the collection of soil samples to investigate the extent of soil contamination associated with site characterization and property transaction prior to the issuance of CAO No. 87-112 and subsequent Orders.

Consideration of voluntary cleanup efforts does provide reason for reducing the amount of civil liability to be imposed.

G. Prior History of Violations

CAO No. 87-112 was issued to PG&E on July 31, 1987. The Order required PG&E to submit a plan to determine the extent of contamination, provide regular updates and provide a plan to clean up and abate the effects of contamination. The extent of contamination has not been defined and the effects of contamination have not been abated. PG&E therefore violated CAO No. 87-112.

CAO No. 88-63 was issued to PG&E and the Partnership on April 18, 1988. The Order required the installation of groundwater monitoring wells, the design, installation, and operation of a groundwater extraction system, and the submittal of a work plan to define the extent of contamination. The extent of contamination was not defined. A treatment system was not designed, installed or operated. PG&E and the Partnership therefore violated CAO No. 88-63.

Cleanup and Abatement Order No. 96-102 was issued to PG&E and the Partnership on December 19, 1996. The Order required a plan to define the extent of contamination, both on- and off-site including in Santa Rosa Creek and the submittal of a remedial action plan. The extent of contamination was not defined and a remedial action plan was not submitted. PG&E and the Partnership therefore violated CAO No. 96-102.

On December 18, 2002, the Executive Officer issued CAO No. R1-2002-0115 to the Dischargers, continuing an effort to stimulate compliance. The Dischargers violated that new order, which prompted the issuance of the Administrative Civil Liability Complaint.

Consideration of past violations does not provide reason for reduction from the amount of civil liability to be imposed.

H. Degree of Culpability

PG&E is culpable as the former owner of the Site and operator of the gas manufacturing plant at the time of the waste discharges. The Partnership is culpable as former owners of the Site. Upway Properties Inc. is culpable as the current property owner.

Consideration of culpability does not provide reason for reduction from the amount of civil liability to be imposed.

I. Economic Savings

Delay in completing site investigative work and implementing an appropriate corrective action delays expenditures and could result in an economic savings.

Consideration of economic savings does not provide reason for reduction from the amount of civil liability to be imposed.

J. Other Matters as Justice May Require

Significant Regional Water Board staff hours have been dedicated to this site in an effort to gain compliance including the preparation of enforcement Orders to protect ground and surface water quality.

Partial funding for cleanup activities is available through the State Water Resources Control Board, Petroleum Underground Storage Tank Cleanup Fund. However, compliance with the California Underground Storage Tank Regulations (Title 23, Division 3, Chapter 16, Article 11) is an eligibility requirement and non-compliance jeopardizes funding from the State of California.

Consideration of other matters as justice may require does not provide reason for reduction from the amount of civil liability to be imposed.

30. Payment of the Civil Liability does not satisfy the Dischargers' obligation to comply with the tasks required by Cleanup and Abatement Order No. R1-2002-0115. That Order remains in full force and effect.
31. Any person affected by this action of the Board may petition the State Water Resources Control Board to review the action in accordance with Section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED THAT the Dischargers collectively pay an Administrative Civil Liability in the amount of \$30,000.00. This is based on an initial proposed penalty of \$650,000.00, the permanent suspension of \$575,000.00 by the Executive Officer in a letter dated August 14, 2003, and reduction of \$45,000.00 by the North Coast Regional Water Quality Control Board on October 5, 2004. The \$30,000.00 liability is due and payable within 30-days from the adoption of this Order.

IT IS FURTHER ORDERED THAT this Order is effective and final upon issuance.

Certification

I, Catherine E. Kuhlman, 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, North Coast Region, on October 5, 2004.

Catherine E. Kuhlman
Executive Officer