

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

CLEANUP AND ABATEMENT ORDER NO. R1-2018-0012

FOR

SANEL LJESNJANIN
UCHENNA UKAZIM

7501 HEARST ROAD
WILLITS, CA
ASSESSOR PARCEL NUMBER 037-301-62-00
MENDOCINO COUNTY

CASE NUMBER 1NMC636

This Order is issued to Sanel Ljesnjanin and Uchenna Ukazim (hereafter referred to as the Dischargers) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order and Water Code section 13267 investigative order, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports (Order).

The Executive Officer finds, with respect to the Dischargers' acts, or failure to act, the following:

1. **Site Conditions:** The Dischargers caused or allowed a discharge and threatened discharge of waste to receiving waters through the release of diesel fuel from an aboveground storage tank to soil and groundwater at 7501 Hearst Road, Mendocino County, APN 037-301-62-0, (hereinafter "Property"). The discharged diesel fuel subsequently reached Rocktree Creek. Rocktree Creek is a water of the state, as well as a water of the United States.¹
2. **Purpose of the Order:** This Order requires the Dischargers to clean up and abate the discharge of diesel fuel into soil and groundwater at the Property and to the waters of Rocktree Creek, and eliminate the threat of future discharges. Investigation and

¹ The Regional Water Board administers and enforces the Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those water as "waters of the United States." Waters of the United States has been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters and their tributaries (40 C.F.R. 122.2). The Porter-Cologne provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state." (Wat. Code § 13260). The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Wat. Code § 13050 subd. (e)). All waters of the United States that are within the borders of California are also waters of the state for purposes of the Porter-Cologne.

cleanup actions required under this Order shall be conducted to comply with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 *et seq.*), the *Water Quality Control Plan for the North Coast Region* (Basin Plan), State Water Resources Control Board (State Water Board) Resolution 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.

3. **Property Description:** The discharge occurred at the property located at 7501 Hearst Road, in rural Mendocino County, outside of the City of Willits. The property is also identified as Mendocino County Assessor Parcel Number (APN) 037-310-62-00. Rocktree Creek flows through the Property, generally from west to east. Domestic water supplies at the Property and nearby area are generally from individual domestic water wells.
4. **Responsible Parties:** The Dischargers, as the Property owners with the legal ability to control the activities on the Property that resulted in the discharge, are responsible parties for purposes of this Order. This Order finds that Sanel Ljesnjanin and Uchenna Ukazim are the responsible parties and are all jointly and severally liable.
 - a. Per records from the Mendocino County Assessor-Recorder's Office, Sanel Ljesnjanin and Uchenna Ukazim own the Property.
 - b. The Regional Board reserves the right to amend this Order to add additional responsible parties when/if those parties are identified.
5. **Factual Basis of Order:** The Dischargers' activities and/or the conditions at the Property, as detailed below, created and threaten to create a condition of pollution in groundwater and in waters of the state by unreasonably impacting water quality and beneficial uses.
 - a. On or about December 16, 2017, a 1000-gallon aboveground storage tank (AST) installed on the Property failed and released diesel fuel on the Property.²
 - b. A property caretaker apparently attempted to fill buckets with as much diesel fuel that he could and then called Redwood Coast Fuels (parent company Nick Barbieri Trucking, LLC), the company that installed the tank and filled it with the diesel fuel.
 - c. On December 17, 2017, Redwood Coast Fuels came to the Property and pumped out any fuel remaining in the AST. The AST and its stand were reportedly removed by Redwood Coast Fuels. The Dischargers did not take further actions at that time to determine the extent of the spill.³

² The Property owners' agent, Clint Gerber reports that the tank fell over and ruptured. Mr. Gerber reports that the AST had been installed only recently and filled with 1000 gallons of red-dyed diesel fuel.

³ Based on in-person, telephone, and email conversations between Regional Water Board staff and either LACO Associates staff or Clint Gerber, owner representative.

- d. On an unknown later date, Clint Gerber, the Property owners' contractor, reportedly noted a fuel odor on the Property in the area where the AST was located. The contractor excavated and stockpiled impacted soil, and backfilled the excavation with other soil from the Property.⁴
 - e. On January 18, 2018, a representative of the owner reported to the Mendocino County Environmental Health Division that a discharge occurred to the creek. On January 18, 2018, Mendocino County Environmental Health Division staff and Mr. Gerber set absorbent pads and booms in the creek to absorb the discharge.
 - f. On January 19, 2018, Regional Water Board staff and the California Department of Fish and Wildlife were notified of the spill and discharge to the creek. Regional Water Board staff and California Department of Fish and Wildlife staff inspected the Property. An environmental consulting firm, LACO Associates, was contracted by the Dischargers and LACO Associates staff were present at the Property during the inspection. Based on observations by staff of the Regional Water Board, California Department of Fish and Wildlife, and LACO Associates, the discolored absorbent pads and booms were determined to be stained from the discharge of red diesel fuel.
6. **Beneficial Uses:** The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference the plans and policies adopted by the Regional Water Boards.
- a. The beneficial uses of areal groundwater include Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Industrial Process Supply (PRO), and Freshwater Replenishment (FRSH).
 - b. The Property includes Rocktree Creek, which is a tributary to Tomki Creek, which flows into the Eel River. The existing and potential beneficial uses of the Tomki Creek Hydrologic Subarea include Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Industrial Process Supply (PRO), Groundwater Recharge (GWR), Freshwater Replenishment (FRSH), Navigation (NAV), Hydropower Generation (POW), Water Contact Recreation (REC1), Non-contact Water Recreation (REC2), Commercial and Sport Fishing (COMM), Warm water Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Rare Threatened or Endangered Species (RARE), Migration of Aquatic Organisms (MIGR), Spawning, reproduction, and/or Early Development (SPWN), and Aquaculture (AQUA). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.
7. **State Water Board Resolutions 92-49:** State Water Board Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site, and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California* ("Resolution 68-16"). Resolution 92-49 requires the waste to be cleaned up

⁴ Based on in-person, telephone, and email conversations between Regional Water Board staff and either LACO Associates staff or Clint Gerber, owner representative.

in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigations and cleanup and abatement proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

8. **Water Quality Objectives:** Water quality objectives in the Basin Plan are adopted to ensure protection of the beneficial uses of water. 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 must 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 the level of water quality objectives for protection of beneficial uses. The most stringent water quality objective for diesel fuel in both groundwater and surface water is 100 µg/L, which is a numerical interpretation, based on published literature, of the narrative Tastes and Odors narrative water quality objectives in the Basin Plan.
9. **Legal Authority to Require Cleanup and Abatement:** Water Code section 13304, subdivision (a) states, in relevant part:

A person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and causes, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts....Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

- a. "Pollution" is defined by Water Code section 13050, subdivision (l)(1) as an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either the waters for beneficial uses or the facilities which serve these beneficial uses.
- b. "Nuisance" is defined by Water Code section 13050, subdivision (m) to mean anything which meets all of the following requirements:
 - i. Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
 - ii. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
 - iii. Occurs during, or as a result of, the treatment or disposal of wastes.

10. Cleanup and Abatement Action Necessary: Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state from the Property are prevented, background water quality, or the best water quality that can be attained is restored, and that any impacts to beneficial uses are mitigated. The current condition of pollution is a priority violation and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with the policies of the Regional Water Board.

11. Technical Reports Required: Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any water of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The burden of preparing the reports required by this Order bear a direct relationship for the need for the reports and the benefits to be obtained from the reports. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are further necessary to demonstrate that appropriate methods will be used to cleanup waste discharged to soil and groundwater and to ensure that cleanup complies with Basin Plan requirements. In accordance with Water Code section 13267(b), the findings in this Order provide the Discharger with a written explanation with regard to the need for investigation and reports and identifies the evidence that supports the requirement to implement clean up and abatement activities and submit the reports.

12. Electronic Reporting Requirements: Sampling data, reports, and plans shall be submitted to the Regional Water Board via the State Water Resources Control Board's Geographic Environmental Information Management System database (GeoTracker) as

specified in Title 23, Division 3, Chapter 30, Article 2, Sections 3890-3895 of the California Code of Regulations.

13. California Environmental Quality Act: Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and, as such, is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061, subdivision (b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup, abatement, and restoration activities at the Property. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Dischargers' proposed cleanup, abatement or restoration activities and possible associated environmental impacts. To the extent that the Order requires earth-disturbing and re-vegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to implementation of the applicable plan. The Dischargers will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the Dischargers and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 and 13304, that the Dischargers shall clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below and provide the following information. The Dischargers shall obtain all necessary permits for the activities required in this Order.

1. Conduct all work under the direction of a California professional civil engineer or professional geologist experienced in surface water, soil, and groundwater investigation and remediation. All workplans and reports submitted to the Executive Officer of the Regional Water Board shall be signed and stamped by a licensed professional.

2. Coordinate investigation and cleanup activities associated with soils, surface waters, and groundwater with Regional Water Board staff, Mendocino County Environmental Health staff, California Department of Fish and Wildlife, and other regulatory agencies involved in the cleanup.
 3. **By February 1, 2018**, the Dischargers shall have the surface water in the creek sampled: 1) above the release; 2) at the point of the discharge; and 3) points downstream to determine the extent of impacted surface water in the creek. The Dischargers shall submit the surface water sampling results **by February 15, 2018**.
 4. **By February 1, 2018**, the Dischargers shall submit an **Interim Cleanup and Abatement Plan** (hereafter "Interim Plan") that identifies interim measures to cleanup diesel impacted soils and groundwater and abate the discharge of diesel fuel to surface water. The Interim Plan shall include, but not be limited to, the following:
 - a. A detailed Property map accurately depicting topography, all graded/disturbed surfaces, roads, surface watercourses, surface water drainages, and water crossings.
 - b. Identification of all locations where fuel has discharged to soil, groundwater, and to waters of the state.
 - c. A sensitive receptor survey including all water supply wells within 1000 feet of the Property and all water supply users of Rocktree Creek within one mile downstream from the Property.
 - d. A report of the spill including nature, cause and circumstances, and all actions taken thus far to cleanup and abate the discharge and prevent future similar discharges.
 - e. Proposed actions and a schedule of implementation to perform the following:
 - i. Intercept and remove free-product diesel flowing to Rocktree Creek.
 - ii. Contain and remove all free-product diesel from surface waters.
 - iii. Cleanup diesel impacted soil.
 - iv. Contain all removed free-product diesel, diesel-impacted soil, and extracted water pending analytical characterization and authorized disposal at permitted waste management facilities.
- The Dischargers shall begin implementation of the Interim Plan within 24 hours of concurrence from the Regional Water Board Executive Officer or his delegee.
5. Submit a weekly report to Regional Water Board staff providing updates on the status of compliance with this Cleanup and Abatement Order No. R1-2018-0012. The first weekly report is due on **February 1, 2018**. The schedule for these update reports may be modified by the Executive Officer in writing.
 6. **Within 60 days from completion of the Interim Plan**, the Dischargers shall provide a report of completion of the Interim Plan to the Regional Water Board.

7. **By March 30, 2018**, the Dischargers shall submit an initial investigation workplan to define the extent of soil and groundwater contamination resulting from the spill. The workplan shall also include an implementation schedule. Implementation of the workplan shall begin within 30 days following concurrence of the workplan by the Executive Officer.
8. **By July 30, 2018**, submit a report summarizing findings of the initial investigation for review and approval by the Regional Water Board Executive Officer. If the results do not fully define the extent of groundwater and soil contamination, the report must contain recommendations and an implementation schedule for additional investigation. The Dischargers shall implement the additional investigation as approved by the Executive Officer. Within 60 days after the Regional Water Board Executive Officer concurs that the extent of groundwater and soil contamination is defined, the Dischargers shall submit a feasibility study for Executive Officer review and concurrence to identify and evaluate the effectiveness, feasibility, and relative costs of potential soil and groundwater cleanup alternatives for the remaining contamination. The feasibility study shall identify the recommended alternative(s). The Executive Officer may waive the requirement for a feasibility study dependent on the results of the soil and groundwater investigation and the results of the interim cleanup and abatement actions.
10. Within 90 days after Regional Water Board Executive Officer concurrence with the feasibility study, the Dischargers shall submit a final remedial action plan. The final remedial action plan shall include soil, soil vapor, and groundwater cleanup goals acceptable to the Executive Officer. If the Property and affected properties cannot be cleaned up to levels considered safe for unrestricted use or if the final remedial action plan contains permanent engineering controls, land use restrictions shall be incorporated into the final remedial action plan. The final remedial action plan must contain a schedule for implementation. The Executive Officer may waive the requirement for a final remedial action plan dependent on the results of the soil and groundwater investigation and the results of the interim cleanup and abatement actions.
11. Within 90 days after Regional Water Board Executive Officer approval of the final remedial action plan, the Dischargers shall begin implementation of the final remedial action plan according to the approved schedule.
12. Within 180 days after implementation of final remedial action, the Dischargers shall submit a report that evaluates the performance of final remedial actions and provides recommendations and an implementation schedule for expanding and/or modifying the remediation system, or other measures, for the Executive Officer's review and approval. The Dischargers shall implement and complete the approved system expansions and/or modifications, or other measures, per the approved schedule to abate and clean up the discharge of waste or threatened discharge of waste, restore water quality in

groundwater, and protect the beneficial uses of surface and groundwater, human health and the environment.

13. The Dischargers shall complete any additional work deemed reasonably necessary by the Executive Officer to abate and clean up the discharge of waste or threatened discharge of waste, restore water quality in groundwater and surface water, and protect the beneficial uses of surface and groundwater, human health, and the environment.

GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** The Dischargers shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Dischargers shall include a statement of qualification and registration numbers of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professional as otherwise required by law.
2. **Signatory Requirements:** All technical reports submitted by the Dischargers shall include a cover letter signed by the Dischargers, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his/her knowledge, the report is true, complete, and accurate. The Dischargers shall also state in the cover letter whether he/she will implement the recommendations/proposals provided in the report and the schedule for implementation. Any person signing a document submitted under this Order 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 knowledge and 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."
3. **Notice of Onsite Work:** The Dischargers, or a duly authorized agent, shall notify Regional Water Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection. The Dischargers may contact the Regional Water Board using the general phone line at (707) 576-2220.

4. **Notice of Change in Ownership or Occupancy:** The Dischargers shall file a written report on any changes in the Property's ownership or occupancy. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.
5. **Reasonable Access:** The Dischargers shall allow the Regional Water Board, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to enter at reasonable times to inspect the Property and any records that must be kept under the conditions of this Order for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code.
6. **Other Regulatory Requirements:** The Dischargers shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work.
7. **Cost Recovery:** Pursuant to Water Code section 13304, the State or Regional Water Board is entitled to all reasonable costs it actually incurs to investigate and abate the effects of unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other restoration action, required by this Order. The State Water Board's Site Cleanup Program Cost Recovery Program was established through the authorities of Water Code sections 13267, 13304, and 13365. The Dischargers shall pay all cost recovery invoices within 30 days of issuance of the invoice.
8. **Delayed Compliance:** If for any reason, the Discharger is 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 pursuant to this Order and approved by the Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and 5 days prior to the compliance date. An extension may be granted by revision of this Order or by a letter from the Executive Officer.
9. **Potential Liability:** If the Dischargers fail to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or a complaint for administrative civil liability may be issued by the Regional Water Board. Failure to comply with this Order may result in the assessment of an administrative civil liability of up to \$10,000 per violation per day and \$10 per gallon when the violation results in the discharge of waste, pursuant to California Water Code sections 13268, 13350, and/or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including, but not limited to, violation of the terms and condition of this Order.

10. **No Limitation of Water Board Authority:** This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the Property consistent with the Water Code. This Order may be revised as additional information becomes available.
11. **Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board or its delegated officer including any potential extension requests.
12. **Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 et al. The State Water Board must receive the petition no later than 5:00 p.m., 30 days following the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

Ordered by: _____
Matthias St. John
Executive Officer

January 25, 2018