

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

ORDER NO. R2-2022-0035

AMENDMENT OF SITE CLEANUP REQUIREMENTS ORDER NO. R2-2019-0012 for:

**TH-HW Enterprise LLC, and
Newark Compass OM&M LLC**

For the property located at:

**8610 Enterprise Drive
Newark, CA 94560
Alameda County**

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

1. **Regional Water Board Order:** The Regional Water Board adopted site cleanup requirements for the above-referenced property on May 21, 2019 (Order No. R2-2019-0012). That order (R2-2019-0012) names TH-HW Enterprise LLC as a discharger, rescinded previous orders for the property, documents cleanup standards, required implementation of the discharger's proposed remedial action plan and risk management plan, required recordation of a deed restriction (which was recorded on November 19, 2019), required long-term monitoring of groundwater and soil vapor, and required long-term operation, maintenance, and monitoring of vapor intrusion mitigation systems.
2. **Reason for Amendment:** Amendment of Order No. R2-2019-0012 is needed to add Newark Compass OM&M LLC (NCOMM) as a discharger.

Order No. R2- 2019-0012 required TH-HW Enterprise LLC to identify "an entity with authority, funding mechanism, and capability to implement long-term operation and maintenance without assigning this responsibility to single-family-home owners." In the March 5, 2021, Report of Establishment of Financial Assurance, TH-HW Enterprise LLC identified NCOMM as the entity created to comply with this task. The June 13, 2022, Report of Establishment of Financial Assurance stated that TH-HW Enterprise LLC "will conduct all Order work for the next approximately five months, after which point TH-HW will delegate its remaining Order work responsibilities to NCOMM." By assuming the responsibilities of TH-HW Enterprise LLC, NCOMM is the successor entity to TH-HW Enterprise LLC for purposes of obligations under this Order and is thus appropriately named as a Discharger.

NCOMM is an operator in the sense that it will have responsibility for operating the groundwater monitoring wells and vapor intrusion mitigation systems. As the entity was created to assume environmental responsibility for the Site, NCOMM

has knowledge of the waste discharge and the legal ability to control it; therefore, it is allowing waste to be discharged where it is, or probably will be, discharged into waters of the state and create, or threaten to create, a condition of pollution or nuisance. Therefore, NCOMM is a discharger under Water Code section 13304.

3. **Human Right to Water:** Under Water Code section 106.3, the State of California's policy is that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Wat. Code, § 106.3; see also State Water Board Resolution No. 2016-0010.) The human right to water extends to all Californians, including disadvantaged individuals and groups and communities in rural and urban areas. This order promotes the human right to water by requiring discharges to meet maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.
4. **CEQA:** This Amendment is not a project as defined in the California Environmental Quality Act (CEQA) because it merely amends the entities and persons named in the Order and there is no possibility that the Amendment may have a significant effect on the environment. (Cal. Code Regs., tit. 14 §§ 15378 and 15061, subd. (b) (3).) Accordingly, this Amendment is not subject to CEQA.
5. **Notification:** The Regional Water Board has notified the dischargers and all interested agencies and persons of its intent under Water Code section 13304 to amend the Order and has provided them with an opportunity to submit their written comments.

IT IS HEREBY ORDERED, pursuant to sections 13304 and 13267 of the Water Code, that Order No. R2-2019-0012 shall be amended as follows:

- A. Finding 3 shall be revised as follows (stricken language is shown in ~~strikeout~~ and new language is shown in underline):

3. ~~**Future Site Use:** A deed restriction recorded by Ashland on July 11, 2003, in accordance with Regional Water Board requirements, restricted the Site to commercial and industrial uses. The 2003 deed restriction was terminated on December 14, 2018, because the Site is was proposed to be redeveloped for residential use in accordance with the City of Newark's Dumbarton Transit Oriented Development Specific Plan. A new deed restriction was recorded on November 19, 2019, to remove land use restrictions for residential purposes, day-care, nursing homes, or hospitals, and to address management of any residual pollution present, risk posed by this pollution, and to ensure engineered controls are properly maintained and monitored. TH-HW Enterprise LLC plans to construct approximately 139 residences at the Site is in the process of developing the Site with 85 townhomes (16 buildings) and 53 single-family homes, and the work is expected to be completed by the end of 2022. After the work is completed, TH-HW Enterprise LLC will delegate its responsibilities under~~

~~the Order to Newark Compass OM&M LLC. The additional remedial actions, mitigation, and monitoring required by this Order are needed to make Site conditions protective of human health once the Site is redeveloped. Prior to sale and occupancy of any of the new homes, the Discharger will be required to record a new deed restriction to address management of any residual pollution present, risk posed by this pollution, and to ensure engineered controls are properly maintained and monitored. Prior to recordation of the new deed restriction, the Site may not be used for residential purposes or for any purposes other than the effectuation of investigation, remediation, or construction.~~

B. Findings 4 shall be revised as follows:

4. Named Dischargers: TH-HW Enterprise LLC is named as a Discharger because it is the owner of the property on which there is a discharge of pollutants, it has knowledge of the discharge or the activities that caused the discharge, and it has the legal ability to control the discharge.

Newark Compass OM&M LLC is named as a Discharger because it was created to assume TH-HW Enterprise LLC's environmental responsibility for the Site and as such is the successor entity to TH-HW Enterprise LLC. Newark Compass OM&M LLC is also named as a Discharger because it is a current operator at the Site. Newark Compass OM&M LLC has knowledge of the continuing discharge and has the legal ability to control the discharge.

Ashland LLC (the successor in interest to Ashland) qualifies as a Discharger because it is the former owner of the Site and was responsible for discharging pollutants to soil and groundwater at the Site. Although Ashland was the named discharger on prior site cleanup requirements for the Site, it is not named as a discharger in this Order because TH-HW Enterprise LLC and Newark Compass OM&M LLC have has adequate financial resources to comply with this Order, TH-HW Enterprise LLC and Newark Compass OM&M LLC have has indicated its their intention to comply with this Order, and TH-HW Enterprise LLC and Newark Compass OM&M LLC have has requested that Ashland not be named in this Order. However, Ashland LLC may be named to this Order in the future if these circumstances change.

If additional information is submitted indicating that other parties caused or permitted any waste to be discharged on the Site where it entered or could have entered waters of the state, the Regional Water Board will consider adding those parties' names to this Order.

I, Eileen White, 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, San Francisco Bay Region, on December 13, 2022.

Eileen White  Digitally signed by Eileen White
Date: 2022.12.13 19:48:34 -08'00'
Water Boards

Eileen White
Executive Officer

Compliance Notice: Failure to comply with the requirements of this Order may subject you to enforcement action, including but not limited to imposition of administrative civil liability under Water Code sections 13268 or 13350, or referral to the Attorney General for injunctive relief or civil or criminal liability.