

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Vincent Christian)
MEETING DATE: March 16, 2005

ITEM: 10

SUBJECT: **Property at 327 Moffett Boulevard, Mountain View, Santa Clara County – Hearing to Consider Procedural Options for Naming Additional Dischargers to Site Cleanup Requirements**

CHRONOLOGY: May 17, 1989 – Site Cleanup Requirements adopted
June 20, 1990 – Site Cleanup Requirements amended
August 18, 1993 – Site Cleanup Requirements amended

DISCUSSION: The Board issued a site cleanup requirement order in 1989 to Union Bank of California (Union Bank) and Innerconn Technologies, naming them responsible for all subsurface cleanup at the subject property. Innerconn Technologies has long been bankrupt and defunct. Union Bank, as owner of the site, has complied with the cleanup order and performed cleanup that has reduced the site's contaminant concentrations significantly. While contaminants still exist at the site and downgradient of the site, the plume of groundwater pollution under the site is stable and residual contaminant concentrations no longer present a significant threat to human health or the environment.

Union Bank has requested that Rheem Manufacturing Company (Rheem) and Raytheon Company (Raytheon) also be named to the cleanup order as responsible parties. Raytheon was a former operator at the site, and Rheem is the successor to Rheem Semiconductor Corporation (RSC), another former operator at the site.

Both Rheem and Raytheon deny any responsibility for the site's contamination. Union Bank has submitted a substantial volume of material to Board staff to support its claim that Rheem and Raytheon were responsible for the contamination. Rheem and Raytheon dispute that the material submitted by Union Bank constitutes reasonable evidence to support a conclusion that they discharged contaminants at the site. The evidence for naming Rheem and Raytheon as dischargers is partially dependent on the testimony of former RSC and Raytheon employees. As allowed under Board regulations, Rheem has requested an opportunity to cross-examine such witnesses if their testimony is to be used as evidence that Rheem discharged contaminants at the site.

Raytheon has not submitted a request to exercise this right. While the law gives parties the right to have an evidentiary hearing, this has rarely been done at water board meetings. Such a hearing would require significantly more board meeting time than is needed for a typical cleanup order.

The issue of whether to name additional responsible parties to the existing cleanup order is complex and controversial. Staff has not been able to resolve the dispute among the parties, as their respective positions are far apart regarding the facts relevant to whether or not Rheem and Raytheon discharged contaminants at the site. In order to address both Union Bank's request that additional parties be named to the cleanup order and Rheem's request to cross-examine witnesses, the Board needs to determine what procedural means it wishes to use to resolve the naming issue. Staff has identified the following options the Board may wish to consider: 1) defer action, 2) hold a full board hearing, 3) hold a panel hearing, and 4) direct the Executive Officer to hold a paper hearing. These procedural options are described in detail in Appendix A.

Staff requested comments on these procedural options in January (see Appendix C). We received numerous comments from Union Bank, Rheem, and Raytheon (see Appendix B), and have fully responded to those comments in Appendix A.

Staff notified the parties that the purpose of this hearing is to discuss the Board's procedural options only, and not the technical issues related to the naming of dischargers at the site. Thus, staff recommends that the Board not allow parties to comment at this hearing on the substantive issues regarding whether or not Rheem or Raytheon should be named to the cleanup order. Staff suggests that the Board defer hearing comments about the substantive issues until such time as the Board has noticed a hearing to consider them.

**RECOMMEN-
DATION:**

A recommendation will follow the hearing if the Board so requests.

File No. 43s0241 (vc)

Appendices:

- A. March 2, 2005, Staff Memorandum
- B. Comments from interested parties*
- C. January 13, 2005, Staff Memorandum

* excluding extensive exhibits; contact staff to obtain a copy of exhibits