

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

STAFF SUMMARY REPORT (Alan Friedman)
MEETING DATE: September 10, 2008

ITEM: 13

SUBJECT: **Dr. Collin Mbanugo, Leona Heights Sulfur Mine, Oakland, Alameda County –
Hearing to Consider Administrative Civil Liability for Violations of California
Water Code Section 13267**

CHRONOLOGY: The Board has not previously considered this item.

DISCUSSION: We have prepared a Tentative Order (Appendix A) for the Board's consideration that would impose an administrative civil liability (ACL) of \$200,000 on Dr. Collin Mbanugo for failure to provide technical reports. The technical reports were required in a letter issued by the Executive Officer in December 2005 pursuant to California Water Code Section 13267. This letter required Dr. Mbanugo to submit monthly reports to document the progress of corrective actions at an abandoned mine site that he owns in the Oakland Hills. The former mine is the source of metals-laden, low-pH acid mine drainage to a creek that runs through the site.

Dr. Mbanugo acquired property in 2001 that included the Leona Heights Sulfur Mine. Shortly after the purchase, Dr. Mbanugo met with staff to discuss his responsibility to remediate the site in accordance with a 1998 Cleanup and Abatement Order (CAO) which required the property owner to perform corrective actions to improve water quality at the site. In 2003, the CAO was amended to identify Dr. Mbanugo as the owner of the site. The 2003 CAO contained tasks with due dates for the design and completion of corrective actions at the site. Over time, it became evident that Dr. Mbanugo was not achieving compliance with the CAO due to his failure to perform required tasks according to schedule. Staff also observed a tendency to perform tasks only in response to staff inquiries. In October 2005, staff issued its first Notice of Violation (NOV) to Dr. Mbanugo for failure to comply with the CAO. Dr. Mbanugo responded to this NOV in November 2005 by submitting a revised scope of work and a request for a revised time schedule to comply with the CAO.

In December 2005, staff issued a Section 13267 letter to Dr. Mbanugo that:

- Noted that Dr. Mbanugo was out of compliance with the site cleanup order;
- Approved the revised scope of work and project schedule that was proposed by Dr. Mbanugo; and
- Required monthly submittal of technical reports to document the progress being made to comply with the CAO and to implement corrective actions at the site.

Over the next two years, staff took additional enforcement actions to encourage Dr. Mbanugo to comply with the project schedule approved in the December 2005 Section 13267 letter. Specifically, two additional Notices of Violation were issued:

- In March 2006, for failure to submit a revised design plan and application packages for required permits; and
- In July 2006, for failure to obtain permits and implement corrective actions.

Both of these NOV letters contain language warning Dr. Mbanugo that staff was already considering more severe enforcement actions, in the form of Administrative Civil Liabilities with monetary fines. Each NOV letter produced an initial response from Dr. Mbanugo to submit documents required for belated compliance with the Section 13267 letter. However, to date, staff's efforts to induce compliance have not led to any actual field work by the property owner to improve water quality. As of this date, Dr. Mbanugo has not secured any of the discretionary permits he must obtain from the City of Oakland prior to performing corrective actions at the site, despite efforts by Water Board and City staff to streamline the permitting process.

The Tentative Order (Appendix A) and Administrative Civil Liability Complaint (Appendix B) for failure to submit required technical reports highlight a problem of much greater significance than simply not meeting deadlines or communicating progress to Board staff. Dr. Mbanugo's failure to submit monthly progress reports coincides with his failure to improve environmental conditions at the site. These unnecessary and unacceptable delays in performing corrective actions at the Leona Mine Site have prolonged the ongoing discharge of metal-laden acid mine drainage, with pH levels sometimes approaching 2 in runoff from the mine site. The water quality impacts to the stream running through the site and potential threats to human health and the environment are significant. Several miles of the stream downstream from the site have visual and quantifiable chemical impacts.

Dr. Mbanugo has responded to the complaint (Appendix D) indicating his intention to contest the complaint while acknowledging his failure to comply. In his letter he attached first pages of several work proposals he has received from environmental consultants, dating back several months; however, he provided no indication that consulting services have been secured, no indication that permits have been obtained, and no indication that any field work is scheduled. This response is similar to previous responses to NOV's, where work was promised but ultimately did not occur. In addition, Dr. Mbanugo's response states that he has discussed financial difficulties with staff. Staff have not discussed this topic with Dr. Mbanugo. Further more, with respect to his ability to pay monetary penalties or to finance corrective actions at the mine site, Dr. Mbanugo owns considerable property in the Bay Area as indicated by supporting documentation (*Properties Owned on 2006 Tax Bill*) contained within Appendix C.

Staff submits that the proposed monetary penalty is reasonable; in that it considers the financial burden Dr. Mbanugo must shoulder to implement the approved corrective actions to control ongoing discharges at the site. However, the proposed penalty is only a fraction of the potential liability (greater than \$3.8 million) for repeated failure

to comply with the Section 13267 letter. The proposed penalty accounts for our staff costs to prepare the Complaint and supporting information but does not account for staff costs associated with preparing documents and testimony for the hearing or for general regulatory oversight of the case.

RECOMMEN-
DATION:

Prosecution staff recommends adoption of the Tentative Order. Assistant Executive Officer Tom Mumley, who has had no involvement with the prosecution of this case, will advise the Board at the hearing.

ATTACHMENTS

Appendix A - Tentative Order
Appendix B - Administrative Civil Liability Complaint
Appendix C - Supporting Documentation
Appendix D - Comment Letter in response to the ACL Complaint

File No. 2158.11 (KER)

APPENDIX A

Tentative Order

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER

SETTING ADMINISTRATIVE LIABILITY FOR:

**DR. COLLIN MBANUGO, Owner
THE LEONA HEIGHTS SULFUR MINE
OAKLAND, ALAMEDA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the "Water Board"), finds with respect to Dr. Collin Mbanugo (hereinafter the "Discharger") that:

1. Dr. Mbanugo is the current owner of the Leona Heights Sulfur Mine, a two-acre abandoned mining site located in the Oakland Hills near the junction of Interstate 580 and State Highway 13 (hereinafter the "Site").
2. Water quality at the site is impacted by acid mine runoff, which discharges into a creek that flows through waste rock piles left behind when the mine was abandoned in the late 1920s. Flows passing through the site follow a natural drainage channel of several hundred feet and then enter a storm drain. The storm drain discharges to Lake Aliso on the Mills College Campus, and ultimately discharges to San Leandro Bay via another Storm Drain System.
3. Site remediation was required initially under Cleanup and Abatement Order No. 98-004, which this Board adopted on January 30, 1998. The Discharger purchased the property on November 29, 2001. The Board amended the 1998 Order on April 14, 2003 by adopting Order No. R2-2003-0028 (hereafter the "CAO"), which identified Dr. Mbanugo as the current owner and added him to the list of dischargers of the Site.
4. On December 16, 2005, the Executive Officer sent a letter to the Discharger pursuant to Water Code Section 13267. The letter approved a revised scope of work and schedule that had been proposed by the Discharger in a work plan submitted pursuant to the CAO on October 28, 2005. The letter required the Discharger to submit monthly progress reports documenting work completed on the project. The progress reports were to be submitted by the last day of each month, beginning in December 2005. Submittal of progress reports was to continue until the Discharger had fully complied with the requirements of the CAO.
5. The Section 13267 letter approved a revised implementation schedule, but required the submittal of monthly progress reports because the Discharger previously had not been diligent in completing tasks required for compliance with

the CAO. Prior work had been intermittent with a history of missed deadlines, resulting in the issuance of a Notice of Violation from Water Board staff on October 6, 2005. The progress reports were required as a means to substantiate the Discharger's compliance with the CAO.

6. The Discharger has not complied with the December 16, 2005 letter because he stopped submitting the required monthly progress reports. Furthermore, the Discharger has not completed project tasks according to the schedule that was approved in the letter. Monthly progress reports were received from the Discharger in January, February, April, May, September, October, and November of 2006, and in February and May of 2007. No further reports have been received since May 2007.
7. Two additional Notices of Violation were issued to the Discharger on March 10, 2006 and July 17, 2006, in an attempt to gain compliance with the December 16, 2005 letter.
8. On July 9, 2008, the Assistant Executive Officer issued an Administrative Civil Liability Complaint in the amount of \$200,000 for the Discharger's failure to submit monthly progress reports required in the Section 13267 letter issued December 16, 2005. For violating CWC Section 13267, the Water Board may administratively impose civil liability pursuant to CWC Section 13268(a)(1) and (b)(1) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
9. The maximum civil liability that could be imposed for this matter is calculated based on the number of days the required technical reports are overdue. For all of the reports missing as of the date the Administrative Civil Liability Complaint was issued (June 10, 2008) there are 2,508 days of violation. (The report due on May 31, 2007 is 376 days late; the report due on June 30, 2007 is 346 days late; the report due on July 31, 2007 is 315 days late; the report due on August 31, 2007 is 284 days late; the report due on September 30, 2007 is 254 days late; the report due on October 31, 2007 is 223 days late; the report due on November 30, 2007 is 193 days late; the report due on December 31, 2007 is 162 days late; the report due on January 31, 2008 is 131 days late; the report due on February 29, 2008 is 102 days late; the report due on March 31, 2008 is 71 days late; the report due on April 30, 2008 is 41 days late; and the report due on May 31, 2008 is 10 days late.) Since the ACL Complaint was issued, there have been an additional 92 days of violation for each of these 13 late reports (1,196 days of violation). The Discharger has also failed to submit the report due on June 30, 2008, which is now 72 days late and for July 31, which is now 41 days late. Accordingly, there are a total of 3,817 days of late report violations, for which the Water Board could assess a total liability of \$3,817,000.
10. On July 9, 2008, the Assistant Executive Officer proposed that civil liability should be imposed on the Discharger in the amount of \$200,000 for the violations

cited above. On July 30, 2008, the Discharger addressed a letter to the Water Board staff expressing his intention to appear before the Water Board on September 10, 2008. In his letter, the Discharger admits he did not submit the required monthly status reports. He further states "Monthly Status Report will be submitted." The Water Board staff did not receive a monthly status report for July, 2008.

11. The Water Board, after hearing all testimony and reviewing the exhibits and information in the record, determined the Discharger is subject to civil penalties. In determining the amount of civil liability to be assessed to the Discharger under CWC Section 13268, the Water Board has taken into consideration the factors described in CWC Section 13327.

12. With respect to the factors the Water Board has taken into consideration under CWC Section 13327, it finds as follows:

a. Nature, Circumstances, Extent and Gravity of the Violations:

Compliance with the December 16, 2005 request for technical reports under CWC Section 13267 is necessary so that Water Board staff can monitor the Discharger's progress and efforts toward compliance with the CAO. Failure to provide those reports deprives the Water Board of information related to the Discharger's progress in complying with the CAO. The progress reports are an integral part of the CAO compliance. Failure to submit the reports is reflective of the Discharger's failure to comply with the scope of work and schedule approved in the December 16, 2005 letter. The failure to comply with the approved scope of work has allowed an ongoing discharge of low pH water contaminated with metals into waters of the State to continue unabated. Because the reporting violations deprived the Water Board of the opportunity to monitor the Discharger's progress towards protecting water quality, the nature, circumstances, extent and gravity of the reporting violations in this instance are very serious, and the Water Board's analysis of this factor weighs in favor of assessing a substantial penalty.

b. Susceptibility of the Discharge to Cleanup:

The discharges from the mine can be cleaned up by means of implementation of a corrective action plan submitted by the Discharger, which was approved by Water Board staff on July 5, 2006. However, because this ACL Complaint seeks penalties for failure to submit reports under CWC 13267, this factor is not applicable to the Water Board's analysis of an appropriate penalty amount for this violation, except to the extent the failure to submit reports has deprived the Water Board of its opportunities to protect water quality, as discussed under subdivision a, above.

c. Degree of Toxicity of the Discharge:

The waste rock at the site contains elevated concentrations of sulfur and metals such as iron, lead, copper, and arsenic. The waste rock piles are more

porous than the native bedrock. This allows water to migrate easily through the material. Contact between water and the sulfur-rich waste rock, primarily during the rainy season, causes sulfur to be dissolved, promoting the formation of sulfuric acid within the waste rock piles. Discharge of acidic water from the waste rock pile, known as acid mine runoff, is indicated at the site by the characteristic yellow coloration in the streambed. Creek sampling has shown very acidic conditions in the creek, with the pH at time dropping below 3. The low pH, in turn, increases the solubility of metals present in the waste rock, resulting in high metals concentrations in the creek. Water quality in the creek is impacted visually and chemically for a considerable distance downstream from the site. This water is toxic to aquatic species living in the creek at the site and downstream of the discharge. Beneficial uses of the creek and other water bodies downstream from the site are seriously compromised as a direct result of the discharge. However, because this ACL Complaint seeks penalties for failure to submit reports under CWC 13267, this factor is not applicable to the Water Board's analysis of an appropriate penalty amount for this violation, except to the extent the failure to submit reports has deprived the Water Board of opportunities to protect water quality from toxic discharges, as discussed under subdivision a, above.

d. Ability to Pay and Ability to Continue in Business:

The Discharger owns a number of properties located in Oakland and Emeryville. Although some of the properties are undeveloped, they are zoned for residential development. The assessed value of those properties (which may not reflect their market value, which is likely higher) is in excess of \$1.5 million. The property owner has not provided any evidence of inability to pay. The Water Board's analysis of this factor does not indicate that there should be a reduction in the proposed penalty.

e. Voluntary Cleanup Efforts Undertaken:

The discharger has not voluntarily undertaken cleanup activities. The Discharger is required under the CAO to implement corrective actions. The Water Board's analysis of the factor does not indicate that there should be a reduction in the proposed penalty.

f. Prior History of Violations:

Water Board staff has issued three Notices of Violation ("NOV") to the Discharger in an attempt to gain compliance with the December 16, 2005 letter and the CAO. These NOV letters were issued on October 6, 2005; March 10, 2006; and July 17, 2006. The Water Board's analysis of this factor supports imposition of a substantial penalty because of the need for progressive enforcement, as outlined in the State Water Resources Control Board's February 2002, Water Quality Enforcement Policy.

g. Degree of Culpability:

The Discharger is solely responsible for submission of monthly progress reports to demonstrate compliance with the 13267 letter and the CAO. The Discharger has not submitted a progress report since May 2007 despite numerous requests by Water Board staff that he comply, and despite his written representation that he would do so. The Water Board's analysis of this factor supports imposition of a substantial penalty.

h. Economic Savings:

The Discharger has achieved modest economic savings by not preparing and submitting the technical reports required under CWC Section 13267. The Discharger has achieved significantly greater economic savings by not performing the corrective actions required to comply with the Section 13267 letter and the CAO. The Water Board's analysis of this factor supports the imposition of a substantial penalty.

i. Other Matters As Justice May Require:

The Discharger's property is a significant source of pollutants to the environment. The toxicity of the pollutants emanating from the property has impacted beneficial uses downstream, including the inability to sustain aquatic life. Although he initially demonstrated cooperation after purchasing the property, the Discharger has terminated efforts to obtain necessary permits and has cut off communication with the Water Board staff by failing to submit the required reports. The Discharger has not implemented any corrective actions to comply with the CAO for more than four years or to comply with the December 16, 2005 letter requiring progress reports for more than a year. The Discharger's willful refusal to comply with the Water Board's duly-issued CAO and reporting requirements continues to allow the prolonged discharge of harmful and toxic material into the environment. The Water Board's analysis of the factor supports the imposition of a substantial penalty.

13. A \$200,000 civil penalty is appropriate based on the specific findings made in Finding No. 12.
14. This action is an Order to enforce the laws and regulations administered by the Water Board. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.
15. The Discharger may petition the State Board to review this Action. The State Board must receive the petition within 30 days of the date this order was adopted by the Water Board. The petition will be limited to raising only the substantive issues or objections that were raised before the Water Board at the public hearing or in a timely submitted written correspondence delivered to the Water Board.

IT IS HEREBY ORDERED that Dr. Colin Mbanugo is civilly liable for the violations of the 13267 Order set forth in detail above, and shall pay the administrative civil liability in the amount of \$200,000. The liability shall be paid to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Order.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on September 10, 2008.

Bruce H. Wolfe
Executive Officer

APPENDIX B

Administrative Civil Liability Complaint



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

Notice of Public Hearing To Consider Administrative Civil Liability for Dr. Collin Mbanugo Alameda County

Complaint Amount and Allegations

The San Francisco Bay Regional Water Board (Regional Water Board) Assistant Executive Officer has issued an administrative civil liability complaint (Complaint) proposing a civil liability of \$200,000 against Dr. Collin Mbanugo (Discharger) for failing to submit technical reports required in a letter from the Executive Officer dated December 16, 2005.

Hearing to be Held

The Regional Water Board will hold a hearing on the Complaint as follows:

Date and Time: September 10, 2008, 9:00 a.m.
Place: Auditorium, 1515 Clay Street, Oakland

Discharger May Waive Hearing

No hearing will be held if the Discharger waives its right to a hearing and agrees to pay the proposed civil liability as set forth in the Complaint, provided no significant public comments are received during the public comment period. At the hearing, the Regional Water Board may affirm, reject, or modify the proposed civil liability, or refer the matter to the Attorney General for judicial enforcement.

Hearing Procedures are Legally Determined

This will be an adjudicatory hearing before the Regional Water Board. The procedures governing such hearings are located in Title 23 of the California Code of Regulations, § 648 et seq.

Any persons objecting to the hearing procedures set forth herein must do so in writing by August 11, 2008, to Alan D. Friedman at 1515 Clay Street, Suite 1400, Oakland, CA 94612.

Participation in the Hearing

The Board staff members who will be involved in this matter have been separated into two groups. One group consists of members of the Groundwater Protection Division to the Board (the "prosecution team") together with Dorothy Dickey, an attorney with the State Water Board's Office of Chief Counsel and who advises the Board on unrelated matters. The prosecution team will appear as a party before the Board. They have had (and will have had) no communication with Board members on this matter outside of the public hearing.

A separate group of staff will advise the Board on this matter. That group (the "advisory team") consists of a technical staff member to be determined, as well as an attorney from the State Water Board's Office of Chief Counsel. Both the staff member and the attorney have had no contact with the prosecution team on this matter.

Other than prosecutorial staff, participants at the hearing are either designated as "parties" or "interested persons". Designated parties to the hearing may present evidence and cross-examine witnesses. Designated parties are subject to cross-examination. Interested persons may make any comments to the Board, but may not offer factual evidence. Interested persons will not be subject to cross-examination, nor may they cross examine parties.

The following participants are hereby designated as parties at the hearing:

- **Dr. Collin Mbanugo**
- **Advisory team**

To ensure that all participants have an opportunity to participate in the hearing, the prosecution team will recommend that the chair establish the following deadlines:

- 20 minutes for each of the prosecutorial staff and Discharger to testify, present evidence, and cross examine witnesses,
- 3 minutes for interested persons to make statements to the Board.

Written Comment and Evidence Deadline

The deadline to submit any and all written comments and evidence to be offered at the hearing is **5 p.m.** on August 11, 2008. Persons shall submit **14 copies** to Alan D. Friedman at 1515 Clay Street, Suite 1400, Oakland, CA 94612.

Questions

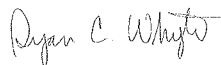
Questions concerning this matter may be addressed to prosecutorial staff Alan Friedman at 510-622-2347 or by email at afriedman@waterboards.ca.gov.

Evidentiary Documents are on File at Regional Water Board Office

The Complaint and related documents are on file, and may be inspected or copied at the Regional Water Board's offices during weekdays between 8 a.m. and 5:00 p.m. The Complaint is also available on the Regional Water Board's website at www.waterboards.ca.gov/sanfranciscobay.

July 9, 2008

Dated



Dyan C. Whyte
Assistant Executive Officer



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

Date: July 9, 2008
File No. 2199.9279 (ADF)

SENT VIA CERTIFIED MAIL

Dr. Collin Mbanugo
Leona Heights Sulfur Mine
3300 Webster Street, Suite 900
Oakland, CA 94609

NOTICE: Administrative Civil Liability (ACL) assessed under California Water Code Section 133268 for the Leona Heights Sulfur Mine, Oakland, Alameda County

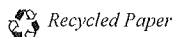
Dear Dr. Mbanugo:

Enclosed is ACL Complaint No. R2-2008-0002. The Complaint alleges that you have violated Section 13267 of the California Water Code by failing to submit technical reports for the Mine, as required in a letter from the Water board Executive Officer dated December 16, 2005. The Complaint describes the alleged violations in detail, and proposes a liability of \$200,000. The deadline for submittal of written comments, evidence, and waivers is **August 11, 2008, at 5 p.m.**

I plan to bring this matter to the Water Board at its September 10, 2008, meeting. You have the following options:

1. You can appear before the Water Board at the meeting to contest the matter. Written comments and evidence shall be submitted by the deadline indicated above, and in accordance with the process set forth in the attached Public Notice. At the meeting, the Water Board may impose an administrative civil liability in the amount proposed or for a different amount, decline to seek civil liability, or refer the case to the Attorney General for judicial enforcement.
2. You can waive the right to a hearing to contest the allegations contained in the Complaint by paying the civil liability in full or by undertaking an acceptable SEP of up to \$100,000 and paying the remainder of the civil liability, all in accordance with the procedures and limitations set forth in the waiver attached to the Complaint.

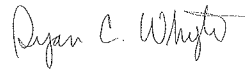
Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years



- 2 -

If you waive your right to a hearing, please mail and fax a copy of the signed waiver to the attention of Alan Friedman of my staff. If you have any questions regarding this matter, please contact Mr. Friedman at (510) 622-2347, or by email at afriedman@waterboards.ca.gov .

Sincerely,

A handwritten signature in cursive script that reads "Dyan C. Whyte".

Dyan C. Whyte
Assistant Executive Officer

Enclosure: Complaint No. R2-2008-0002

Copy to: Standard R-1E List
Mailing List
Bruce H. Wolfe, Executive Officer

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

COMPLAINT NO. R2-2008-0002

**ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
DR. COLLIN MBANUGO
FOR VIOLATIONS OF CALIFORNIA WATER CODE
SECTION 13267
AT THE LEONA HEIGHTS SULFUR MINE
OAKLAND, ALAMEDA COUNTY**

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Water Board), hereby gives notice that:

1. Dr. Collin Mbanugo (the Discharger) has violated provisions of law for which the Water Board may impose civil liability pursuant to California Water Code Sections 13268(a)(1) and (b)(1) and 13323.
2. The Discharger has violated Section 13267 by failing to submit technical reports required in a letter from the Executive Officer dated December 16, 2005.
3. Unless waived, a hearing on this complaint will be held before the Water Board as set forth below on September 10, 2008, at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California. You or your representative will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of the civil liability. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date. The deadline to submit all evidence or comments concerning this complaint is August 11, 2008. The Water Board will not consider any evidence or comments not submitted by this deadline.
4. At the hearing, the Water Board will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.

ALLEGATIONS

5. This complaint is based on the following facts:
 - a. Dr. Mbanugo is the current owner of the Leona Heights Sulfur Mine, a two-acre abandoned mining site located in the Oakland Hills near the junction of Interstate 580 and State Highway 13. Water quality at the site is impacted by acid mine runoff, which discharges into a creek that flows through waste rock piles left behind when the mine was abandoned in the late 1920s. Flows passing through the site follow a natural drainage channel of several hundred feet and then enter a storm drain. The

COMPLAINT NO. R2-2008-0002

storm drain discharges to Lake Aliso on the Mills College Campus, and ultimately discharges to San Leandro Bay via another Storm Drain System. Site remediation was required under Cleanup and Abatement Order No. 98-004, which this Board adopted on January 30, 1998.

- b. The Discharger purchased the property on November 29, 2001. Water Board staff met with the Discharger shortly thereafter. The Discharger indicated that he was aware of the discharges and planned to remediate the site. The Board amended the 1998 Order on April 14, 2003 by adopting Order No. R2-2003-0028 (hereafter referred to as “the CAO”), which identified Dr. Mbanugo as the current owner and added him to the list of Dischargers of the Leona Heights Sulfur Mine.
- c. On December 16, 2005, the Executive Officer sent a letter to the Discharger pursuant to Water Code Section 13267. This Section 13267 letter had two purposes:
 - 1) The letter approved a revised scope of work and schedule that had been proposed by the Discharger in a work plan submitted on October 28, 2005. This scope of work was required for compliance with the CAO.
 - 2) The letter required the Discharger to submit monthly progress reports documenting work completed on the project. The progress reports were to be submitted by the last day of each month, beginning in December 2005. Submittal of progress reports was to continue until the Discharger had fully complied with the requirements of the CAO.
- d. The Discharger was out of compliance with the CAO at the time the Section 13267 letter was issued. Enforcement action was not taken at that time because technical comments received from an outside permitting agency (the City of Oakland) necessitated substantive changes to the Discharger’s corrective action plan. The Discharger demonstrated a willingness to make beneficial revisions to the corrective action plan, provided additional time was allowed.
- e. The Section 13267 letter approved a revised implementation schedule, but required the submittal of monthly progress reports because the Discharger previously had not been diligent in completing tasks required for compliance with the CAO. Prior work had been intermittent with a history of missed deadlines, resulting in the issuance of a Notice of Violation from Water Board staff on October 6, 2005. The progress reports were required as a means to substantiate the Discharger’s compliance with the CAO.
- f. The Discharger has not complied with the December 16, 2005 letter. Specifically, the Discharger has stopped submitting the monthly progress reports required by the letter. Furthermore, the Discharger has not completed project tasks according to the schedule that was approved in the letter.
- g. Monthly progress reports were received from the Discharger in January, February, April, May, September, October, and November of 2006, and in February and May of

COMPLAINT NO. R2-2008-0002

2007. No further reports have been received since May 2007. The Discharger has provided no indication that any further work has been performed to comply with the CAO.

- h. Two additional Notices of Violation were issued to the Discharger on March 10, 2006 and July 17, 2006, in an attempt to gain compliance with the December 16, 2005 letter.
- 6. This Administrative Civil Liability is being issued for the Discharger's failure to submit monthly progress reports required in the Section 13267 letter issued December 16, 2005. For violating CWC Section 13267, the Water Board may administratively impose civil liability pursuant to CWC Section 13268(a)(1) and (b)(1) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
- 7. In determining the amount of civil liability to be assessed to the Discharger, the Water Board must take into consideration the factors described in CWC Section 13327. These factors and considerations are as follows:

a. Nature, Circumstances, Extent and Gravity of the Violations:

Compliance with the December 16, 2005 request for technical reports under CWC Section 13267 is necessary so that Water Board staff can monitor the Discharger's progress and efforts toward compliance with the CAO. Failure to provide those reports deprives the Water Board of information related to the Discharger's progress in complying with the CAO. The progress reports are an integral part of the CAO compliance. Failure to submit the reports is reflective of the Discharger's failure to comply with the scope of work and schedule approved in the December 16, 2005 letter. The failure to comply with the approved scope of work has allowed an ongoing discharge of low pH water contaminated with metals into waters of the State to continue unabated.

b. Susceptibility of the Discharge to Cleanup:

The discharges from the mine can be cleaned up by means of implementation of a corrective action plan submitted by the Discharger, which was approved by Water Board staff on July 5, 2006. If implemented, the corrective actions will significantly reduce the seriously detrimental effects of the discharge in an economically achievable manner. However, the corrective actions have not been implemented.

c. Degree of Toxicity of the Discharge:

The waste rock at the site contains elevated concentrations of sulfur and metals such as iron, lead, copper, and arsenic. The waste rock piles are more porous than the native bedrock. This allows water to migrate easily through the material. Contact between water and the sulfur-rich waste rock, primarily during the rainy season, causes sulfur to be dissolved, promoting the formation of sulfuric acid within the

waste rock piles. Discharge of acidic water from the waste rock pile, known as acid mine runoff, is indicated at the site by the characteristic yellow coloration in the streambed. Creek sampling has shown very acidic conditions in the creek, with the pH at time dropping below 3. The low pH, in turn, increases the solubility of metals present in the waste rock, resulting in high metals concentrations in the creek. Water quality in the creek is impacted visually and chemically for a considerable distance downstream from the site. This water is toxic to aquatic species living in the creek at the site and downstream of the discharge. Beneficial uses of the creek and other water bodies downstream from the site are seriously compromised as a direct result of the discharge.

d. Ability to Pay and Ability to Continue in Business:

The Discharger owns a number of properties located in Oakland and Emeryville. Although some of the properties are undeveloped, they are zoned for residential development. The assessed value of those properties (which may not reflect their market value, which is likely higher) is in excess of \$1.5 million. The property owner has not provided any evidence of inability to pay.

e. Voluntary Cleanup Efforts Undertaken:

The discharger has not voluntarily undertaken cleanup activities. The Discharger is required under the CAO to implement corrective actions.

f. Prior History of Violations:

Water Board staff has issued three Notices of Violation (NOV) to the Discharger in an attempt to gain compliance with the December 16, 2005 letter and the CAO. These NOV letters were issued on October 6, 2005; March 10, 2006; and July 17, 2006.

g. Degree of Culpability:

The Discharger is solely responsible for submission of monthly progress reports to demonstrate compliance with the 13267 letter and the CAO. The Discharger has not submitted a progress report since May 2007 despite numerous requests by Water Board staff that he comply.

h. Economic Savings:

The Discharger has achieved modest economic savings by not preparing and submitting the technical reports required under CWC Section 13267. The Discharger has achieved significantly greater economic savings by not performing the corrective actions required to comply with the Section 13267 letter and the CAO.

i. Other Matters As Justice May Require:

The Discharger's property is a significant source of pollutants to the environment. The toxicity of the pollutants emanating from the property has impacted beneficial uses downstream, including the inability to sustain aquatic life. Although he initially demonstrated cooperation after purchasing the property, the Discharger has terminated all efforts to obtain necessary permits and has cut off communication with the Water Board staff by failing to submit the required reports. The Discharger has not implemented any corrective actions to comply with the CAO for more than four years or to comply with the December 16, 2005 letter requiring progress reports for more than a year. The Discharger's willful refusal to comply with the Water Board's duly-issued CAO and reporting requirements continues to allow the prolonged discharge of harmful material into the environment. This enforcement action is necessary to compel the Discharger to comply with the CAO and reporting requirements.

8. The maximum civil liability that could be imposed for this matter is calculated based on the number of days the required technical reports are overdue. For all of the reports missing to date (June 10, 2008):

The report due on May 31, 2007 is 376 days late.
The report due on June 30, 2007 is 346 days late.
The report due on July 31, 2007 is 315 days late.
The report due on August 31, 2007 is 284 days late.
The report due on September 30, 2007 is 254 days late.
The report due on October 31, 2007 is 223 days late.
The report due on November 30, 2007 is 193 days late.
The report due on December 31, 2007 is 162 days late.
The report due on January 31, 2008 is 131 days late.
The report due on February 29, 2008 is 102 days late.
The report due on March 31, 2008 is 71 days late.
The report due on April 30, 2008 is 41 days late
The report due on May 31, 2008 is 10 days late.

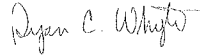
There are a total of 2,508 days of late reports, for which the Water Board could assess a total liability of \$2,508,000. The Executive Officer proposes that civil liability should be imposed on the Discharger in the amount of \$200,000 for the violations cited above, which is due as provided below.

9. This action is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

10. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by (a) paying the civil liability in full or (b) undertaking an approved supplemental environmental project in an amount not to exceed \$100,000 and paying the remainder of the civil liability, all in accordance with the procedures and limitations set forth in the attached waiver.

July 9, 2008

Date



Dyan C. Whyte

Assistant Executive Officer

Attachment: Waiver of Hearing Form

WAIVER

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. **Your waiver is due no later than August 11, 2008, 5 p.m.**

- ☐ Waiver of the right to a hearing and agreement to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in this Complaint and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the Water Board meeting for which this matter is placed on the agenda. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability.

- ☐ Waiver of right to a hearing and agree to make payment and undertake an SEP.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in this Complaint, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to the amount identified in Finding 10 of this Complaint and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the Water Board meeting for which this matter is placed on the agenda. The SEP proposal shall be submitted no later than the due date for this waiver, above. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Assistant Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Assistant Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Assistant Executive Officer rejecting the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Assistant Executive Officer. I understand failure to adequately

COMPLAINT NO. R2-2008-0002

complete the approved SEP will require immediate payment of the suspended liability to the CAA.

Name (print)

Signature

Title/Organization

Date

APPENDIX C

Documentation



Alan C. Lloyd, Ph.D.
Agency Secretary

California Regional Water Quality Control Board

San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>



Arnold Schwarzenegger
Governor

Date: DEC 16 2005
File No. 2199.9279 (KER)

Dr. Collin Mbanugo
Leona Heights Sulfur Mine
3300 Webster Street, Suite 900
Oakland, CA 94609

**Subject: Response to November 2005 Revisions to Work Plan and Work Schedule for
Implementation of Corrective Action at the Leona Heights Sulfur Mine, Oakland,
Alameda County**

Dear Dr. Mbanugo:

This letter acknowledges receipt of the November 1, 2005, letter from Mr. Glenn Gould that was sent in response to our October 6, 2005, Notice of Violation letter regarding the former Leona Heights Sulfur Mine ("the site"). This letter approves the revised scope of work and schedule for the project presented in the Work Plan prepared by Moju Environmental Technologies, dated October 28, 2005, that was attached to Mr. Gould's letter. Additionally, this letter requires submittal of monthly progress reports as discussed below.

Revised Scope of Work and Schedule

On April 14, 2003, the San Francisco Bay Regional Water Quality Control Board ("Water Board") adopted Cleanup and Abatement Order No. R2-2003-0028, which required you to submit a Corrective Action Plan and Implementation Schedule, and to then implement that plan immediately upon approval. A Corrective Action Plan was submitted on August 25, 2003, and approved by Water Board staff on September 11, 2003. Corrective actions have still not been implemented at the site.

The August 22, 2005, letter from Mr. Peter Mundy of Moju Environmental Technologies and the October 28, 2005, Work Plan proposed substantial changes to the Corrective Action Plan that we approved on September 11, 2003. Subsequent review and comments submitted by City of Oakland staff during July 2005 necessitated changes to some aspects of the remedial design. The specific changes to the remedial design plan proposed in the August 22 letter and the October 28 Work Plan are intended to alleviate concerns raised by the City about possible impacts to the creek. Water Board staff agree that these proposed remedial design changes are beneficial and will improve the overall effectiveness of the remediation project.

The October 28 Work Plan proposed the following scope of work and schedule:

- | | |
|--|---|
| 1. Perform Detailed Site Survey
(Includes wetlands delineation, geomorphic assessment, and stream channel survey) | November 15, 2005 |
| 2. Revise Conceptual Stream Restoration Design
(Includes analytical stability assessment and conceptual mitigation plan) | December 16, 2005 |
| 2b. Agency Meeting to Discuss Revised Design | December 2005 |
| 3. Submit Permit Application Packages | December 31, 2005 |
| 4. Revise Construction Design Drawings and Report
(Includes detailed construction drawings, specifications, and design report) | December 31, 2005 |
| 5. Regulatory Agency Meeting | January 2006 |
| 6. Submit Final Design Report | February 2006 |
| 7. Select Contractor | February 2006 |
| 8. Perform Field Construction | May – August 2006 |
| 9. Submit Closure Report | 90 days after completion
of Field Construction |

Water Board staff approve the revised scope of work and schedule outlined above. This work is required to comply with Cleanup and Abatement Order No. R2-2003-0028.

It is important to note that you are out of compliance with the due dates approved under the Order. Water Board staff approval of the technical revisions proposed in the October 28 Work Plan does not reduce or limit your liability for past non-compliance with Order No. R2-2003-0028. You may ultimately be subject to monetary Administrative Civil Liabilities for non-compliance with the tasks and due dates approved by this letter.

Required Agency Permits

Before the scope of work can be implemented, several permits must be obtained from the City of Oakland, this Regional Water Board, and the U.S. Army Corps of Engineers, and perhaps from other agencies. As of this date, none of these permits have been issued. Your June 27, 2005, application to the City of Oakland for a Creek Protection Permit was determined by the City to be incomplete, as indicated in their July 27, 2005, letter from Mr. Edward Manasse. The letter from the City clearly details additional documents that must be provided to City staff before the necessary permits can be issued. The required documents include:

- Construction Staging/Work Plan;
- Erosion Control Plan;
- Drainage Plan;
- Plan for Grading within Street Right-of-Way; and a
- Tree Removal/Protection Plan.

Additionally, you are responsible for identifying and obtaining all required approvals and permits from other federal, state, or local agencies for this project. It is likely that Water Quality


Certifications pursuant to Sections 401 and 404 of the Federal Clean Water Act will also be required. The Section 401 permit must be obtained from the Water Board, while the Section 404 permit must be obtained from the U.S. Army Corps of Engineers. Other permits may be required from the California Department of Fish and Game or U.S. Fish and Wildlife Service to address threatened or endangered species concerns. Please be advised that some permits may take several months for issuance; therefore all permit applications must be filed as soon as possible. Also, please be aware that agency reviews of permit applications often result in the identification of additional requirements that must be met.

Progress Reports

By notice of this letter, you are required to submit a monthly progress report documenting work completed on the project. These monthly reports are necessary to allow Water Board staff to monitor your progress and efforts toward compliance with the Board Order in consideration of enforcement actions. Progress reports shall be submitted by the last day of each month, beginning in December 2005. The progress report must be distributed to the mailing list attached to this letter and any other interested parties.

Our requirement for submittal of monthly progress reports is made pursuant to California Water Code Section 13267 (see attached Fact Sheet). Failure to respond or late response may subject you to penalty of perjury and/or civil liability imposed by the Board up to a maximum amount of \$1,000 per day. Any extensions of the time deadlines set forth above must be confirmed in writing by the Executive Officer. If you have any questions, please contact Keith Roberson at (510) 622-2404 or by email at KRoberson@waterboards.ca.gov.

Sincerely,


Bruce H. Wolfe
Executive Officer

Attachment: Section 13267 Fact Sheet
cc w/o attachment: Mailing List

Dr. Collin Mbanugo

- 4 -

Mailing List

Moju Environmental Technologies
Attn: Mr. Akali Igbene
780 Chadbourne Road, Suite A1
Fairfield, CA 94585

Mr. Alan Berman
5171 McDonell Avenue
Oakland, CA 94619

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Miller Brown and Dannis
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Lewis, Brisbois, Bisgaard & Smith
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Los Angeles, CA 90012

Ocean Industries, Inc.
Attn: Chris Chase, Esq.
2716 Ocean Park Boulevard, Suite 2025
Santa Monica, CA 90405

Alcoa Inc.
Attn: Ralph Waechter, Esq.
Alcoa Corporate Center
201 Isabella Street
Pittsburgh, PA 15212-5858

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

CLEANUP AND ABATEMENT ORDER NO. R2-2003-0028

AMENDEMENT OF CLEANUP AND ABATEMENT ORDER NO. 98-004

DR. COLLIN MBANUGO, RIDGEMONT DEVELOPMENT INC., WATT RESIDENTIAL INC., WATT INDUSTRIES OAKLAND, WATT HOUSING CORPORATION, ALCOA CONSTRUCTION SYSTEMS INC., CHALLENGE DEVELOPMENT INC., AP CONSTRUCTION SYSTEMS INC., F.M. SMITH AND EVELYN ELLIS SMITH, REALTY SYNDICATE, LEONA CHEMICAL COMPANY, AND ALCOA PROPERTIES INC.

LEONA HEIGHTS SULFUR MINE
OAKLAND, ALAMEDA COUNTY

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

STATUS

- a. **Prior Board Actions:** On January 30, 1998 the Board adopted Cleanup and Abatement Order No. 98-004 (CAO 98-004) to Ridgemont Development Inc., Watt Residential Inc., Watt Industries Oakland, Watt Housing Corporation, Alcoa Construction Systems Inc., Challenge Development Inc., AP Construction systems Inc., F.M. Smith and Evelyn Ellis Smith, Realty Syndicate, Leona Chemical Company, and Alcoa Properties Inc. for the investigation and cleanup of the Leona Heights Sulfur Mine located approximately one-half mile northeast of the intersection of Interstate 580 and State Highway 13, in the Oakland Hills, Alameda County.
- b. **Purpose of this Amendment:** The purpose of this amendment is to add the current property owner and Discharger, Dr. Collin Mbanugo, to CAO 98-004 and to modify several tasks based on our current understanding of exiting site conditions.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

- c. This Order is an action for the protection of the environment and is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to 15321, Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED that Order No. 98-004 shall be amended as follows:

1. Finding **8.B.8** is added as follows to identify Dr. Collin Mbanugo as the current owner of the Leona Heights Sulfur Mine based on recording No. 2001-462441:

Dr. Collin Mbanugo is hereby identified as the current owner and Discharger of the Leona Heights Sulfur Mine acquiring Title from Ridgemont Development Company on November 29, 2001 (Alameda County Grant Deed No. 2001-462441).

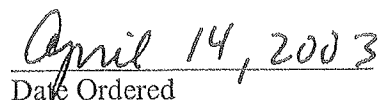
2. **Amended or Deleted Remedial Measures** – Remedial Measures (CAO 98-004) B.1, B.2, B.3, and B.4 are amended or deleted as follows:

- a. **Remedial Measure No. B.1** is hereby deleted.
- b. **Remedial Measure No. B.2:** The Dischargers shall submit a revised **Corrective Action Plan and Implementation Schedule** acceptable to the Executive Officer by **May 30, 2003**. Implementation of the proposed plan shall provide for the prevention of further erosion of the mine tailings, and shall encapsulate the mine tailings in a manner as to best isolate the mining waste from storm water runoff and contact with groundwater. The Dischargers shall implement the proposed **Corrective Action Plan and Implementation Schedule** immediately upon approval.
- c. **Remedial Measure No. B.3:** Post construction monitoring shall be conducted to assess the effectiveness of remedial activities and be implemented following the completion of the required **Corrective Action Plan and Implementation Schedule** (Amended Remedial Measure B.2). Monitoring reports shall be due semi-annually on **October 31st** and **April 30th** of each year. The first monitoring report shall be due on **October 31, 2003** and consist of the analysis of water from Leona Creek sampled at Leona Street (located near the existing base of the lower waste rock pile). Water sample analysis shall include the field parameters: pH, conductivity, oxidation-reduction potential, and temperature; and the laboratory parameters: dissolved copper, zinc, and sulfate, as well as suspended solids and total acidity. All future reports will be submitted in accordance with a new operations and maintenance order issued to the then current property owner (or owners).
- d. **Remedial Measure No. B.4** is hereby deleted.

3. **Amended General Requirements** – General Requirement C.6 is hereby added to CAO 98-004:

Upon compliance with this CAO and completion of specified Remedial Tasks the Board will amend or re-issue this Order naming the then current property owner (or owners) as solely responsible for addressing long-term monitoring, operations, and maintenance of the designed cap.


Loretta K. Barsamian
Executive Officer


Date Ordered



California Regional Water Quality Control Board

San Francisco Bay Region

Alan C. Lloyd, Ph.D.
Agency Secretary

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>



Arnold Schwarzenegger
Governor

Date: OCT 0 8 2005
File No. 2199.9279 (KER)

Leona Heights Sulfur Mine
Attn: Dr. Collin Mbanugo
3300 Webster Street, Suite 900
Oakland, CA 94609

Subject: Notice of Violation, Leona Heights Sulfur Mine, Oakland, Alameda County

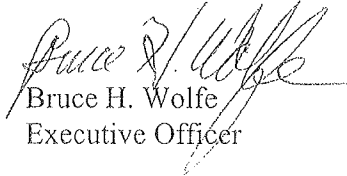
Dear Dr. Mbanugo:

You are in violation of Cleanup and Abatement Order (CAO) No. 2003-0028 to complete corrective action at the Leona Heights Sulfur Mine site in Oakland. Specifically, implementation of remedial work at the Leona Heights Sulfur Mine property has not been implemented per Task B.2 of the CAO and your own commitments to perform work during the summer of 2005. Task B.2 requires implementation of the Corrective Action Plan and Implementation Schedule *immediately upon approval* by the Board. Your Corrective Action Plan was submitted on August 25, 2003, and approved by Board staff on Sept 11, 2003. On March 17, 2004, Board staff approved a follow-up document you submitted on March 1, 2004, under the title *Summary Design Report and Construction Documents*. A schedule presented within this report indicated the remediation would be performed during the summer of 2004. However, you made no attempt to implement the work until after Board staff contacted you in May 2005. Your subsequent applications for permits submitted in late June 2005 to the City of Oakland to implement corrective actions were deemed incomplete.

More than two years have passed since we approved your Corrective Action Plan and still no work has been performed at the site. The failure to implement corrective actions has allowed a discharge of contaminants into Waters of the State to continue unabated. We are considering enforcement action for your failure to comply with the CAO in the form of administrative civil liabilities pursuant to California Water Code Section 13350. Please provide a written explanation, **by November 1, 2005**, describing the circumstances for your failure to apply for permits to perform construction activities in a timely manner.

If you have any questions, please contact Keith Roberson at (510) 622-2404 or by email at KRoberson@waterboards.ca.gov.

Sincerely,


Bruce H. Wolfe
Executive Officer

cc: Mailing List

Mailing List

Moju Environmental Technologies
Attn: Mr. Akali Igbene
780 Chadbourne Road, Suite A1
Fairfield, CA 94585

LFR Levine-Fricke
Attn: Chuck Pardini
1900 Powell Street, 12th Floor
Emeryville, CA 94608

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City of Oakland
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Alcoa Inc.
Attn: Ralph Waechter, Esq.
Alcoa Corporate Center
201 Isabella Street
Pittsburgh, PA 15212-5858

Mr. Alan Berman
5171 McDonell Avenue
Oakland, CA 94619



California Regional Water Quality Control Board

San Francisco Bay Region

Alan C. Lloyd, Ph.D.
Agency Secretary

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Arnold Schwarzenegger
Governor

Date: MAR 10 2006
File No. 2199.9279 (KER)

Leona Heights Sulfur Mine
Attn: Dr. Collin Mbanugo
3300 Webster Street, Suite 900
Oakland, CA 94609

Subject: Notice of Violation, Leona Heights Sulfur Mine, Oakland, Alameda County

Dear Dr. Mbanugo:

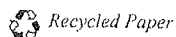
You are in violation of Cleanup and Abatement Order (CAO) No. R2-2003-0028 to implement corrective actions at the Leona Heights Sulfur Mine site in Oakland. This is your second Notice of Violation for non-compliance with the CAO. Specifically, remedial work at the Leona Heights Sulfur Mine property specified in Remedial Measure No. B.2 of the CAO has not been implemented in compliance with the revised scope of work and schedule that was approved by the Executive Officer in our December 16, 2005 letter. Copies of the CAO and our letter approving the revised work scope and schedule are attached.

Please submit forthwith all documents required for compliance with Order No. R2-2003-0028. These documents include 1) a Revised Construction Design Report and Drawings; 2) an application package to the Regional Water Board for a Section 401 Water Quality Certification permit; and 3) an application package to the U.S. Army Corps of Engineers for a Section 404 Streambed Alteration Permit. According to the revised schedule approved on December 16, 2005, each of these documents was due on December 31, 2005.

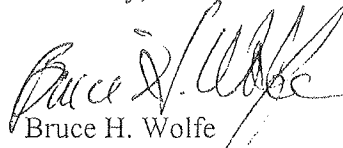
The failure to implement corrective actions has allowed a discharge of contaminants into Waters of the State to continue unabated. We are considering enforcement action for your failure to comply with the CAO in the form of administrative civil liabilities pursuant to California Water Code Section 13350. You may be subject to penalties between \$500 and \$5,000 per day for each day you are out of compliance with the CAO. The required documents are now more than 66 days late.

If you have any questions, please contact Keith Roberson at (510) 622-2404 or by email at KRoberson@waterboards.ca.gov.

Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years



Sincerely,



Bruce H. Wolfe
Executive Officer

Attachments: 1) Cleanup and Abatement Order No. R2-2003-0028
2) December 16, 2005 Letter to Dr. Collin Mbanugo

cc w/o attachments: Mailing List

Mailing List

Moju Environmental Technologies
Attn: Mr. Akali Igbene
780 Chadbourne Road, Suite A1
Fairfield, CA 94585

Mr. Brian Matsumura
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Building & Engineering Services
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5171 McDonell Avenue
Oakland, CA 94619



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

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<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

Date: **JUL 17 2006**
File No. 2199.9279 (KER)

Certified Mail No. 70042890000400474863
Leona Heights Sulfur Mine
Attn: Dr. Collin Mbanugo
3300 Webster Street, Suite 900
Oakland, CA 94609

Subject: Notice of Violation, Leona Heights Sulfur Mine, Oakland

Dear Dr. Mbanugo:

You are in violation of Cleanup and Abatement Order (CAO) No. R2-2003-0028 to implement corrective actions at the Leona Heights Sulfur Mine site in Oakland. This is your third Notice of Violation for non-compliance with the CAO. Specifically, remedial work at the Leona Heights Sulfur Mine property specified in Remedial Measure No. B.2 of the CAO has not been implemented in compliance with the revised scope of work and schedule that was proposed by you and approved by the Executive Officer in our December 16, 2005 letter. A copy of the December 16th letter approving the revised work scope and schedule is attached.

The following are violations of the CAO:

1. Our December 16, 2005 letter required you to submit monthly progress reports documenting work completed on the project. Our requirement for submittal of monthly progress reports was made pursuant to California Water Code Section 13267. You have not submitted a monthly progress report since the March 2006 progress report was submitted on April 7, 2006. To date the required progress reports have not been received for the months of April, May, and June 2006.
2. Permits that are required for the site remediation work to proceed have not been obtained. These permits include grading and creek protection permits from the City of Oakland, a Section 401 Water Quality Certification from the Water Board, and a Section 404 Streambed Alteration Permit from the US Army Corps of Engineers. The work schedule you proposed in the October 28, 2005, letter from Moju Environmental Technologies, which we approved in our December 16, 2005 letter, stated that application packages for these permits would be submitted no later than December 31, 2005. These permit applications were not submitted until April 10 – 11, 2006, over 90 days late. Your late submittal of these applications has resulted in project delays in obtaining the necessary permits, and completing the remediation at the Leona Mine.

Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years

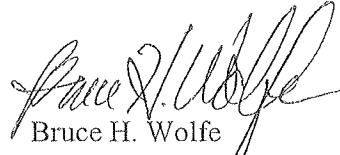
3. Your April 11 permit application package to the City of Oakland was determined to be incomplete. On April 18, City of Oakland staff requested submittal of additional information in order to process your permit application. This information included:
 - A survey showing surrounding property lines adjacent to your project site;
 - Construction staging plan and drawing showing equipment hauling routes, City right of way, and surrounding property lines;
 - Engineers cost estimate for Grading and Watercourse improvements, wet signed and sealed;
 - Revised application for Category 4 Creek Protection Permit (CP05106) reflecting your current project, including required technical reports.
4. Also, on May 11, City of Oakland staff requested you also demonstrate your project's California Environmental Quality Act (CEQA) Compliance, through use of appropriate categorical exemptions. Specifically, you were requested to:
 - Submit a Request for Environmental Review Form and appropriate fee; and
 - Submit an analysis demonstrating whether the project could be considered categorically exempt under CEQA Guidelines sections 15333 (Small Habitat Restoration Projects) and/or 15304 (Minor Alterations to Land), taking into account the "exceptions" to the exemptions.

As of July 14, the City of Oakland has received no response from you to its requests for additional information, and therefore cannot process the permit applications. Furthermore, Water Board staff cannot process the Section 401 Permit application until the CEQA compliance issues with the City are addressed. Your failure to submit, in a timely manner, the information requested by the City of Oakland has resulted in unnecessary delays in obtaining the permits required for implementation of remediation of the Leona Mine site. Additionally, numerous calls to your office have not been returned. Your actions have not demonstrated a commitment to complete this project per the approved schedule, and as required by the CAO.

The failure to implement corrective actions at the Leona Mine site has allowed the discharge of contaminants into Waters of the State to continue unabated. We are considering enforcement action for your failure to comply with the CAO in the form of administrative civil liabilities pursuant to California Water Code Section 13350. You may be subject to penalties up to \$5,000 per day for each day you are out of compliance with the CAO and our December 16, 2005 letter. We urge you to come into full compliance forthwith.

If you have any questions, please contact Keith Roberson at (510) 622-2404 or by email at KRoberson@waterboards.ca.gov.

Sincerely,



Bruce H. Wolfe
Executive Officer

Attachment: December 16, 2005 Letter to Dr. Collin Mbanugo

cc w/o attachment: Mailing List

MAILING LIST

Mr. Alan Friedman
Enforcement Coordinator
Regional Water Quality Control Board
San Francisco Bay Region

Moju Environmental Technologies
Attn: Mr. Akali Igbene
780 Chadbourne Road, Suite A1
Fairfield, CA 94585

Mr. Brian Matsumura
City of Oakland
Building & Engineering Services
250 Frank Ogawa Plaza, Suite 2340
Oakland, CA 94612

Glenn N. Gould, Esq.
Miller, Brown & Dannis
71 Stevenson Street, 19th Floor
San Francisco, CA 94105

Jon Benjamin, Esq.
Farella, Braun & Martel
235 Montgomery Street
San Francisco, CA 94104

Christopher Bisgaard, Esq.
Lewis, Brisbois, Bisgaard & Smith
221 N. Figueroa Street, Suite 1200
Los Angeles, CA 90012

Ocean Industries, Inc.
Attn: Chris Chase, Esq.
2716 Ocean Park Boulevard, Suite 2025
Santa Monica, CA 90405

Alcoa Inc.
Attn: Ralph Waechter, Esq.
Alcoa Corporate Center
201 Isabella Street
Pittsburgh, PA 15212-5858

Mr. Alan Berman
5171 McDonell Avenue
Oakland, CA 94619



California Regional Water Quality Control Board

San Francisco Bay Region

Alan C. Lloyd, Ph.D.
Agency Secretary

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>



Arnold Schwarzenegger
Governor

Date: DEC 16 2005
File No. 2199.9279 (KER)

Dr. Collin Mbanugo
Leona Heights Sulfur Mine
3300 Webster Street, Suite 900
Oakland, CA 94609

Subject: Response to November 2005 Revisions to Work Plan and Work Schedule for Implementation of Corrective Action at the Leona Heights Sulfur Mine, Oakland, Alameda County

Dear Dr. Mbanugo:

This letter acknowledges receipt of the November 1, 2005, letter from Mr. Glenn Gould that was sent in response to our October 6, 2005, Notice of Violation letter regarding the former Leona Heights Sulfur Mine ("the site"). This letter approves the revised scope of work and schedule for the project presented in the Work Plan prepared by Moju Environmental Technologies, dated October 28, 2005, that was attached to Mr. Gould's letter. Additionally, this letter requires submittal of monthly progress reports as discussed below.

Revised Scope of Work and Schedule

On April 14, 2003, the San Francisco Bay Regional Water Quality Control Board ("Water Board") adopted Cleanup and Abatement Order No. R2-2003-0028, which required you to submit a Corrective Action Plan and Implementation Schedule, and to then implement that plan immediately upon approval. A Corrective Action Plan was submitted on August 25, 2003, and approved by Water Board staff on September 11, 2003. Corrective actions have still not been implemented at the site.

The August 22, 2005, letter from Mr. Peter Mundy of Moju Environmental Technologies and the October 28, 2005, Work Plan proposed substantial changes to the Corrective Action Plan that we approved on September 11, 2003. Subsequent review and comments submitted by City of Oakland staff during July 2005 necessitated changes to some aspects of the remedial design. The specific changes to the remedial design plan proposed in the August 22 letter and the October 28 Work Plan are intended to alleviate concerns raised by the City about possible impacts to the creek. Water Board staff agree that these proposed remedial design changes are beneficial and will improve the overall effectiveness of the remediation project.

The October 28 Work Plan proposed the following scope of work and schedule:

- | | |
|--|---|
| 1. Perform Detailed Site Survey
(Includes wetlands delineation, geomorphic assessment, and stream channel survey) | November 15, 2005 |
| 2. Revise Conceptual Stream Restoration Design
(Includes analytical stability assessment and conceptual mitigation plan) | December 16, 2005 |
| 2b. Agency Meeting to Discuss Revised Design | December 2005 |
| 3. Submit Permit Application Packages | December 31, 2005 |
| 4. Revise Construction Design Drawings and Report
(Includes detailed construction drawings, specifications, and design report) | December 31, 2005 |
| 5. Regulatory Agency Meeting | January 2006 |
| 6. Submit Final Design Report | February 2006 |
| 7. Select Contractor | February 2006 |
| 8. Perform Field Construction | May – August 2006 |
| 9. Submit Closure Report | 90 days after completion
of Field Construction |

Water Board staff approve the revised scope of work and schedule outlined above. This work is required to comply with Cleanup and Abatement Order No. R2-2003-0028.

It is important to note that you are out of compliance with the due dates approved under the Order. Water Board staff approval of the technical revisions proposed in the October 28 Work Plan does not reduce or limit your liability for past non-compliance with Order No. R2-2003-0028. You may ultimately be subject to monetary Administrative Civil Liabilities for non-compliance with the tasks and due dates approved by this letter.

Required Agency Permits

Before the scope of work can be implemented, several permits must be obtained from the City of Oakland, this Regional Water Board, and the U.S. Army Corps of Engineers, and perhaps from other agencies. As of this date, none of these permits have been issued. Your June 27, 2005, application to the City of Oakland for a Creek Protection Permit was determined by the City to be incomplete, as indicated in their July 27, 2005, letter from Mr. Edward Manasse. The letter from the City clearly details additional documents that must be provided to City staff before the necessary permits can be issued. The required documents include:

- Construction Staging/Work Plan;
- Erosion Control Plan;
- Drainage Plan;
- Plan for Grading within Street Right-of-Way; and a
- Tree Removal/Protection Plan.

Additionally, you are responsible for identifying and obtaining all required approvals and permits from other federal, state, or local agencies for this project. It is likely that Water Quality


Certifications pursuant to Sections 401 and 404 of the Federal Clean Water Act will also be required. The Section 401 permit must be obtained from the Water Board, while the Section 404 permit must be obtained from the U.S. Army Corps of Engineers. Other permits may be required from California Department of Fish and Game or U.S. Fish and Wildlife Service to address threatened or endangered species concerns. Please be advised that some permits may take several months for issuance; therefore all permit applications must be filed as soon as possible. Also, please be aware that agency reviews of permit applications often result in the identification of additional requirements that must be met.

Progress Reports

By notice of this letter, you are required to submit a monthly progress report documenting work completed on the project. These monthly reports are necessary to allow Water Board staff to monitor your progress and efforts toward compliance with the Board Order in consideration of enforcement actions. Progress reports shall be submitted by the last day of each month, beginning in December 2005. The progress report must be distributed to the mailing list attached to this letter and any other interested parties.

Our requirement for submittal of monthly progress reports is made pursuant to California Water Code Section 13267 (see attached Fact Sheet). Failure to respond or late response may subject you to penalty of perjury and/or civil liability imposed by the Board up to a maximum amount of \$1,000 per day. Any extensions of the time deadlines set forth above must be confirmed in writing by the Executive Officer. If you have any questions, please contact Keith Roberson at (510) 622-2404 or by email at KRoberson@waterboards.ca.gov.

Sincerely,


Bruce H. Wolfe
Executive Officer

Attachment: Section 13267 Fact Sheet
cc w/o attachment: Mailing List

Dr. Collin Mbanugo

- 4 -

Mailing List

Moju Environmental Technologies
Attn: Mr. Akali Igbene
780 Chadbourne Road, Suite A1
Fairfield, CA 94585

Mr. Alan Berman
5171 McDonell Avenue
Oakland, CA 94619

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Santa Monica, CA 90405

Alcoa Inc.
Attn: Ralph Waechter, Esq.
Alcoa Corporate Center
201 Isabella Street
Pittsburgh, PA 15212-5858



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

Fact Sheet

Site and Creek Restoration at Leona Heights Sulfur Mine

McDonnell Avenue, Oakland, California

August 2006

Purpose

This Fact Sheet was prepared by staff at the Regional Water Quality Control Board, San Francisco Bay Region ("Water Board") to inform the public of work planned to improve environmental quality at a former mine site. The following paragraphs describe the nature and location of the site, and explain the need for the proposed site restoration project.

Background & Site History

The Leona Heights Sulfur Mine is a long-abandoned pyrite mine located in the Oakland Hills between Merritt College and Mills College, about 0.5 mile northeast from the intersection of Highway 13 and Interstate 580. The former mine is located at the end of McDonnell Avenue. The mine is not associated with the former Leona Quarry, where residential development is now occurring.

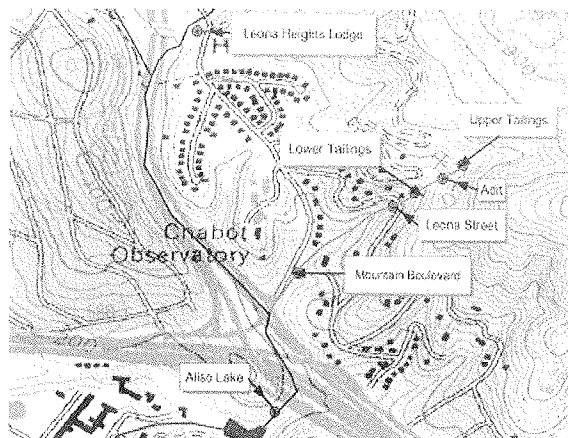
The mine was operated from about 1900 through the 1920s to extract pyrite (iron sulfide) crystals from the volcanic bedrock for production of sulfuric acid.

A large volume of waste rock left behind from mine operations partially fills a steep ravine through which a small seasonal creek flows. In the upper portion of the former mine site, the creek has eroded downward through the waste rock, forming a deeply incised channel. In the lower portion of the site, the creek generally skirts around the southern edge of the waste rock pile.

Environmental Problems at the Site

The waste rock at the site contains elevated concentrations of sulfur and metals such as iron, lead, copper, and arsenic.

The waste rock piles are more porous than the native bedrock, which allows water to migrate easily through the material. Contact between water and the sulfur-rich waste rock, primarily during the rainy season, causes sulfur to be dissolved, promoting the formation of sulfuric acid within the waste rock piles. Discharge of acidic water from the waste rock, known as acid mine runoff, is indicated at the site by the characteristic yellow coloration in the streambed. Creek sampling has shown very acidic conditions in the creek, with the pH sometimes dropping below 3. The low pH, in turn, increases the solubility of metals present in the waste rock, resulting in high metals concentrations in the creek. Water quality in the creek is impacted visually and chemically for a considerable distance downstream from the site.



Site Location Map

Site Restoration Plans

The Water Board issued a Site Cleanup and Abatement Order in 2003 that requires the current property owner and other involved parties to address the acid mine runoff situation and improve water quality at the site. The owner has submitted a Corrective Action Plan to minimize contact between water and the waste rock pile. The plan includes re-grading and stabilizing the waste rock piles, installing sub-drains to convey groundwater along the interface between the waste rock and bedrock, and covering the re-graded surface with an impermeable cap and vegetative cover. The plan also includes reconfiguring the surface drainage pattern to route the creek around the perimeter of the capped waste rock pile, and restoring a more natural stream channel appearance.

These actions will improve water quality by minimizing infiltration of rainwater into the waste rock and reducing the amount of contact between water and sulfur in the waste rock piles, thereby reducing the formation of acid.



Stream Channel Formed in Waste Rock Pile

Schedule

The property owner is in the process of obtaining permits necessary to gain access to the site and perform creek restoration. Once all permits have been issued, field work will begin with preparation of access roads and re-grading of the waste rock piles, followed by creek restoration, installation of the cap and soil cover, and revegetation. It is anticipated that all site restoration work will be completed before the next rainy season begins.

Regulatory Information

The Water Board is the lead agency overseeing the remediation at this site. Certain aspects of the project are regulated by the U.S. Army Corps of Engineers, California Department of Fish & Game, and the City of Oakland. If you have specific questions regarding the site, please contact:

Keith Roberson
Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2404
KRoberson@waterboards.ca.gov

or

Brian Matsumura
Project Coordinator
City of Oakland
(510) 238-3882
BPM@oaklandnet.com

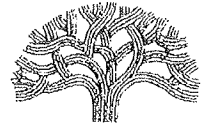
Critical Dates in Leona Mine Administrative Civil Liability Case

- January 30, 1998: Board issues Cleanup and Abatement Order to Ridgemon Development Co. & former owners of the property.
- **November 29, 2001: Dr. Mbanugo acquires property from Ridgemon Development and assumes liability for cleanup.**
- **April 14, 2003: Board amends CAO No. 98-004 to add Dr. Mbanugo to the list of Dischargers. Amended CAO requires submittal and implementation of Corrective Action Plan and Implementation Schedule (CAP), to be followed by semi-annual monitoring.**
- August 25, 2003: Discharger submits CAP
- Sept. 11, 2003: Water Board staff approves CAP
- March 1, 2004: Discharger submits Summary Design Report and Construction Documents, indicating construction would be performed summer of 2004
- March 17, 2004: Staff approves Summary Design Report and schedule. Work was not performed during Summer 2004.
- April 2005: Staff contacts Discharger and requests status report.
- April 15, 2005: Discharger responds, says contractor will be selected and work will begin in July 2005
- June 27, 2005: Discharger submits applications to City of Oakland for grading and creek protection permits
- July 27, 2005: City of Oakland notifies Dr. Mbanugo that permit applications were incomplete. City staff also expresses significant concerns with project design and its potential impacts to creek. Water Board staff agrees with need to revise design. Discharger requests additional time to revise the project design to address City's concerns.
- **October 6, 2005: Executive Officer issues 1st Notice of Violation for failure to implement corrective actions.**
- November 1, 2005: Discharger submits Revised Scope of Work and Project Schedule. Discharger proposes to submit revised Corrective Action Design and resubmit permit applications by December 31, 2005 and perform site restoration in Summer 2006.
- **December 16, 2005: Executive Officer issues 13267 Letter approving Revised Scope of Work and Schedule proposed by Discharger. This letter requires submittal of monthly status reports. *This is the letter we are enforcing with this ACL.***
- **March 10, 2006: Executive Officer issues 2nd NOV for failure to submit revised design plan and permit applications.**
- April 10 – 11, 2006: Discharger submits revised project design to Water Board. Discharger also submits permit applications to City of Oakland and to Water Board for Section 401 Water Quality Certification and to Army Corps for Section 404 Certification.
- May 11, 2006: City of Oakland determines permit applications incomplete, and requests additional information from Discharger to support permit applications.

City requests information on CEQA compliance, including an analysis of project's possible qualification for CEQA exemption.

- June 2006: Staff contacts Discharger's consultant for project update; consultant has stopped work because Discharger is no longer paying bills.
- July 6, 2006: Staff issues conditional approval of revised CAP. Several calls to Discharger are not returned.
- **July 17, 2006: Executive Officer issues 3rd NOV for failure to obtain permits and implement work.**
- August 10, 2006: Discharger's remediation design consultant notifies staff he has resumed work on case after receiving partial payment.
- March 1, 2007: Discharger and his contractors and CEQA consultants, along with Water Board staff, attend meeting at City of Oakland to discuss the information City needs to issue permits. Discharger said that all requested information would be provided to the City by May 1, 2007.
- **May 4, 2007: Discharger submits last Monthly Progress report to Water Board.**
- September 28, 2007: Discharger's CEQA consultant copies Water Board on letter to Dr. Mbanugo withdrawing its proposal to perform CEQA analyses. Discharger's remediation design consultant also confirms he is no longer performing work on project due to lack of payment.
- October 30, 2007: Staff speaks with Dr. Mbanugo by telephone regarding project status. Dr. Mbanugo says he has been out of the country for several months but would re-start project soon.
- **July 31, 2008: Staff issues ACL Complaint via certified mail to Dr. Mbanugo for failure to comply with December 16, 2005 13267 letter.**

CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency
Planning & Zoning Services Division(510) 238-3911
FAX (510) 238-4730
TDD (510) 839-6451

July 27, 2005

Collin Mbanugo
3300 Webster Street -- Suite 900
Oakland, CA 94609Re: **Leona Heights Sulfur Mine - Abatement and Cleanup**
Creek Protection Permit -Application # CP05-106 (filed on 6/27/05)

Location: End of McDonell Ave. (APN: 037A-3151-002-06)

Dear Mr. Mbanugo:

Section 65943 of the California Code requires a determination in writing as to the completeness of an application for a development project. This letter does not constitute either an approval or a denial of your application.

Your application for a Creek Protection Permit as part of the clean-up and abatement of the abandoned Leona Heights Sulfur Mine has been found to be:

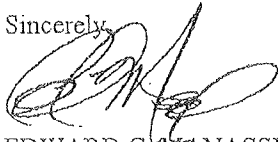
[X] **INCOMPLETE. Additional information or material is needed in order to process your application.** Please submit additional and/or revised application materials that address the specific items listed below:

1. **Construction Staging/Work Plan**, prepared in site plan format, showing in actual location and area all of the following:
 - a. Equipment and personnel decontamination facilities;
 - b. Location and method for temporary stockpiling of soil and other materials;
 - c. Mitigation measures for potential adverse impacts of construction activities on adjacent properties, including but not limited to - noise impacts from operation of heavy equipment, dust from grading, and disruption of traffic flow;
 - d. Traffic routing plan - show proposed delivery and off-haul routes (with specific public or private streets, roads, or accessways identified, as applicable), and temporary on-site circulation areas;
 - e. Temporary fencing;
 - f. Parking areas for construction workers and equipment;
 - g. Details of debris removal and disposal; and
 - h. Any other work staging functions that require the Engineer's review, acceptance or approval.
2. **Erosion Control Plan**, prepared in site plan format, showing in actual location and area all of the following:
 - a. All mechanical and vegetative measures to reduce erosion and sedimentation, including the type and location of all temporary silt fencing (such as sandbags, filter fabric, etc.), and areas to be hydro-seeded and/or landscaped upon project completion.

3. **Drainage Plan (both temporary and long-term)**, prepared in site plan format, showing in actual location and area all of the following:
 - a. Temporary drainage measures - Specify the methods and location for any temporary re-routing of existing creek and adit discharge flows required to facilitate construction. Specify outflow locations.
 - b. Permanent drainage measures - Specify all permanent drainage measures, such as the outflow locations for new subsurface drainage, and methods of dissipation.
4. **Grading within the street right-of-way.** The submitted Buttress Excavation Plan (Sheet C-2), Site Drainage Plan (Sheet C-3), and Waste Rock Grading Plan (Sheet C-4) appear to show excavation and/or grading activities extending into the McDonnell Avenue right-of-way. Any proposed grading within the street ROW will require review and approval of additional City permits, such as encroachment, grading and/or building permits.
5. **Tree Removal/Protection**, prepared in site plan format, showing all of the following:
 - a. The size (dbh), species, and location of all protected trees within 30 feet of construction activity on the subject lot, and whether or not the indicated trees are to be removed or preserved.
 - b. All protected trees located within 10 feet of construction (including trees located on neighbor's properties or the adjacent public right-of-way).

If you have any questions, feel free to contact me at (510) 238-7733. Thank you for your prompt response to this request.

Sincerely,



EDWARD C. MANASSE

Planner IV - Design Review Supervisor

Community and Economic Development Agency

Tel: (510) 238-7733

Fax: (510) 238-4730

Email: emanasse@oaklandnet.com

Cc: Mark Wald / Senior Deputy City Attorney, Oakland, City Attorney's Office
Alison Schwarz / City of Oakland, Environmental Services Division, Public Works Agency
Lesley Estes / City of Oakland, Environmental Services Division, Public Works Agency
Dominic Ma / City of Oakland Building & Engineering Services
Jon Ewigleben / City of Oakland Building & Engineering Services
Brian Matsumura / City of Oakland Building & Engineering Services

Collin Mbanugo
Properties on 2006 Tax Roll

Held as separate property or in joint tenancy

Campus Drive	22 acres	Assessed value:	\$24, 743
Campus Drive	.53 acres	Assessed value	\$6,185
Ridgemont Drive	135.7 acres	Assessed value	\$131,962
Ridgemont Drive	20.9 acres	Assessed value	\$20,619
Keller Ave	20.2 acres	Assessed value	\$20,619
Pinecrest Drive	.09 acres	Assessed value	\$2,061
90 Skyway Lane	5.3 acres	Assessed value	\$971,190

Properties held as trustee

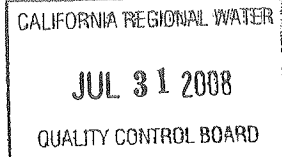
Equestrian Trail	13.66 acres	Assessed value	\$190,062
Ridgemont Drive	3.9 acres	Assessed value	\$351,581
3 Commodore Dr., #B160	condo	Assessed value	\$138,179

APPENDIX D

Discharger Response to Complaint

Collin A. Mbanugo, M.D., F.A.C.S.

GENERAL & VASCULAR SURGERY
DIPLOMATE, AMERICAN BOARD OF SURGERY
P.O. Box 8353
EMERYVILLE, CA 94662



Alan D. Friedman
California Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612

July 30, 2008

CERTIFIED

RE: ACL Complaint Number R2-2008-002

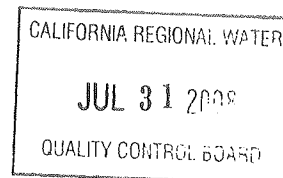
Dear Mr. Friedman,

This letter confirms my intention to appear before the Water Board at its September 10, 2008 meeting to contest this matter.

I must begin by apologizing for not submitting monthly status report since May 2007. As I discussed with Mr. Terry Seward in late 2007, I was experiencing cash difficulties and hoped to resume work in early 2008.

In January 2008, I paid Geofon (Insight Environmental) the balance due on their account with expectation they will resume preparation of the closure work plan. As you can see from the attached E-mail dated 01/30/2008 Insight Environmental abruptly pulled out of the project. I then sought proposals from Lucy Armentrout, AICP and subsequently LSA Associates Inc. (1st proposal pages attached).

Page 1



In summary, money difficulties slowed the progress of CAO. Additionally, one major consultant (Insight) abruptly pulled out. I am sorry I did not communicate these difficulties to the Water Board in writing.

Moving forward, Peters & Ross will prepare the Closure Work Plan. LSA will prepare the environmental documents for City of Oakland Permit. Monthly Status Report will be submitted. Thank you for your patience and consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Collin A. Mbanugo".

Collin A. Mbanugo, M.D.

CAM:ODL

Attachments

1. 13 copies of cover letter.
2. 14 copies each of proposal
3. 14 Copies of rescission of work

Subj: Rescission of work
Date: 1/30/2008 4:50:26 P.M. Pacific Standard Time
From: dmarks@insight-eeec.com
To: petersross@aol.com
CC: cduckworth@geofon.com

Dear Mr. Mundy,

Insight EEC, Inc. is no longer interested in providing our services on the Leona Heights project and/or work plan. We consider payment to date as "in full" and hereby rescind our working relationship with Dr. Colin Mbanugo and/or Peters & Ross on the Leona Heights project.

Thank you,

Dave Marks, PG
Senior Project Manager
Insight Environmental Engineering & Construction, Inc.
4620 Northgate Blvd., Suite 155
Sacramento, CA 95834
(916) 923-3335 office
(916) 201-7187 cell
(916) 923-3336 fax

Please Make Note Of Our Email Address Domain Change To: @leeci.com

IMPORTANT NOTICE: This message and any attachment is intended only for the addressee and may contain confidential, privileged information. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this message and any attachments is strictly prohibited. If you have received this message in error, please immediately notify the sender by reply email and delete the message and any attachments.

Thursday, January 31, 2008 AOL: PetersRoss

Dr. Collin Mbanugo
3300 Webster Street, suite 900
Oakland, CA 94609

c/o Mr. Peter Mundy
Peters & Ross Engineers
114 Hopeco Road
Pleasant Hill, CA 94523

March 21, 2008

Subject: Proposal/Contract to Conduct Environmental Analysis and Prepare Appropriate Report/Determination under the California Environmental Quality Act ("CEQA"), for review and approval by the City of Oakland, for the Leona Heights Sulfur Mine Creek Reclamation and Reconstruction Project

Dear Dr. Mbanugo and Mr. Mundy,

I am pleased to present this proposal/contract ("Proposal") to conduct an environmental analysis and preparation of CEQA documents, currently presumed to be a determination of Categorical Exemption (the "Project"), for your Leona Heights Sulfur Mine property. This property is located at the terminus of McDonell Avenue in Oakland, California (the "Property"). The aforementioned analysis will be undertaken, and documents prepared and submitted to the City of Oakland, in order to secure the City's formal determination that no significant impacts will result from the proposed geotechnical reinforcement and soils capping, and creek remediation and reconstruction work (the "Remediation Work").

This Proposal is based on the following understanding of the project background and position in relation to discretionary approvals sought from the City of Oakland.

Project Description

The project site is approximately 2 acres, located in the Oakland Hills between Merritt College and Mills College, and about 0.5 mile northeast from the intersection of Highway 13 and Interstate 580 (above – east of – Interstate 580). It is currently accessed from a cul-de-sac parking area at the uppermost end of McDonell Avenue.

Project Background and History

A fact sheet prepared by the Regional Water Quality Control Board ("RWQCB") defines certain environmental concerns at the Property. The mine on the Property was used for pyrite mining from about 1900 through the 1920s. Large quantities of waste rock (mine tailings) were left on the Property after the mining extraction of pyrite (iron oxide) was



LSA ASSOCIATES, INC.
2215 FIFTH STREET
BERKELEY, CALIFORNIA 94710

510.540.7331 TEL
510.540.7344 FAX

CARLSBAD
FORT COLLINS
IRVINE

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April 25, 2008

Dr. Collin A. Mbanugo
3300 Webster Street, Suite 900
Oakland, CA 94609

Subject: Proposal to Conduct CEQA Analysis for the Leona Heights Sulfur Mine Remediation Project

Dear Dr. Mbanugo,

LSA Associates, Inc. (LSA) is pleased to submit this revised proposal to conduct environmental analysis pursuant to the California Environmental Quality Act (CEQA) for the Leona Heights Sulfur Mine Remediation (project) in Alameda County, California. Our understanding of the project, LSA's scope of work, required materials, project schedule, and cost estimate are summarized below. This revised scope of services supersedes the previous proposal submitted on April 24, 2007.

Primary staff on this project will be Judith Malamut, Principal and Dennis Brown, Ph.D., Associate, who will serve as the overall project manager. Dennis will be assisted by Steve Foreman, Principal Biologist; Tim Milliken, Arborist; and planning staff in the LSA Berkeley office. LSA will coordinate with Peter Mundy of Peters and Ross for geology and soils and hydrology and water quality issues and compliance with the Regional Water Quality Control Board (RWQCB) requirements and City of Oakland standard conditions.

A. PROJECT UNDERSTANDING

The following project understanding is based on the Fact Sheet prepared by the RWQCB, our discussions, review of background materials, and two meetings (March 1, 2007 at the City of Oakland offices, and a site visit on March 8, 2007). The approximately 2-acre Leona Heights Sulfur Mine Remediation project site is located southeast of the eastern terminus of McDonnell Avenue approximately one-half mile northeast of the intersection of I-580 and State Highway 13 in the Oakland Hills. The project site contains mine tailings from an abandoned mine that was operated from about 1900 through the 1920s to extract pyrite (iron sulfide) crystals from the volcanic bedrock for production of sulfuric acid. A large volume of mine tailings left behind from mine operations partially fills a steep ravine through which a small seasonal creek flows. In the upper portion of the former mine site, the creek has eroded downward through the mine tailings, forming a deeply incised channel. In the lower portion of the site, the creek generally skirts around the southern edge of the mine tailings. The creek channel runs northeast to southwest throughout the length of the property.

The mine tailings at the site contain elevated concentrations of sulfur and metals such as iron, lead, copper, and arsenic. The tailings piles are more porous than the native bedrock, which allows water to migrate easily through the material. Contact between water and the sulfur-rich mine tailings, primarily during the rainy season, causes sulfur to be dissolved, promoting the formation of sulfuric acid within the tailings piles. Discharge of acidic water from the mine tailings, known as acid mine runoff, is indicated at the site by the characteristic yellow coloration in the streambed. Creek sampling