



California Regional Water Quality Control Board

Santa Ana Region



Winston H. Hickox
Secretary for
Environmental
Protection

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July 12, 2001

JUL 16 2001

WEST NEWPORT OIL

Mr. Robert Armstrong
West Newport Oil,
Armstrong Petroleum Corporation,
& Rancho Santiago Partnership
P.O. Box 1547
Newport Beach, CA 92663

Mr. George Bayse
Aera Energy LLC
3030 Saturn Street, Suite 101
Brea, CA 92821

**CLEANUP AND ABATEMENT ORDER NO. 01-77; WEST NEWPORT OIL,
ARMSTRONG PETROLEUM CORPORATION, AERA ENERGY LLC, AND RANCHO
SANTIAGO PARTNERSHIP CORPORATION**

Dear Messrs. Armstrong and Bayse:

Enclosed is Cleanup and Abatement Order No. 01-77, that I have issued to West Newport Oil, Armstrong Petroleum Corporation, Aera Energy LLC, and Rancho Santiago Partnership Corporation, for violations of Sections 401 and 402 of the Clean Water Act and Sections 13260, 13264, 13272, and 13376 of the California Water Code resulting from the discharge of oil and other waste to waters of the State, at the West Newport Oil site located at 1080 West 17th Street in Costa Mesa, California.

Regional Board staff conducted an inspection of the West Newport Oil site on January 21, 1999, and collected water and soil samples that demonstrate that illegal discharges and disposal of oil waste and other waste into waters of the State has occurred, and was occurring, at various locations throughout the site. Enclosed is a report of the findings of this inspection. Staff has been working closely with the Orange County District Attorney in the investigation of these illegal discharges and recently completed the investigation.

California Environmental Protection Agency

Messrs. Armstrong and Bayse
Cleanup and Abatement Order No. 01-77

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July 12, 2001

Please call me at (909) 782-3284, or Ken Theisen at (909) 320-2028 if there are any questions regarding the enclosed order or the report.

Sincerely,



Gerard J. Thibeault
Executive Officer

Enclosures: CAO No. 01-77
June 15, 2001 Staff Report

cc w/ enclosures:
Kip Kinnings, OCDA
SWRCB, Ted Cobb
USEPA, Tom Huettemans and Aaron Setran
OCPFRD, Chris Crompton

California Environmental Protection Agency

Z

**California Regional Water Quality Control Board
Santa Ana Region**

Cleanup and Abatement Order No. 01-77

For

**West Newport Oil, Armstrong Petroleum Corporation,
Aera Energy LLC, and Rancho Santiago Partnership
Newport Beach
Orange County**

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

1. West Newport Oil (WNO) operates an oil drilling operation on approximately 400 acres of historic marshlands adjacent to the mouth of the Santa Ana River in Newport Beach, California. The property is owned by Armstrong Petroleum Corporation, Aera Energy LLC and the Rancho Santiago Partnership. WNO, Armstrong Petroleum Corporation, Aera Energy LLC and the Rancho Santiago Partnership are hereinafter referred to in this order as the discharger.
2. In May of 1998, staff from the United States Environmental Protection Agency (USEPA) and a consultant for the discharger completed a jurisdictional determination that delineated areas of the property that are considered to be waters of the United States. This jurisdictional determination found that between 60 to 80 acres of federal jurisdictional waters exist on the 400 acre site. These wetlands are also waters of the State.
3. The Water Quality Control Plan, Santa Ana River Basin, (Basin Plan), adopted by the Board on March 11, 1994, establishes water quality standards for waters of the State in the Region. The Basin Plan identifies the Santa Ana River Salt Marsh, which includes the WNO site, as wetlands and establishes beneficial uses of wetlands. The Basin Plan has identified the beneficial uses of wetlands to include body contact recreation, non-body contact recreation, aquatic habitat, wildlife habitat, and rare and endangered species habitat.
4. The Basin Plan establishes a narrative water quality objective for oil that prohibits discharges of oil that cause a visible sheen on the water. The Basin Plan also includes water quality objectives for toxic substances, such as arsenic, as well as a narrative objective that states, "The concentrations of toxic substances in the water column, sediments, or biota shall not adversely affect beneficial uses."
5. The USEPA May 1998 jurisdictional determination report documents that between 4 to 6 acres of wetland waters of the United States on the site have been filled with discharges of fill and concrete material, since 1994. These discharges have not been permitted by the Corps of

Engineers, in accordance with Section 404 of the Clean Water Act (CWA), nor were they given water quality certification by the Regional Board, pursuant to Section 401 of the CWA.

Therefore, these discharges of fill material by the discharger are in violation of Sections 404 and 401 of the CWA and Sections 13260, 13264, and 13376 of the California Water Code (CWC).

6. On January 21, 1999, Regional Board Staff conducted an inspection of WNO and collected soil and water samples from locations throughout, and adjacent to, the site. The inspection was conducted with staff from the Orange County District Attorney's office and the California Department of Fish and Game.
7. The soil and water quality monitoring data from the January 1999 site inspection by Board staff shows that liquid oil waste, mixed with water, has been discharged into unlined pits on site at the base of the bluff. This disposal operation was observed by Board staff.
8. The soil samples collected by Advanced GeoEnvironmental, Inc., (consultants to Orange County District Attorney's office), on January 21, 1999, identified as samples GP3-D4, GP5-D4, GP7-D5, GP7-D8, GP9-D6, and GP9-D8, had concentrations of C8-C32 hydrocarbons, indicative of diesel and petroleum oil waste, ranging from 3,900 to 87,000 mg/kg (ppm). These soil samples were collected from borings adjacent to active waste oil disposal pits and in borings where a ground penetrating radar survey identified anomalies that was suspected to be waste disposal pits that had been filled in by WNO. These soil samples demonstrate that WNO was discharging, and has discharged, waste oil to unlined waste disposal pits on site, without filing a report of the discharge, as required by Section 13260 of the CWC. Further, WNO would not have been permitted to discharge the liquid oil waste into unlined pits. Such pits do not meet the requirements for a land disposal operation contained in Title 23, Chapter 15 of the California Code of Regulations.
9. The water quality monitoring conducted by Regional Board staff at the WNO site shows that on-site surface water drainages that discharge to wetland areas on site and to adjacent wetlands and surface waters around the site contain concentrations of oil and arsenic that exceed water quality objectives in the Basin Plan.
10. The concentrations of oil found in the surface waters on and adjacent to the site were also at levels that may cause toxicity to aquatic organisms that live in these wetlands and surface waters. The surface water samples collected from the WNO site contained concentrations, in the diesel range (C10-C23), ranging from 190 to 820 ppb of total petroleum hydrocarbons. The discharge of this water to wetlands on site and surface waters adjacent to the site violates the Basin Plan objectives for oil, and may violate the objectives for toxicity.
11. Concentrations of arsenic in the surface water samples ranged between 81 to 84 ppb, which exceeds the Basin Plan objective of 36 ppb, established to protect aquatic life.

12. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Order No. 97-03-DWQ, General Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities (NPDES Permit No. CAS000001, General Permit), which regulates the discharge of storm water runoff from industrial sites in the State. Order No. 97-03-DWQ exempts mining and oil and gas facilities from the requirements of the permit if there has not been a release of storm water resulting in a discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR Parts 110, 117, and 302 at any time after November 1987. Discharges of storm water runoff from oil and gas sites, such as WNO, are not required to be permitted unless the industrial storm water discharge has contributed to a violation of a water quality standard.
13. The discharges of waste and fill material at the WNO site have caused, and/or contributed to, violations of water quality standards, as discussed above. Therefore, the exemption in Order No. 97-03-DWQ does not apply to WNO, and the requirements of Order No. 97-03-DWQ apply to WNO. WNO has not complied with any of the requirements of Order No. 97-03-DWQ, by failing to submit a notice of intent to be covered by the General Permit, which is considered to be a report of waste discharge pursuant to Section 13260 of the CWC. Therefore, discharges of storm water runoff from WNO are in violation of Sections 13260 and 13264 of the CWC.
14. The extent of all the waste disposal areas have not been defined and further investigation is needed to fully characterize the extent of illegal waste disposal at the WNO site.
15. The discharger has discharged oil waste and concrete and earthen fill material into waters of the State, and waters of the United States, in violation of Sections 401, 402, and 404 of the CWA and Sections 13260, 13264, 13272 and 13376 of the CWC. The discharge of these wastes into waters of the State has destroyed beneficial uses of waters of the State and are also in violation of numerous water quality standards and objectives established by the Regional Board in the Basin Plan. The discharge of waste has caused the destruction of at least 4 to 6 acres of wetlands, and may be posing a threat to other beneficial uses of adjacent wetlands and surface waters of the Newport Slough.
16. CWC Section 13260, and its counterpart Section 13376, for waters of the United States, require that any person discharging waste and/or fill material that could affect the quality of the waters of the State, file a report of waste discharge with the appropriate Regional Board. The discharger has not complied with this requirement for any discharges of waste and fill material that have occurred at the site. These discharges of waste and fill material are also in violation of Section 13264, Prerequisites to Discharge, that prohibit any person from initiating a new discharge to waters of the State prior to filing the report of waste discharge required by Section 13260.

17. The discharger has caused or permitted waste to be discharged where it is or probably will be discharged to waters of the State and has created, or threatens to create, a condition of pollution or nuisance. Therefore, pursuant to CWC Section 13304, it is appropriate to require the discharger to clean up such waste and abate the effects thereof or take other appropriate remedial action.
18. This action is being taken for the protection of public health and the environment, and as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

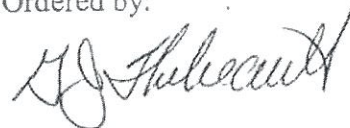
IT IS HEREBY ORDERED that, pursuant to Section 13304, Division 7, of the California Water Code, West Newport Oil, Armstrong Petroleum Corporation, Aera Energy LLC and the Rancho Santiago Partnership shall:

1. Forthwith cease discharging oil waste, fill material, and other waste in a manner in which state waters are impacted or threatened.
2. By October 1, 2001, submit a workplan acceptable to the Executive Officer for determining the vertical and lateral extent of oil waste discharged at the WNO site. The workplan shall also include a proposal to define the extent of fill material discharged to waters of the State. The workplan must describe any necessary soil borings and monitoring well installations, and soil and water testing needed to define the extent of contaminant migration and impact. The workplan shall describe the locations, depths, construction details, and sampling procedures of all monitoring wells, the target constituents to be analyzed, and the analytical methods to be utilized. The workplan shall include a proposed time schedule for the completion of the fieldwork, and the preparation and submittal of a complete report of the findings and recommendations.
3. Implement the proposed work plan submitted pursuant to No. 2 above, in accordance with the time schedule approved by the Executive Officer.
4. Conduct any additional fieldwork necessary to further define the extent of oil contamination, and fill material discharged to waters of the State, in accordance with the time schedule(s) approved by the Executive Officer, until the extent of contamination and fill material discharged to waters of the State, are fully defined.
5. Within 60 days of being notified by the Executive Officer that it is appropriate to begin cleanup, submit a remedial action plan (RAP) for completing the cleanup. At a minimum, the RAP shall include the following:

- A plan for restoring wetlands that have been destroyed by the discharger, and to mitigate for the temporal loss of the beneficial uses of these wetlands for the time period of the illegal discharges.
 - A plan for the cleanup of the oil waste, that includes an evaluation of all appropriate hydrogeologic parameters.
 - A time schedule for design, construction, startup and operation of all related cleanup activities.
 - A plan and schedule for complying with SWRCB Order No. 97-03-DWQ.
 - A proposal for completion and submittal of quarterly progress reports to the Executive Officer.
6. Implement the proposed RAP submitted pursuant to No. 5 above, in accordance with the time schedule approved by the Executive Officer.

Failure to comply with the terms and conditions of this Order may result in imposition of civil liability, either administratively by the Board or judicially by the Superior Court in accordance with Section 13350, et seq., of the California Water Code, and/or referral to the Attorney General of the State of California for such action as he/she may deem appropriate (CWC Section 13304(a)).

Ordered by:



Gerard J. Thibeault
Executive Officer

Date: 7-12-01



California Regional Water Quality Control Board

Santa Ana Region



Winston H. Hickox
Secretary for
Environmental
Protection


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TO: Mike Adackapara
Supervising WRCE

FROM: 
Ken Theisen, Sanitary Engineering Associate
SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

DATE: June 15, 2001

SUBJECT: West Newport Oil (WNO) Investigation, Status Report

This memo provides a status report on the subject investigation, summarizes my review of the evidence we have in the record to date, and recommends a course of action towards correction of violations of the California Water Code and cleanup of oil and other waste discharged to waters of the State.

The Orange County District Attorney's (OCDA) office has almost completed their investigation of WNO, and has requested my analysis of the evidence in our record before proceeding with any action. The OCDA has been working with our office and the USEPA Region 9 office in this investigation.

In summary, there is evidence that WNO has discharged oil waste and concrete and earthen fill material into waters of the State, and waters of the United States, in violation of Sections 401, 402, and 404 of the Clean Water Act (CWA) and Sections 13260, 13264, 13272 and 13376 of the California Water Code (CWC). The discharge of these wastes into waters of the State has destroyed beneficial uses of waters of the State and are also in violation of numerous Water Quality Standards and Objectives established by the Regional Board in the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan). The discharge of waste has caused the destruction of at least 4 to 6 acres of wetlands, and may be posing a threat to other beneficial uses of adjacent wetlands and surface waters of the Newport Slough. Because there has been a discharge of oil waste at WNO that has contributed to violations of water quality standards, the exemption for WNO from the SWRCB's General Stormwater Runoff NPDES permit for Industrial sites does not apply to WNO. Therefore, WNO is subject to the general, or individual, waste discharge requirements for stormwater runoff from the facility, and discharges of stormwater runoff from the facility are in violation of the General Industrial NPDES permit. A Draft of a Cleanup and Abatement Order (CAO) has been prepared (Attachment A) that requires WNO to define the extent of all illegal waste disposal activities on site and propose, and implement, a plan for cleanup.

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MJA

West Newport Oil

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I have met with the Orange County District Attorney's office on this case and this memo and the Draft CAO may assist them in their investigation of WNO and to followup on the implementation of cleanup, as needed. The OCDA would like us to handle the cleanup. The USEPA has also been working with the OCDA on this investigation and is planning on issuing an enforcement action to address the Section 404 violations. However, both the OCDA and USEPA wanted me to address all the violations of State law so the Draft CAO also addresses these violations of Section 404, which are also violations of State law because we provide water quality certification for discharges regulated under Section 404. Since the discharges violate several water quality standards and objectives established in the Basin Plan these discharges would not be given water quality certification, and in any event, WNO has not obtained any permits pursuant to Section 404. USEPA staff has also informed me that they support our addressing the violations of Section 404 of the CWA resulting from the discharge of fill material to wetland waters of the United States.

Because of the loss of beneficial uses of waters of the State caused by the illegal fill material, the concentrations of oil found in the soil and the water at the site, and the proposed use of the site as a park adjacent to a residential development, **I recommend that the CAO be issued by the Executive Officer to require WNO to cleanup the oil and other waste and restore beneficial uses of the waters of the State. The cleanup order incorporates cleanup criteria from the Aera Energy Oil Site cleanup in Yorba Linda, which had oil waste similar to WNO and was proposed for residential and park development.** The cleanup order also requires WNO to define the extent of illegal fill discharges into wetlands on site and propose and implement a cleanup and restoration plan for these wetlands. The order includes a requirement for WNO to provide restoration for the temporal loss of the beneficial uses of the wetlands, since the illegal fill discharges have occurred over many years. This temporal mitigation will compensate for the loss of wetland beneficial uses until the wetlands can be restored. Although WNO is also subject to civil liabilities because of these violations, and has also avoided legal waste disposal costs because of these violations, I do not recommend an ACL complaint because the OCDA is likely to address these issues in their action. I will also work with the OCDA and USEPA to ensure our cost recovery for this enforcement action and to address any of their concerns.

Background

After receiving notice of possible illegal disposal of oil waste at the West Newport Oil (WNO) site in Newport Beach (Figure 1), Regional Board Staff conducted an inspection of the facility and collected soil and water samples from locations throughout, and adjacent to, the site. The inspection was conducted on January 21, 1999. The inspection was conducted with staff from the Orange County District Attorney's office and the Department of Fish and Game.

Figure 2 shows the locations of water samples, and Figure 3 shows the locations of the soil samples, that were collected during the inspection. Table 1 summarizes the water quality data and Table 2 summarizes the soil data.

Waters of the State and the United States

Before discussing the monitoring evidence showing violations of water quality standards it is important to clarify the locations of the various discharges in order to apply the appropriate standard. Discharges have occurred into surface water bodies, an enclosed bay and estuary, wetlands, and some upland areas that may impact ground and surface waters of the State. The Basin Plan contains different water quality standards for each of these different types of waters of the State.

The WNO site is located on the Newport Banning Ranch property adjacent to the Santa Ana River and Newport Slough (Figure 1). Historically, this area was part of the mouth of the Santa Ana River and was connected to the west end of Newport Bay. In the 1920s, the Corps of Engineers constructed the current channel for the Santa Ana River that isolated the adjacent wetlands and marsh areas from the river. Oil drilling has occurred on the site since the 1940s and numerous roads were constructed by filling in the marsh areas. The construction of many of these roads was before the adoption of the CWA, and therefore not all the discharges of waste and fill material into the wetlands of the site are in violation of the CWA. However, all discharges after 1972, and the adoption of the CWA, are subject to the requirements of the CWA and the California Water Code.

In May of 1998 USEPA staff and a consultant for the property owner of Banning Ranch completed a jurisdictional determination that delineated areas of the property that are considered to be waters of the United States, for the purposes of determining the extent of illegal discharges into these waters and because the property owner is planning on developing the property and will have to get a Section 404 permit for the development. This jurisdictional determination found that between 60 and 80 acres of federal jurisdictional waters exist on the 400 acre site. These wetlands are also waters of the State. The USEPA also found that between 4 and 6 acres of wetland waters of the United States on the site have been filled with discharges of fill and concrete material, since 1994. These discharges have not been permitted by the Corps of Engineers in accordance with Section 404 of the CWA, nor were they given water quality certification by the Regional Board pursuant to Section 401 of the CWA. These discharges could not be given water quality certification because they violate State water quality standards. It is also important to note that the jurisdictional determination by the property owner and the USEPA only evaluated illegal fill activity on the site since 1994. Based on some evidence from boring logs from the site it appears that other wetland or marsh areas may have been filled after 1972, and therefore more than 60 to 80 acres of the site may be waters of the State/United States.

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However, I have depended on the jurisdictional determination completed in 1994 to be consistent with USEPA and avoid a possible argument about the statute of limitations for illegal fill discharges prior to 1994.

Violations of CWA, CWC, and Water Quality Standards at West Newport Oil/Banning Ranch

There are three different kinds of violations of the Water Code and water quality standards that have occurred at the WNO/Banning Ranch site. First, is the discharge of fill material into wetlands that resulted in the loss of the beneficial uses of these wetlands. Second, is the discharge of liquid oil waste to unlined pits in the ground at various locations throughout the site. And third, the discharge of stormwater, and other runoff, from the site to Newport Slough and adjacent wetlands has concentrations of oil and arsenic that exceed water quality objectives in the Basin Plan.

Violations of Section 401 of the CWA and Sections 13260, 13264, and 13376 of the CWC- Discharges of Fill Material and Concrete Waste to Waters of the State

In our file there is a copy of a June 12, 2000 memo from Aaron Setran (USEPA) to Tim Vendlinski, Robert Leidy (USEPA), and Kip Kinnings (OCDA) which documents those areas of the Banning Ranch/WNO site that are waters of the United States, and therefore, waters of the State. This memo also provides evidence that WNO has discharged fill and concrete waste into wetland waters of the State in violation of Section 404 of the CWA. Since WNO did not obtain a permit from the Corps of Engineers in accordance with Section 404 of the CWA, they also failed to obtain water quality certification of the discharges of fill and concrete waste material into waters of the State. Therefore, these discharges are in violation of Section 401 of the CWA and Sections 13260, 13264, and 13376 of the CWC.

Section 13260, and its counterpart Section 13376 for waters of the United States, require that any person discharging waste, and/or fill material, that could affect the quality of the waters of the State, to file a report of waste discharge with the appropriate Regional Board. WNO has not complied with this requirement for any discharges of waste and fill material that have occurred at the site. These discharges of fill material are also in violation of Section 13264, Prerequisites to Discharge, that prohibit any person from initiating a new discharge to waters of the State prior to filing the report of waste discharge required by Section 13260.

Since these discharges of fill material have destroyed the beneficial uses of the wetlands on site, these discharges are in violation of the Basin Plan water quality standards for wetlands. The Basin Plan establishes beneficial uses for wetlands, including wildlife habitat and rare and endangered species habitat, that have been lost due to these discharges of fill material. The Basin

Plan includes a water quality objective that prohibits the discharge of fill material to wetlands if the discharge adversely affects the beneficial uses of the wetlands.

Violations of Sections 13260 and 13264-Discharge of Liquid Oil Waste to Unlined Pits

The soil and water quality monitoring data shown in Tables 1 and 2 provide evidence from the January 1999 site inspection by Board staff that WNO has discharged liquid oil waste, mixed with water, into unlined pits on site at the base of the bluff. This disposal operation was observed by Board staff. I have also attached copies of statements from Bruce Paine discussing his involvement in the January 21, 1999 site inspection and his interpretation of the soil and water quality data. I concur with his assessment of the data.

The soil samples collected by Advanced GeoEnvironmental, Inc. on January 21, 1999, identified as samples GP3-D4, GP5-D4, GP7-D5, GP7-D8, GP9-D6, and GP9-D8 in Table 2, had concentrations of C8-C32 hydrocarbons, indicative of diesel and petroleum oil waste, ranging from 3,900 to 87,000 mg/kg (ppm). These soil samples were collected from borings adjacent to active waste oil disposal pits and in borings where a ground penetrating radar survey identified anomalies that indicates waste disposal pits that had been filled in by WNO. These soil samples demonstrate that WNO was, and has, discharged waste oil to unlined waste disposal pits on site, without filing a report of the discharge, as required by Section 13260 of the CWC. Further, WNO would not have obtained waste discharge requirements for the waste oil disposal operation because they were discharging the liquid oil waste into unlined pits, which do not meet the requirements for a land disposal operation contained in Title 23, Chapter 15 of the California Administrative Code. These regulations require that liquid waste only be disposed of in waste disposal units that have liners and leachate collection systems, to prevent the liquid waste from migrating and polluting ground and surface waters of the State.

The sample locations shown on Figure 2 are for the locations of the soil borings completed by Advanced GeoEnvironmental, and Table 2 indicates the depths below ground surface where the samples were collected. The logs for the borings completed on site indicate that all the borings were drilled through 8-12 feet of fill material, or loosely compacted "soil". This evidence indicates that WNO placed fill material at the base of the bluff, on what may have been wetlands, and then dug pits in the fill material for the disposal of the liquid oil waste.

The soil sample data from the WNO site in Table 2 also shows that there were active and filled in waste oil pits on site. The radar survey identified areas where the soil was contaminated with oil between 4 and 8 feet below ground surface, indicating the location of a former disposal pit that had been filled in and covered over with dirt. This is confirmed by the fact that groundwater sample GP2 had 2.9 ppm of petroleum hydrocarbons, the highest level found in groundwater at the site, in a location in the assumed upgradient direction from the active disposal pits. The

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inspection in January 1999 did not define the extent of all the waste disposal areas and further investigation is needed to fully characterize the extent of illegal waste disposal at the WNO site.

Violations of Sections 13260 and 13264-Discharge of Wastewater Runoff and Stormwater Runoff to Wetland and Other Surface Waters of the State/United States

The water quality monitoring data in Table 1 shows that the surface water drainages on site, that discharge to wetland areas on site and to adjacent wetlands and surface waters around the site, has water with concentrations of oil and arsenic that exceed water quality standards in the Basin Plan. The Basin Plan water quality objective for oil is a narrative objective that prohibits discharges of oil that cause a visible sheen on the water. The concentrations of oil found in the surface waters of the site, and adjacent to the site, were also at a level that may cause toxicity to aquatic organisms that live in these wetlands and surface waters. Typically, Board staff recommends an effluent limit of no more than 100 ppb of total petroleum hydrocarbons for ground water cleanup sites where petroleum waste is pumped from the ground, treated, and then discharged to surface waters. This effluent limit ensures compliance with the Basin Plan objectives for toxicity, as well as the narrative objective of no visible sheen from an oil discharge. Since the surface water samples had concentrations ranging from 190 to 820 ppb of total petroleum hydrocarbons, in the diesel range (c10-c23), the discharge of this water to wetlands on site and surface waters adjacent to the site violates the Basin Plan objectives for oil, and may violate the objectives for toxicity.

Another reason the discharge of runoff and stormwater from the site may be toxic to aquatic life and violate the Basin Plan toxicity objective is the concentration of arsenic found in the surface water samples collected in January 1999. Concentrations of arsenic in the surface water samples ranged between 81 and 84 ppb, which exceeds the Basin Plan objective of 36 ppb that is established to protect aquatic life from toxic effects.

Based on the data in Table 1, WNO is discharging wastewater runoff from the site, that includes concentrations of oil waste and arsenic, in violation of Basin Plan water quality objectives. WNO is discharging this waste without submitting a report of waste discharge or obtaining waste discharge requirements. The discharge would also be in violation of waste discharge requirements, had WNO obtained the requirements prior to discharging waste. These discharges also are also in violation of Section 13264, because WNO initiated a new discharge without submitting a report of waste discharge in accordance with Section 13260.

On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Order No. 97-03-DWQ, General Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities (NPDES Permit No. CAS000001, General Permit), which regulates the discharge of storm water runoff from industrial sites in the State. Order No. 97-03-DWQ,

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June 15, 2001

exempts mining and oil and gas facilities from the requirements of the permit, if there has not been a release of storm water resulting in a discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR Parts 110, 117, and 302 at any time after November 1987. Discharges of storm water runoff from oil and gas sites, such as WNO, are not required to be permitted unless the industrial storm water discharge has contributed to a violation of a water quality standard.

All the discharges of waste and fill material at the WNO site have caused, and/or contributed to, violations of water quality standards, as discussed above. Therefore, the exemption in Order No. 97-03-DWQ does not apply to WNO and the requirements of this Order apply to WNO. WNO has not complied with any of the requirements of Order No. 97-03-DWQ, by failing to submit a notice of intent to be covered by the General Permit, which is considered to be a report of waste discharge pursuant to Section 13260 of the CWC. Therefore, discharges of storm water runoff from WNO are in violation of Sections 13260 and 13264 of the CWC.

Conclusion and Recommendation

Because of the significant loss of beneficial uses of wetland waters of the State, and a continued threat to wetland waters and surface waters of the State, resulting from the illegal discharge of waste by WNO, I recommend that we ask the Executive Officer to issue a Cleanup and Abatement Order pursuant to Section 13304 of the CWC. I also recommend that we ask the OCDA to prosecute WNO in order to recover the cost of our enforcement activities at WNO, and other legal remedies. A Draft CAO is attached.

Mr. L. Lodrigueza/OCHCA

July 9, 1998

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Table 2. Maximum Allowable Concentrations For Soil
Within Residential Lots and The Planned School Lot Area

Depth From Final Grade	Analysis EPA Method/Constituent	Concentration (mg/kg)
less than or equal to 3.5 feet	418.1/TRPH	100
"	8015/TPH-cc/id (C ₁₃ -C ₂₃ inclusive)	100
"	8020/BTEX	B=nd, T=nd, E=nd, X=nd
"	8015/VFH (C ₄ -C ₁₂ inclusive)	nd
greater than 3.5 feet but less than or equal to 10 feet	418.1/TRPH	500*
"	8015/TPH-cc/id (C ₁₃ -C ₂₃ inclusive)	500*
"	8020/BTEX	B=nd, T=nd, E=nd, X=nd
"	8015/VFH (C ₄ -C ₁₂ inclusive)	nd
greater than 10 feet but less than or equal to 15 feet	418.1/TRPH	15,000
"	8015/TPH-cc/id (C ₁₃ -C ₂₃ inclusive)	15,000
"	8020/BTEX	B=nd, T=0.1, E=0.68, X=1.75
"	8015/VFH (C ₄ -C ₁₂ inclusive)	100
greater than 15 feet and greater than depth of buried utilities	418.1/TRPH	15,000
"	8015/TPH-cc/id (C ₁₃ -C ₂₃ inclusive)	15,000
"	8020/BTEX	B=0.4, T=10.0, E=68.0, X=175.0
"	8015/VFH (C ₄ -C ₁₂ inclusive)	600

Notes:

- * - if odors or visual staining are apparent the concentration will be 100 mg/kg
- mg/kg - milligrams per kilogram
- cc/id - carbon chain identification
- nd - not detected
- EPA - Environmental Protection Agency
- TRPH - total recoverable petroleum hydrocarbons
- VFH - volatile fuel hydrocarbons, C₄-C₁₂ inclusive
- TPH - total petroleum hydrocarbons, carbon chain identification, C₁₃-C₂₃ inclusive
- BTEX - benzene, toluene, ethylbenzene, and total xylenes

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Table 1. Maximum Allowable Concentrations for Soil in Non-Residential Areas, Paved Roads and Open Spaces (excluding the Proposed School Lot)

Depth From Final Grade	Analysis EPA Method/Constituent	Concentration (mg/kg)
less than or equal to 3.5 feet	418.1/TRPH	1,000*
"	8015/TPH-cc/id (C ₁₃ -C ₂₃ inclusive)	1,000*
"	8020/BTEX	B=nd, T=nd, E=nd, X=nd
"	8015/VFH (C ₄ -C ₁₂ inclusive)	ND
greater than 3.5 feet and/or depth of buried utilities but less than or equal to 10 feet ÷	418.1/TRPH	15,000
"	8015/TPH-cc/id (C ₁₃ -C ₂₃ inclusive)	15,000
"	8020/BTEX	B=0.1, T=10.0, E=68.0, X=175.0
"	8015/VFH (C ₄ -C ₁₂ inclusive)	400
greater than 10 feet and/or greater than depth of buried utilities ÷	418.1/TRPH	15,000
"	8015/TPH-cc/id (C ₁₃ -C ₂₃ inclusive)	15,000
"	8020/BTEX	B=0.4, T=10.0, E=68.0, X=175.0
"	8015/VFH (C ₄ -C ₁₂ inclusive)	600

Notes:

- * - if odors are apparent the concentration will be 100 mg/kg - visual staining of highly weathered particles is acceptable
- ÷ - final depth of remediated soil will be such that potential exposure through future excavation activities will be minimized
- mg/kg - milligrams per kilogram
- cc/id - carbon chain identification
- nd - not detected
- EPA - Environmental Protection Agency
- TRPH - total recoverable petroleum hydrocarbons
- VFH - volatile fuel hydrocarbons, C₄-C₁₂ inclusive
- TPH - total petroleum hydrocarbons, C₁₃-C₂₃ inclusive
- BTEX - benzene, toluene, ethylbenzene, and total xylenes