

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 99 - 03

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In the Matter of the Petition of  
**INTERNATIONAL LONGSHORE AND WAREHOUSE UNION**  
for Review of the Failure to Act  
by the  
California Regional Water Quality Control Board,  
Los Angeles Region,  
Regarding  
Hugo Neu-Proler Company

*SWRCB/OCC File A-1183*

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BY THE BOARD:

Hugo Neu-Proler Company (Hugo Neu-Proler or company) recycles scrap metal at a facility on Terminal Island in the East Basin of Los Angeles' Inner Harbor. Last year the International Longshore and Warehouse Union (Union) sent several letters to the California Regional Water Quality Control Board, Los Angeles Region (Regional Water Board), alleging that Hugo Neu-Proler's activities had polluted the waters of Los Angeles Harbor. In the last letter, sent in June 1998, the Union requested that the Regional Water Board take corrective action against the company for unauthorized discharges of scrap metal and shredder waste into the harbor. The Regional Water Board did not respond. The Union then filed a petition for State Water Resources Control Board (State Water Board or Board) review of the Regional Water Board's failure to act.<sup>1</sup> This Order remands the matter back to the Regional Water Board for appropriate action.

I. BACKGROUND

Hugo Neu-Proler leases approximately 26 acres of waterfront and backland property, including two shipping piers, Piers 210 and 211, from the Port of Los Angeles. Scrap

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<sup>1</sup> See Wat. Code § 13320.

metal from various locations is transported to the site, where it is sorted and shredded or sheared. The material is then stockpiled and eventually loaded onto ships for transport overseas.

The Union's efforts to get the Regional Water Board's attention apparently started in February 1998, with a 60-day notice of violations and intent to sue under the federal Clean Water Act.<sup>2 3</sup> This letter, which was addressed to the Regional Water Board, the United States Environmental Protection Agency (U.S. EPA), and others, alleged that Hugo Neu-Proler's past and present activities at its Terminal Island site violated the Clean Water Act and other statutes.

The following month the Union sent two letters to the Regional Water Board requesting that the Board place the waters immediately adjacent to Piers 210 and 211 on the Clean Water Act section 303(d)<sup>4</sup> list as impaired due to historical and ongoing discharges of polychlorinated biphenyls (PCBs) and toxic metals.<sup>5</sup> The Regional Water Board declined this request on the grounds that the data did not support listing the entire East Basin of the Inner Harbor.<sup>6</sup> Additionally, the Regional Water Board noted that, while PCB concentrations were still elevated, they have shown a decreasing trend.

In May, the Union filed a petition with this Board for review of the Regional Water Board's failure to respond to the 60-day notice.<sup>7</sup> This petition was dismissed without prejudice for procedural reasons. The Union then sent another letter to the Regional Water Board in June 1998 requesting that the Regional Water Board take corrective action against Hugo Neu-Proler.<sup>8</sup> The Regional Water Board did not answer the Union's letter or otherwise communicate with the Union, and this petition followed.

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<sup>2</sup> 33 U.S.C. § 1251 et seq.

<sup>3</sup> See id. § 1365; "International Longshore and Warehouse Union Petition for Appeal to the [State Water Board] Regarding the Failure of the [Regional Water Board] to Take Appropriate Corrective Action Against [Hugo Neu-Proler] for Its Unauthorized Discharges into Los Angeles Harbor," September 18, 1998 (hereafter Petition), Exh. 19.

<sup>4</sup> 33 U.S.C. § 1313(d). Under this statute and U.S. EPA's implementing regulations, states must biennially list waterbodies that do not meet water quality standards, after application of technology-based effluent limitations. See 40 C.F.R. § 130.7.

<sup>5</sup> See "Real Party in Interest, Hugo Neu-Proler's Opposition to International Longshore and Warehouse Union's Petition to the California Water Resources Control Board Regarding the Alleged Failure of the Regional Water Quality Control Board, Los Angeles Region, to Take Appropriate Corrective Action Against Hugo Neu-Proler Company," December 28, 1998, (hereafter Opposition), Exh. A.

<sup>6</sup> See id., Exh. B., p. 42.

<sup>7</sup> State Water Board File No. A-1151.

<sup>8</sup> See Petition, fn. 3 supra, Exh. 3.

Under the State Water Board's petition regulations, responses to the petition and the Regional Water Board's administrative record were due in December 1998.<sup>9</sup> Hugo Neu-Proler filed a timely response and, later, a supplemental response in opposition to the petition. The Regional Water Board, however, did not file either a substantive response to the petition or the administrative record. Rather, the Regional Water Board has requested that the State Water Board informally refer this matter back to the Regional Water Board for further consideration since staff have not had an opportunity to thoroughly consider the issues.<sup>10</sup> Alternatively, the Regional Water Board has requested that the State Water Board dismiss the petition without prejudice.

## II. DISCUSSION

The Union's petition contains troubling allegations that Hugo Neu-Proler has discharged and continues to discharge toxic pollutants into Los Angeles Harbor. The Union alleges that Hugo Neu-Proler maintains open piles of scrap metal near the water's edge, and that fine metal dust and nonmetallic shredder residue from these piles are blown into the waters of the harbor. In addition, the Union alleges that shredded scrap metal routinely falls off the company's bulkloader conveyor system into harbor waters. The Union cites a Los Angeles Harbor District underwater survey in 1996 that revealed a 23-foot wall of steel debris along the bottom slope of Hugo Neu-Proler's wharf.<sup>11</sup> The petition further alleges that these direct and indirect discharges have polluted harbor waters with PCBs, DDT and metals. The petition cites data from the State Water Board's Mussel Watch Program, a 1990 Southern California Coastal Water Research Project (SCCWRP) study, and other sources.<sup>12</sup>

The petition further alleges that Hugo Neu-Proler has discharged and continues to discharge pollutants, including scrap metal shredder waste and scrap metal, into harbor waters

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<sup>9</sup> See Cal. Code Regs., tit. 14, § 2050.5. Responses were originally due by December 8, 1998. At Hugo Neu-Proler's request, this date was extended to December 28, 1998.

<sup>10</sup> See memorandum from Dennis A. Dickerson, Executive Officer, Regional Water Board, to Sheila K. Vassey, State Water Board, entitled "Petition Filed by International Shoreman & Workers' [sic] Union (ILWU)", dated February 19, 1999.

<sup>11</sup> See Petition, fn. 3 supra, Exhs. 10 & 11.

<sup>12</sup> See id., Exhs. 5, 13 & 14.

without a National Pollutant Discharge Elimination System (NPDES) permit in violation of the Clean Water Act.<sup>13</sup> Additionally, the Union contends that the Regional Water Board has not, to date, required Hugo Neu-Proler to investigate and clean up sediments and water adjacent to Piers 210 and 211 that were polluted due to the company's past scrap metal activities. Although the Regional Water Board issued a cleanup and abatement order to the company in 1991, based on the SCCWRP study's findings, the order did not require the company to actually remediate polluted water and sediments.<sup>14</sup>

These allegations are, of course, hotly disputed by Hugo Neu-Proler. Hugo Neu-Proler contends that the company properly manages airborne deposition of metallic dust and shredder waste and properly controls the spillover of bulk scrap material into Los Angeles Harbor. In particular, the company alleges that it has addressed "spillover" by installing a new ship loading crane to load scrap metal onto ships and by dismantling the bulkloader.<sup>15</sup> The company further contends that the supporting studies cited by the Union in its petition are all flawed. Finally, the company maintains that it is currently engaged in remediation at the site.<sup>16</sup>

Given the gravity of the Union's allegations and the fact that they are vigorously disputed by Hugo Neu-Proler, the Board does not believe that dismissal of the petition is appropriate. The State Water Board is particularly concerned about the Union's allegations that Hugo Neu-Proler directly discharges pollutants into harbor waters without an NPDES permit and that the company has never been required to thoroughly investigate and remediate sediment and water column pollution caused by its scrap metal operation.

The Board is reluctant to proceed further with this petition, absent the administrative record and the benefit of the Regional Water Board's response. While the State

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<sup>13</sup> Under the Clean Water Act, it is illegal to discharge pollutants from a point source into surface waters without an NPDES permit. See 33 U.S.C. §§ 1311, 1342. This prohibition is not limited to pollutants that are visible nor to pollutants that pose a demonstrated environmental or health risk. If scrap metal spills over into harbor waters during loading operations at the Hugo Neu-Proler site, this spillover must be regulated under a permit.

<sup>14</sup> See Petition, fn. 3 *supra*, Exhs. 6 (Cleanup and Abatement Order 91-062 (May 15, 1991)) and 8. The order required Hugo Neu-Proler to stop the waterborne and airborne discharge of metal shredder waste.

<sup>15</sup> See Hugo Neu-Proler's Supplemental Opposition to the International Longshore and Warehouse Union's Petition to the [State Water Board] Regarding the Alleged Failure of the [Regional Water Board] to Take Appropriate Corrective Action Against Hugo Neu-Proler Company, March 18, 1999, p. 10.

<sup>16</sup> Hugo Neu-Proler is currently engaged in soil and groundwater remediation on the *landward* portion of the leased site. See Opposition, fn. 5 *supra*, text and Exhs. F (Waste Discharge Requirements for soil remediation, Order 96-020, adopted April 1, 1996), G & H.

Water Board could conduct an evidentiary hearing on this matter, the Board believes, as a policy matter, that the Regional Water Board should hear the matter in the first instance. The Board, therefore, concludes that the matter should be remanded to the Regional Water Board for an evidentiary hearing no later than August 31, 1999. The purpose of the hearing will be to receive evidence on the Union's allegations and any other matters the Regional Water Board deems appropriate. At the conclusion of the hearing, the Regional Water Board may consider a variety of responses, including, but not limited to, no action, issuance of an enforcement order, and adoption of an NPDES permit.

The Board would like to stress that nothing in this Order should be interpreted to prevent the Regional Water Board from acting on the Hugo Neu-Proler site prior to the evidentiary hearing. The Regional Water Board may take any appropriate action, during this time, including issuing a request for a technical or monitoring program report.<sup>17</sup>

The Regional Water Board Executive Officer is directed to file a status report with this Board, no later than September 30, 1999, describing what actions, if any, the Regional Water Board has taken on the Hugo Neu-Proler site. The State Water Board will retain jurisdiction over this matter pending further developments.

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<sup>17</sup> See Wat. Code §§ 13267 and 13383.

III. ORDER

IT IS HEREBY ORDERED that the Los Angeles Regional Water Quality Control Board shall conduct an evidentiary hearing, as described in this Order, no later than August 31, 1999.

IT IS FURTHER ORDERED that the Los Angeles Regional Water Quality Control Board (Regional Water Board) Executive Officer shall file a status report with the State Water Resources Control Board, no later than September 30, 1999, describing what actions, if any, the Regional Water Board has taken on the Hugo Neu-Proler site.

IT IS FURTHER ORDERED that the State Water Resources Control Board will retain jurisdiction over this matter [In the Matter of the Petition of International Longshore and Warehouse Union, A-1183] pending further developments.

CERTIFICATION

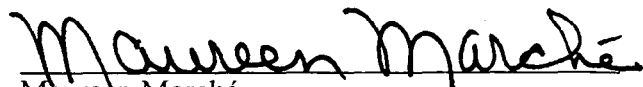
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 29, 1999.

AYE: James M. Stubchaer  
Mary Jane Forster  
John W. Brown

NO:

ABSENT:

ABSTAIN:

  
Maureen Marché  
Administrative Assistant to the Board