

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2004-0709

FOR

NORTH EAST, L.L.C., A UTAH LIMITED LIABILITY COMPANY
CORNING, CALIFORNIA
TEHAMA COUNTY

This Order is issued to North East, L.L.C., a Utah Limited Liability Company (hereafter Discharger) based on provisions of California Water Code Section 13304, which authorizes the California Regional Water Quality Control Board, Central Valley Region (hereafter Regional Board) to issue a Cleanup and Abatement Order (Order).

The Regional Board finds, with respect to the Discharger's acts or failure to act, the following:

INTRODUCTION

1. Del Pinnland owned about 11.83 acres at 2120 South Avenue, Corning, California, Section 27, T24N, R3W, MDB&M, Assessor's Parcel Numbers 087-050-38-1, 087-050-39-1, 087-050-40-1, and 087-050-44-1, (hereafter the property) from 1947 to about 1965. Del Pinnland constructed a truck stop, service station, and grease and tire shop, and operated Orchard Service, a business with diesel pumps. Around 1965, Dudley and Petty, Inc., a.k.a. Dudley & Associates, a California Corporation, bought the property, expanded the truck stop, and leased areas to a radiator shop, tire dealership, and truck wash.
2. Del Pinnland, and Dudley and Petty, Inc., former property owners, stored petroleum in underground and aboveground tanks on the property. Knowledgeable parties allege historical fuel spills and solvent use.
3. On 19 December 1986, Dudley and Petty, Inc. filed for bankruptcy in the United States Bankruptcy Court for the Eastern District of California, Sacramento Division (Case No. 286-06529-B-7). On 22 October 2003, the bankruptcy court authorized the trustee for Dudley and Petty, Inc. to abandon the property.
4. On 25 February 2004, the Tehama County Tax Assessor requested the bankruptcy court modify their automatic stay, and permit the County to sell the tax-defaulted real property. Following appeal, the bankruptcy court authorized the County to proceed with the property sale. On 4 June 2004, the Discharger bought the property at public auction. As the owner of property on which waste was discharged and has caused pollution or nuisance, as described herein, the Discharger is subject to an order issued pursuant to Water Code section 13304.

PETROLEUM POLLUTION

5. In February 1988, Dudley and Petty, Inc. filed an Unauthorized Release (Leak)/Contamination Site Report based on total petroleum hydrocarbons (TPH) in soils by an underground storage

tank. On 11 April 1991, Regional Board staff observed free phase fuel on perched groundwater in two trenches east of the property, at about 10 to 15 feet below grade surface (bgs). After a McLaren Hart (1992) Phase I Property Transfer Assessment, Lawrence and Associates (1994), and Metcalf and Eddy (1995) collected samples from 45 borings and 15 monitoring wells. The sampling data revealed that the perched aquifer had free phase product, concentrations of TPH as gasoline and diesel (TPHg, TPHd), up to 14,000 and 970 milligrams/Liter (mg/L), and Benzene (B), Toluene (T), and Ethylbenzene (E) at 51, 45, and 26 mg/L. No motor oil (TPHmo) or Xylenes (X) were detected. The semi-confined aquifer, about 25 to 40 feet bgs, had concentrations of dissolved TPHg, and TPHd to 28 and 670 mg/L, and BTEX at 50, 58, 1200, and 1,800 micrograms/Liter ($\mu\text{g/L}$).

6. On 24 April 1996, the Executive Officer issued Cleanup and Abatement Order No. 96-701 to Dudley and Petty, Inc. The Order required Dudley and Petty, Inc. to remove from the property non-permitted underground and aboveground storage tanks and piping, and submit work plans to remove free phase product in groundwater and locate water supply wells within 2,000 feet of the property, and recommend further investigation and cleanup. Due to unauthorized entries onto the property, in 1997 Regional Board staff requested the Dudley and Petty bankruptcy trustee to install perimeter fencing.
7. On 21 January 1998, Metcalf and Eddy managed removals of two underground storage tanks and soil containing waste constituents. Between 1998 through 2002, the semi-confined aquifer contained concentrations of TPHg, TPHd, and TPHmo at a maximum of 5.2, 5, 500, and 84 $\mu\text{g/L}$, and BTEX at 17, 1.2, 590, and 570 $\mu\text{g/L}$.
8. As of June 2004, two aboveground petroleum storage tanks remain on the property. Tehama County Environmental Health Department records show that eleven underground petroleum storage tanks remain. Smoke testing and geophysics (Metcalf and Eddy, Norcal Geophysical Consultants, Inc. 2000), indicate that underground utilities and other buried metal objects exist at the property.

CHLORINATED SOLVENTS

9. In 1993, Regional Board staff sampled domestic wells east and northwest of the property for volatile organic compounds. On 8 November 1993, staff sampled a domestic well at 2040 South Avenue, about 450 feet east of the property, open to formation at 96 to 100 feet bgs, and found concentrations of Trichloroethene (TCE) and cis-1,2-Dichloroethene (c-1,2-DCE), at 11.7 and 25.7 $\mu\text{g/L}$. On 4 February 1994, staff issued a Proposition 65 notice to the Tehama County Board of Supervisors.
10. From 1997 to 1998, monitoring wells east of the property in the unconfined aquifer began showing chlorinated ethenes. For example, well AGT-MW-3, in the unconfined aquifer east of the property, about 20 to 40 feet bgs, showed maximum concentrations of PCE (Perchloroethene), TCE, c-1,2-DCE, t-1,2-DCE (trans-1,2-Dichloroethene), and VC (Vinyl Chloride) at 1.5, 72, 480, 1.6, and 0.85 $\mu\text{g/L}$.

11. On 19 August 1999, the State Water Resources Control Board (SWRCB) approved State Board Resolution 99-075, which authorized the distribution of \$627,000 from the Cleanup and Abatement Account (C/A No. 172) to the City of Corning (City) to clean up and abate the site. On 28 January 2000, the Regional Board enacted with the City, Resolution 5-00-004, a Mutual Release and Covenant Not to Sue.
12. In 1999 and 2000, Regional Board staff detected chlorinated ethenes in six of sixteen domestic wells, depths unknown, on Toomes and Houghton Avenues, about 700 and 2,500 feet east of the site. Maximum concentrations of ethenes were, for TCE, c-1,2-DCE, and t-1,2-DCE, 9.6, 8.2, and 0.6 µg/L. On 2 July 1999 and 11 October 2000, staff issued Proposition 65 notices, for TCE, and c-1,2-DCE and TCE, respectively, to the Tehama County Board of Supervisors.
13. On 8 May 2000, the City of Corning requested that the SWRCB distribute \$200,000 from C/A No. 172 for extension of domestic water to three properties on Toomes Avenue with contaminated wells, about 700 feet east of the site, and one property on Houghton Avenue, about 2500 feet east of the site. On 8 June 2000, SWRCB staff disapproved the request. However, on 23 October 2000, SWRCB staff approved the distribution of \$40,000 from C/A No. 172 for temporary bottled water and granulated activated carbon (GAC) wellhead units.
14. On 31 October 2001, Haling and Associates concluded a focused site investigation, a limited effort to find chlorinated ethene sources on-property, with soil gas data from 45 borings, and groundwater data from 13 new monitoring wells plus those earlier installed. Soil gas indicated sources near the eastern property line and northwest corner. Perched aquifer well AGT MW-9, near the eastern property line, has to date shown concentrations of TCE and c-1,2-DCE at 270 and 330 µg/L. Results of AGT-MW-3 were generally consistent with earlier data (see Finding 10). Near the northwest corner, well OSS-MW-7, perched, has to date shown concentrations of PCE, TCE, cis-1,2-DCE, and t-1,2-DCE to 10, 16, 22, and 0.82 µg/L. Well OSS-MW-6, confined, about 50 feet bgs, has shown TCE and cis-1,2-DCE at 0.90 and 4.6µg/L.
15. On 23 January 2002, the SWRCB amended Order 99-075, and approved the distribution of an additional \$8,000 from C/A No. 185 for granulated activated carbon (GAC) wellhead units to serve an additional two residences on Houghton Avenue. In 27 June 2003, Regional Board staff requested SWRCB fund alternative water for one domestic well on South Avenue; on 23 July 2003 SWRCB staff approved the distribution of \$4,403.86 from C/A No. 185 toward either piped water or GAC.
16. Regional Board staff are investigating the former Orchard Carriers Inc., facility at Toomes and South Avenues, as a potential source for wastes described in Findings 9, 10, 12, and 14, especially chlorinated ethenes near and past the eastern property boundary. Based on results, this Cleanup and Abatement Order may be modified to require investigation of this potential source.
17. The extent of waste in soil and groundwater is undefined. Surface spills, underground and aboveground storage tanks, related piping, other underground utilities and buried metal objects, and domestic wells are uninvestigated as conduits of waste discharge. While promising technologies exist for chlorinated ethene cleanup, none have been evaluated.

AUTHORITY – LEGAL REQUIREMENTS

18. The Regional Board’s *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, 4th Edition (hereafter Basin Plan) designates beneficial uses of the waters of the State within the Region, establishes water quality objectives (WQOs) to protect these uses, and establishes implementation policies to implement WQOs. The beneficial uses of the groundwater beneath the site are domestic, municipal, industrial, and agricultural supply.
19. Petroleum waste constituents and chlorinated ethenes are refined hydrocarbon products, do not occur naturally, and are known human carcinogens. The constituents listed in Findings 5, 7, 9, 10, 12, and 14 are all considered wastes as defined in California Water Code section 13050.
20. WQOs listed in the Basin Plan include numeric WQOs, e.g., state drinking water maximum contaminant levels (MCLs) that are incorporated by reference, and narrative WQOs, including the narrative toxicity objective and the narrative tastes and odors objective for surface and groundwater. Chapter IV of the Basin Plan contains the *Policy for Application of Water Quality Objectives*, which provides that “[w]here compliance with narrative objectives is required (i.e., where the objectives are applicable to protect specified beneficial uses), the Regional Water Board will, on a case-by-case basis, adopt numerical limitations in orders which will implement the narrative objectives.” The numerical limit for the constituent of concern listed in the following tables implement the Basin Plan WQOs.

Numerical Limits, Single Ring Aromatics, Gasoline, Diesel, and Chlorinated Ethenes

CONSTITUENT	WQO	LIMIT (µg/L)	REFERENCE FOR LIMIT
Benzene	Chemical Constituents	1	California Primary MCL
	Toxicity	0.15	California Public Health Goal
	Tastes and Odors	170	Taste and Odor Threshold
Toluene	Chemical Constituents	150	California Primary MCL
	Toxicity	150	California Public Health Goal
	Tastes and Odors	42	Taste and Odor Threshold
Ethylbenzene	Chemical Constituents	300	California Primary MCL
	Toxicity	300	California Public Health Goal
	Tastes and Odors	29	Taste and Odor Threshold
Xylenes (sum of isomers)	Chemical Constituents	1750	California Primary MCL
	Toxicity	1800	California Public Health Goal
	Tastes and Odors	17	Taste and Odor Threshold
Gasoline	Toxicity	21	USEPA Superfund Provisional Cancer Slope Factor
	Taste and Odors	5	Taste and Odor Threshold
Diesel	Toxicity	56 to 140	USEPA Superfund Provisional Reference Dose
	Taste and Odors		Taste and Odor Threshold
		100	
Tetrachloroethene (PCE)	Chemical Constituents	5	California Primary MCL
	Toxicity	0.06	California Public Health Goal
	Tastes and Odors	170	Taste and Odor Threshold

CONSTITUENT	WQO	LIMIT (µg/L)	REFERENCE FOR LIMIT
Trichloroethene (TCE)	Chemical Constituents	5	California Primary MCL
	Toxicity	0.8	California Public Health Goal
	Tastes and Odors	310	Taste and Odor Threshold
cis-1,2-Dichloroethene (c1,2 DCE)	Chemical Constituents	6	California Primary MCL
	Toxicity	70	California MCL Goal
Vinyl Chloride (VC)	Chemical Constituents	0.5	California Primary MCL
	Toxicity	0.05	California Public Health Goal
	Tastes and Odors	3400	Taste and Odor Threshold

21. The concentration of wastes listed in Findings 5, 7, 9, 10, 12, and 14 exceeds the WQOs for those wastes. The exceedance of applicable WQOs in the Basin Plan constitutes pollution as defined in California Water Code Section 13050 and impairs the beneficial uses of water. The presence of waste in groundwater may cause nuisance as defined in California Water Code section 13050.
22. The Discharger is the owner of the property at which the waste has been discharged and acquired the property with knowledge of the discharges of waste. The owner of the property has the ability to control the discharges of waste. Consistent with California Water Code section 13304, the Discharger has, therefore, caused or permitted waste to be discharged or deposited where it has discharged to waters of the state and has created, and continues to threaten to create, a condition of pollution and/or nuisance.
23. The SWRCB has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*. This Policy sets forth the policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with SWRCB Resolution 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. Resolution 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution 92-49 requires the waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with Title 23, California Code of Regulations (CCR) Section 2550.4. Any alternative cleanup level to background must (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State and Regional Boards.
24. Chapter IV of the Basin Plan contains the *Policy for Investigation and Cleanup of Contaminated Sites*, which describes the Regional Board's strategy for managing contaminated sites. This strategy is based on Water Code Sections 13000 and 13304, the Title 27 CCR Division 2, Subdivision 1 regulations and SWRCB Resolution Nos. 68-16 and 92-49. The strategy includes site investigation, source removal or containment, information required to be submitted for consideration in establishing cleanup levels, and the bases for establishment of soil and groundwater cleanup levels.
25. The SWRCB adopted the *Water Quality Enforcement Policy*, which states in part: "At a minimum, cleanup levels must be sufficiently stringent to fully support beneficial uses, unless the RWQCB allows a containment zone. In the interim, and if restoration of background water

quality cannot be achieved, the CAO should require the discharger(s) to abate the effects of the discharge. Abatement activities may include the provision of alternate water supplies." (Enforcement Policy, p. 19.)

26. Section 13304(a) of the California Water Code provides that:

“Any person who has discharged or discharges waste into waters of the state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the Regional Board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including but not limited to, overseeing cleanup and abatement efforts. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the Regional Board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”

27. Section 13304(c)(1) of the California Water Code provides that:

“If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising the cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and state board to the extent of the latter’s contribution to the cleanup costs from the State Water Pollution and Abatement Account or other available funds.”

28. Section 13267(b) of the California Water Code provides that:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the State within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”

29. This Order requires the Discharger to cleanup the wastes described in this Order and to abate the effects of the discharges of waste according to tasks specified herein and to submit technical and monitoring reports. The Discharger, as owner of the property, has the ability to control the discharge of wastes. The reports required by this Order are necessary to assure compliance with the Order and to assure that the wastes are cleaned up and abated consistent with the applicable plans and policies of the State and Regional Boards.
30. If the Discharger fails to comply with this Order, the Executive Officer may request the Attorney General to petition the superior court for the issuance of an injunction.
31. If the Discharger violates this Order, then the Discharger may be liable civilly in a monetary amount provided by the California Water Code, including section 13268 or 13350.
32. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), pursuant to Title 14 CCR Section 15321(a)(2). The implementation of this Order is also an action to assure the restoration of the environment and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), in accordance with Title 14 CCR, Sections 15308 and 15330.
33. Any person adversely affected by this action of the Regional Board may petition the SWRCB to review the action in accordance with Section 2050 through 2068, Title 23, California Code of Regulations. The petition must be received by the SWRCB within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at http://www.swrcb.ca.gov/water_laws/cawtrcde/wqpetition_instr.html or will be provided upon request.

REQUIRED ACTIONS

IT IS HEREBY ORDERED THAT Cleanup and Abatement Order No. 96-701 is rescinded, and, pursuant to California Water Code Section 13267 and Section 13304, North East L.L.C., a Utah Limited Liability Company, shall investigate the discharges of waste, clean up the waste, and abate the effects of the waste, forthwith. "Forthwith" means as soon as is reasonably possible. Compliance with this requirement shall include, but not be limited to, completing the tasks listed below:

FENCE AND WELLHEAD UNIT MAINTENANCE

1. **By 13 August 2004**, repair and maintain security fencing around the property to prevent unauthorized entry.
2. **By 13 August 2004**, begin regularly servicing and continue to service granulated activated carbon wellhead units to manufacturer's specifications on six domestic wells, on Toomes and Houghton Avenues (Assessor's Parcel Numbers 087-050-28-1, 087-050-27-1, 087-050-43-1, 087-050-11-1, 087-050-24-1, and 087-050-50-1).

SITE INVESTIGATION AND FEASIBILITY STUDY

3. Submit, **by 13 August 2004**, to the Tehama County Department of Environmental Health an application to remove all remaining underground petroleum storage tanks and related underground piping. Remove underground tanks and related piping **within 30 days after Regional Board staff concur with a work plan for a site investigation and feasibility study.**
4. Submit, **by 13 August 2004**, a work plan for a site investigation and feasibility study to define the total extent of pollution and preferential migration pathways, and choose appropriate cleanup methods. The plan should include, but is not limited to, appropriate soil gas surveys, geophysics, test pits, trenches, borings, and monitoring wells. Sampling should be sufficient to assess pollution sources, including, but not limited to, surface spills, underground storage tanks, aboveground storage tanks, underground utilities, and buried metal objects. Sampling should also be sufficient to assess feasibility of cleanup methods including, but not limited to, biostimulation, bioaugmentation, reductive dehalogenation with zero valent iron, soil vapor extraction, and source removal. The plan should include a time schedule for implementation, which, upon concurrence by the Regional Board staff, shall become a part of this Order.

GROUNDWATER MONITORING

5. Begin a quarterly monitoring program on 28 active monitoring wells **in the third calendar quarter 2004** and augment, as appropriate, based on findings from additional aquifer investigations. Quarterly monitoring reports shall be submitted **within 30 days after the end of each calendar quarter** until directed otherwise. Submit the first quarterly report **by 29 October 2004.**

GENERAL REQUIREMENTS

6. Reimburse the Regional Board for reasonable costs associated with oversight of the investigation and cleanup of this site. Failure to do so shall be considered a violation of this Order.
7. Conduct work only after work plans are concurred with by Regional Board staff.
8. Submit all reports with a cover letter from the Discharger.
9. As required by the California Business and Professions Code Sections 6735, 7835, and 7835.1, have all reports prepared by, or under the supervision of, a registered professional engineer or geologist and signed by the registered professional. All technical reports submitted by the Discharger shall include a statement signed by the authorized representative certifying under penalty of law that the representative has examined and is familiar with the report and that to his knowledge, the report is true, complete, and accurate.
10. Notify Regional Board staff at least three working days prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation.
11. Obtain all local and state permits and access agreements necessary to fulfill the requirements of this Order prior to beginning the work.

12. If, for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. An extension may be granted only by revision of this Order.
13. If, in the opinion of the Executive Officer, the Discharger fails to comply with the requirements of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, or issue a complaint for Administrative Civil Liability.

This Order is effective upon the date of signature.

THOMAS R. PINKOS, Executive Officer

By: James C. Pedri, Assistant Executive Officer

(Date)

EJR: sae