

STAFF REPORT

CONSIDERATION OF A RESOLUTION REQUIRING PAYMENT OF \$50,000 AS DESCRIBED BY THE STIPULATED JUDGMENT

for

MA-RU HOLDING COMPANY, INC. AND BONZI SANITATION LANDFILL STANISLAUS COUNTY

Background

The Ma-Ru Holding Company, Inc. and Bonzi Sanitation Landfill (hereafter jointly referred to as “Discharger”) own and operate the Bonzi Sanitation Landfill, in Modesto California. The facility is on a 128-acre parcel near the Tuolumne River, and has been in operation since the late 1960’s. The majority of the landfill is not constructed to today’s standards, and a portion of the wastes are in contact with the shallow groundwater. None of the four waste management units were constructed with a bottom liner or a leachate collection and recovery system, as is required of modern landfills. The landfill has created a plume of groundwater pollution, which must be contained and treated through a groundwater extraction and treatment system.

The facility is regulated under two separate waste discharge requirements. WDRs Order No. 98-093 prescribes requirements for the four waste management units (only one of which is currently active), and includes requirements to fully close the inactive units, as well as post closure maintenance, monitoring, and corrective action requirements. The corrective action measures include both the groundwater pump and treat system and a landfill gas collection system.

Waste Discharge Requirements (WDRs) Order No. 90-215 prescribes requirements for the discharge of treated groundwater and storm water to a twelve million gallon surface impoundment. The WDRs allows water from this surface impoundment to be discharged to the adjacent vineyard, and provides flow rates, discharge specifications, and monitoring requirements.

History of Violations

In 1984, Bonzi reported that its activities had resulted in a release of volatile organic compounds to groundwater. The Regional Board subsequently adopted Cease and Desist (C&D) Order No. 84-153, which directed the Discharger to evaluate the extent of the contaminant plume. Upon completion of that task, the Regional Board adopted Cleanup and Abatement (C&A) Order No. 89-185, requiring the installation and operation of a groundwater remediation system. While the Discharger installed a groundwater extraction and treatment system, Bonzi failed to operate it for at least one year, from March 2004 through March 2005. In addition, the Discharger has recently verified that the system is not adequate to contain the entire extent of the contaminant plume nor is it strong enough prevent groundwater from contacting the waste.

As evidenced by 17 Notice of Violations issued to the Discharger since January 2001, Bonzi has a long history of failing to address noncompliance issues, failing to operate its groundwater extraction system, and failing to submit adequate reports.

After site inspections in March and April 2005, staff prepared a Cease and Desist Order to address the numerous regulatory violations. Among other items, the C&D Order includes time schedules

for Bonzi to: stop accepting non-permitted waste, repair the soil cover on the closed unit, repair the storm water conveyance system, complete final closure for the two inactive units, evaluate the adequacy of the groundwater detection and corrective action systems, establish a financial assurance fund, and continuously operate the groundwater extraction and treatment system. After many meetings and revisions by staff, the Discharger elected to accept the terms of the proposed C&D. The Regional Board subsequently adopted Order No. R5-2005-0073 as an uncontested item at its 29 April 2005 meeting.

Stipulated Judgment

Following the adoption of C&D Order No. R5-2005-0073, the Discharger began submitting the required reports. However staff's review found that these submittals were incomplete and did not address the requirements of the C&D nor the applicable landfill regulations. Although the operator complied with a few aspects of the C&D, it did not comply with the majority of the requirements, as evidenced by the seven Notices of Violation that have been issued since the Order was adopted.

In September 2005, the Stanislaus County District Attorney and Regional Board staff began a joint enforcement action against the landfill. The District Attorney's complaint alleged that Bonzi has failed to comply with numerous requirements of the CDO, including failing to demonstrate that the groundwater detection and extraction system is adequate for site conditions and failing to post financial assurances for corrective action, closure, and post closure maintenance activities at the landfill. In addition, Bonzi has failed to provide a least one foot of interim soil cover on two of the landfill units and has allowed un-permitted waste to be deposited in the active unit. Of gravest concern to the neighbors living next to the landfill, the groundwater treatment and extraction system was not operated for a one-year period.

The parties agreed to a Stipulated Judgment, which was filed with the Superior Court of Stanislaus County on 23 December 2005. Terms of the stipulated judgment include:

- Payment of \$450,000 to the Stanislaus County District Attorney's Office and the State of California over a two year period;
- Payment of \$100,000 if Bonzi submits fraudulent reports at any time in the next three years; and
- Payment of \$1.4 million in penalties has been stayed contingent upon Bonzi's satisfactory completion of 21 studies and improvements to the landfill. These tasks must be completed by the timelines described in the judgment or Bonzi must pay the specific penalty associated with each task.

The stipulated judgment does not relieve the landfill owners and operators from the need to comply with all aspects of their WDRs and the C&D Order, nor does it prohibit the Regional Board from taking additional enforcement actions for items not addressed in the judgment.

The Stipulated Judgment is found as Attachment A to this staff report. As stated above, \$1.4 million of penalties were stayed contingent upon the Discharger completing 21 reports and/or

landfill improvements. This listing of tasks is contained in Exhibit A to the Stipulated Judgment. Many of the items were originally required by the C&D Order, or are violations found during staff's inspections during the summer of 2005. Exhibit B of the Stipulated Judgment contains the specific stayed penalty for each task. In order for any of the stayed penalties to be assessed, the Regional Board must allow the Discharger an opportunity for a hearing before adopting a Resolution or Order describing the violation. Alternatively, a Superior Court Judge may find that the Discharger has violated the Stipulated Judgment. Once a finding of violation has been made, the applicable stayed penalty is immediately due and payable.

At its 27 January 2006 meeting, the Regional Board adopted a resolution finding that the Discharger had violated Item No.11 of the Stipulated Judgment, and requiring the payment of \$50,000. The Discharger has not submitted the payment and has appealed the decision to the State Water Board.

The item under consideration at the May 2006 Regional Board meeting is the non-submittal of the five-year analysis. The remainder of this staff report will discuss this issue.

Five-year Analysis

The Discharger has failed to submit the five-year analysis report required by the Stipulated Judgment. Item No. 4 of Exhibit A contains the requirement that "By 1 January 2006, the Discharger shall either resample and submit the results or submit a reevaluation of the previous analysis for the five-year 40 CFR Part 258 Appendix II sampling." The penalty for failing to complete this task is \$50,000.

What is a five-year analysis?

WDRs Order No. 98-093 prescribes requirements in regard to the submittal of the five-year 40 CFR Part 258 Appendix II sampling ("five-year analysis") report. As the name implies, the Discharger is required to complete the five-year analysis once every five years. Groundwater samples are to be analyzed for constituents beyond those normally required, to verify that additional constituents are not being released from the landfill. The objective is to ensure that staff and the discharger are aware of the entire scope of groundwater impacts so that remedial systems can be appropriately designed. Bonzi Sanitation Landfill and the Ma-Ru Holding Company are required to complete this sampling and evaluation by (a) WDRs Order No. 98-093, (b) Title 27 California Code of Regulations Section 20420 and (c) 40 CFR Part 258.53.

Chronology of non-compliance

The WDRs required that the five-year analysis be submitted on 15 April 2004; however, it was not received and a Notice of Violation was sent to the Discharger on 14 September 2004. The sampling results were subsequently received on 2 February 2005. Staff's review found that the samples were analyzed with high detection limits and that therefore the Discharger did not complete the data evaluation required by the WDRs.

On 29 April 2005, the Regional Board adopted Cease and Desist (C&D) Order No. R5-2005-0073. The C&D required that the Discharger submit many outstanding reports, including the five-year analysis. The Discharger was allowed until 15 June 2005 to submit this report. It was not submitted by that date, and on 27 June 2005 the Discharger's consultant submitted a letter

requesting clarification as to the requirements. Board staff responded on 12 September 2005, describing in detail what is required in a five-year analysis, including the appropriate detection limits for the sampling results. Staff also verbally clarified the requirements during the Stipulated Judgment discussions in October 2005.

On 23 November 2005, the Discharger submitted some metals results; however, the report did not include an analysis of volatile organic compounds or semi-volatile organic compounds, or an evaluation of the data. Because a complete five-year analysis had not been submitted, the requirement to submit it was included in the Stipulated Judgment as one of the 21 items that must be completed or a penalty will be assessed. The Discharger signed the Stipulated Judgment on 21 December 2005.

Per the Stipulated Judgment, the five-year analysis was to be submitted by 1 January 2006. Because it was not received by late February, staff prepared an item for the March 2006 Board meeting. However, the item was postponed until the May meeting due to illness. As of early April, the five-year analysis still has not been submitted.

Response to Discharger's Comments

Staff received comments from Douglas Neibauer, the attorney for Ma-Ru Holding Company, Inc. and Bonzi Sanitation Landfill on 10 March 2006. This comment letter is found as Attachment B to the staff report. The comment letter contains a number of attached letters, which the Discharger purports were submitted to staff. However, staff's review of these letters show that the majority of them are labeled "draft" and appear to be correspondence between the consultant and the Discharger. A review of the case file shows that the draft letters were neither finalized nor were they submitted to the Regional Board.

Mr. Neibauer's letter addresses four main issues: (a) Regional Board staff is requiring outdated analysis methods, (b) staff has provided insufficient guidance, (c) the Discharger should not have to provide trace results, and (d) Regional Board staff stated that the discharger was in compliance. Each of these points will be addressed.

Analysis methods

Contrary to the Discharger's assertions, Regional Board staff has never required specific analytical methods. Instead, the Regional Board adopted Waste Discharge Requirements for the Bonzi Landfill, which require that analyses be conducted using the lowest practicable reporting limits. This is the standard that staff has been enforcing, not just at the Bonzi landfill, but at all landfills. The requirement for the lowest possible reporting requirements is standard in all our Waste Discharge Requirements for landfills, and the reporting limits contained in the five-year analysis documents are relatively consistent throughout the industry. In fact, the Discharger has previously complied with this requirement, as its 1999 five-year report contained acceptably low limits. In response to Bonzi's questions over the last year, staff have provided guidance as to what is necessary to comply with the five-year analysis requirement. Staff have also pointed out that previous sampling completed by the Discharger (i.e., the 1999 five year report and the third quarter 2004 groundwater monitoring report) had sufficiently low detection limits, and suggested that the Discharger review those documents.

Insufficient guidance

The Discharger asserts that staff has not provided sufficient guidance to the Discharger regarding what is required in a five-year analysis. We respond by stating that Bonzi's WDRs, as well as State and Federal Landfill regulations, contain guidance for the periodic five-year sampling event. Staff have also provided the State Board's Program Note Number 7 to the Discharger. This document contains a list of appropriate analytical methods and discusses analysis of the required constituents in the five-year sampling. In addition, staff's 15 June 2005 letter provided guidance on reporting limits. Finally, staff's 12 September 2005 letter offered guidance and stated that reporting limits contained in Bonzi Landfill's third quarter 2004 report were acceptable to use for the five-year report. The amount of guidance provided to the Discharger on this issue far exceeds the level of guidance needed by most landfills.

Reporting trace results

The Discharger believes they should not have to submit "trace" analytical results, even though required by WDRs. Staff would point out that reporting trace results and using low detection limits is extremely important, as this type of data provides an early indication of a release to groundwater. This allows the discharger and the Board to react to a problem before it becomes a significant health issue to any downgradient water users and before the beneficial uses of the groundwater are impaired. It is particularly important in this case as the community of Riverdale, just downgradient of the landfill, relies on groundwater as its source of drinking water. Because many of Bonzi's reporting limits in its incomplete 2004 five-year analysis exceed water quality goals and drinking water standards, it is possible that before a constituent is detected, it may exceed health standards. Finally, the differences between the acceptable low/trace reporting limits in the 1999 five-year analysis and the higher reporting limits in the incomplete 2004 five-year analysis makes it impossible to compare the two, and therefore it is not possible to determine if there has been a change in water quality between these two sampling events.

Staff stated that the Discharger was in compliance

The final issue is the Discharger's claim the staff stated that they were in compliance in regard to submittal of the five-year analysis. Staff has reviewed the case file and past correspondence and cannot find any basis for this comment. In fact, since our 12 September 2005 letter discussing reporting limits, no volatile organic constituents (VOC) or semi-volatile organic constituents (SVOC) data has been submitted with the appropriate reporting limits. Also, the requirement to compare and evaluate the differences between the 1999 five-year sampling and 2004 sampling event was never done. Staff would not have stated the Discharger was in compliance with so many outstanding issues related with the five-year review. In fact, because of the noncompliance issues in the five-year review staff made sure that these requirements were part of the Stipulated Judgment dated 21 December 2006.

Conclusion

The Discharger's WDRs required that the five-year analysis be submitted by 15 April 2004. Despite numerous requests and letters providing guidance, and adequate report has still not been submitted. The five-year analysis is necessary to determine whether or not additional constituents are being released from the landfill, and in this case, is critical because the downgradient Riverdale

community relies on groundwater for its domestic uses. The Stipulated Judgment, which the Discharger signed in December, requires that a complete five-year analysis be submitted by 1 January 2006. It lists a penalty of \$50,000 for a violation of this particular Term. The five-year analysis was not submitted by that date, and as of early April 2006, still has not been submitted.

The proposed Resolution recognizes that the Discharger has not submitted a complete five-year analysis and requires payment of the \$50,000 penalty agreed to in the Stipulated Judgment. Staff recommend that the Board adopt the proposed Resolution.

Attachments:

A: Stipulated Judgment (Case No. 376882)

B: 10 March 2006 letter from Strauss, Neibauer & Anderson

VJI/WSW: 6 April 2006

Staff Report for the 4/5 May 2006 Regional Board meeting