



OFFICE OF THE
CITY ATTORNEY

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January 26, 2006

Kenneth D. Landau, Acting Executive Officer
RWQCB
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Re: Update re ACL Complaint No. R5-2005-0525 ("Area 8" - APN 011-780-014)
Virginia L. Drake, Trustee, Drake Revocable Trust - Area 8 Cleanup

Dear Mr. Landau:

By letter of January 19, 2006, Greg Peterson, attorney for Virginia Drake, offers what he characterizes as a supplement to the executive officer's report included on the Regional Board's agenda for today's meeting in Sacramento.

Summary of Area 8 Contamination

By way of background, it is important that you and the members of the Regional Board understand the manner in which Area 8 came to be contaminated.

The city understands that in 1987, Ed Simmons, as then co-owner of Area 8 with Mrs. Drake's husband, Dan Drake (now deceased), agreed with Baldwin Contracting Company for the construction by Baldwin of a berm on Area 8 to contain water for a stock pond for use by Mr. Simmons. The stock pond was built by Baldwin with soil owned by Baldwin. After completion of the pond, it was determined that Baldwin's soil was contaminated with various residues from burn dump activities conducted on private properties and that the most significant contaminant present was burn ash.

Baldwin obtained the soil from a City of Chico road extension project undertaken to connect Humboldt Road to State Highway 32. (To understand the relationship between the road extension project and Area 8, please see the enclosed map.)

The city also understands that Mrs. Drake continues to contend that the city is somehow responsible for the contamination of Area 8. The city has repeatedly requested that Mrs. Drake or her attorney provide any evidence to substantiate that claim, and no such evidence has been received by the city to date.

In fact, the contract between the city and Baldwin Contracting Company left the disposal of any excess soil from the road project solely in the hands of Baldwin. Nothing in the contract directed or required Baldwin to dispose of such excess soil in any particular manner. At no time did the city otherwise direct Baldwin to dispose of such excess soil in any particular manner. At no time did a contract exist between the city and Baldwin Contracting, or between the city and Ed Simmons or Dan Drake, for disposal of any of Baldwin's excess soil on Area 8. Rather, the deposit of Baldwin's excess soil on Area 8 was done, so far as the city knows, pursuant to an agreement between Baldwin and Ed Simmons.

In short, Baldwin had full discretion to dispose of its excess soil from the project in any manner it felt appropriate, and Mr. Simmons had full discretion to acquire soil for the proposed stock pond from any source he deemed appropriate. There is no record of any relationship between the city and Baldwin Contracting that caused the deposit of Baldwin's excess soil on Area 8, nor is there any record of any benefit to the city from that deposit, as ownership of the soil passed to Baldwin as soon as Baldwin separated it from the right-of-way for the road.

City Response to Cleanup and Abatement Order

A second matter in Mr. Peterson's letter also deserves comment. Mr. Peterson suggests that his client, Mrs. Drake, "continues to perceive a different standard of treatment accorded to the City of Chico by your staff, as opposed to that directed to the property owners." While Mr. Peterson bases that assertion, in part, on a misstatement of facts as to the role of the city in the contamination of Area 8, he also ignores the very substantial expenditures made by the Chico Redevelopment Agency (RDA) in response to the board's cleanup and abatement order.

First, the RDA has accomplished the cleanup of all of Area 1 (APN 011-030-015), which was the 10-acre site of the city-owned municipal burn dump that operated from 1922 until 1965. The cleanup of Area 1 also included the cleanup of property adjoining the north and west sides of Area 1 (APN 011-030-037).

Second, the city owned one of the four parcels comprising Area 2, west of Bruce Road and north of Humboldt Road. The RDA acquired all four parcels and has caused the remediation of all of Area 2 at the RDA's expense and by deposit of the contaminated soils found in Area 2 onto Area 1. Area 2 has now been completely remediated and a certificate of completion has been issued for it. A certificate of completion has also been issued for Area 1, though work remains to complete the final cap on Area 1.

To date, approximately \$10 million dollars of city and RDA funds have been invested in this cleanup in response to your Board's cleanup and abatement order.

Third, in September of 2004, former City Manager Tom Lando offered Mrs. Drake \$150,000 as a contribution toward the cost of cleaning up Area 8. There has been no response to that offer. (A copy of Mr. Lando's letter is attached for your ready reference.)

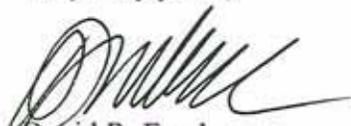
Kenneth D. Landau, Acting Executive Officer
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Fourth, the RDA offered to consider accepting all of the contaminated soil from Area 8 and Area 7 onto the RDA's cell on Area 1. All that was required of the owners of these areas was that they bear the costs of transporting the contaminated soils to Area 1, that they secure all governmental permits necessary for that work, that they agree to subject both areas to a recorded covenant to provide for annual assessments against the parcels to cover each parcel's fair share of O & M costs for Area 1, and that they waive their claims against the city with respect to the manner in which the area became contaminated and the cost of the owner's prior remedial activities. It should be noted that the RDA did not request one cent for the costs of the engineering, permitting, constructing and closing the contaminant cell on Area 1. (The exchange of correspondence on this subject, between Mr. Peterson and myself in December 2004 and January 2005, is already in the administrative record.)

Finally, the RDA's cell on Area 1 was engineered to accept all of the waste from Areas 7 and 8. When that did not occur, the RDA bore the cost of importing approximately 14,000 cubic yards of additional fill material as a substitute for the material anticipated to be received from Areas 7 and 8. Now that the cell on Area 1 has been completed and closed, including the compaction and encapsulation of this 14,000 cubic yards of fill in lieu of the contaminated soils from Areas 7 and 8, it is infeasible to reopen that cell to now accept the waste from those areas. (See attached letter of January 17, 2006, from the Chico RDA's consultant, EMKO Environmental, Inc.)

In short, while the city possesses no facts that would support the conclusion that it is a discharger under Water Code section 13305 as to Area 8, the city and the RDA have spent a substantial amount of public money to remediate the majority of the contaminated soils in and near the city's former landfill, including soils contaminated by purely private activities. The RDA offered the owners of Areas 7 and 8 the opportunity to participate in the RDA's remediation of Areas 1 and 2. As noted above, Areas 1 and 2 have now been cleaned up by the RDA in compliance with the Board's order, and Areas 7 and 8 remain contaminated from activities for which the city is not responsible.

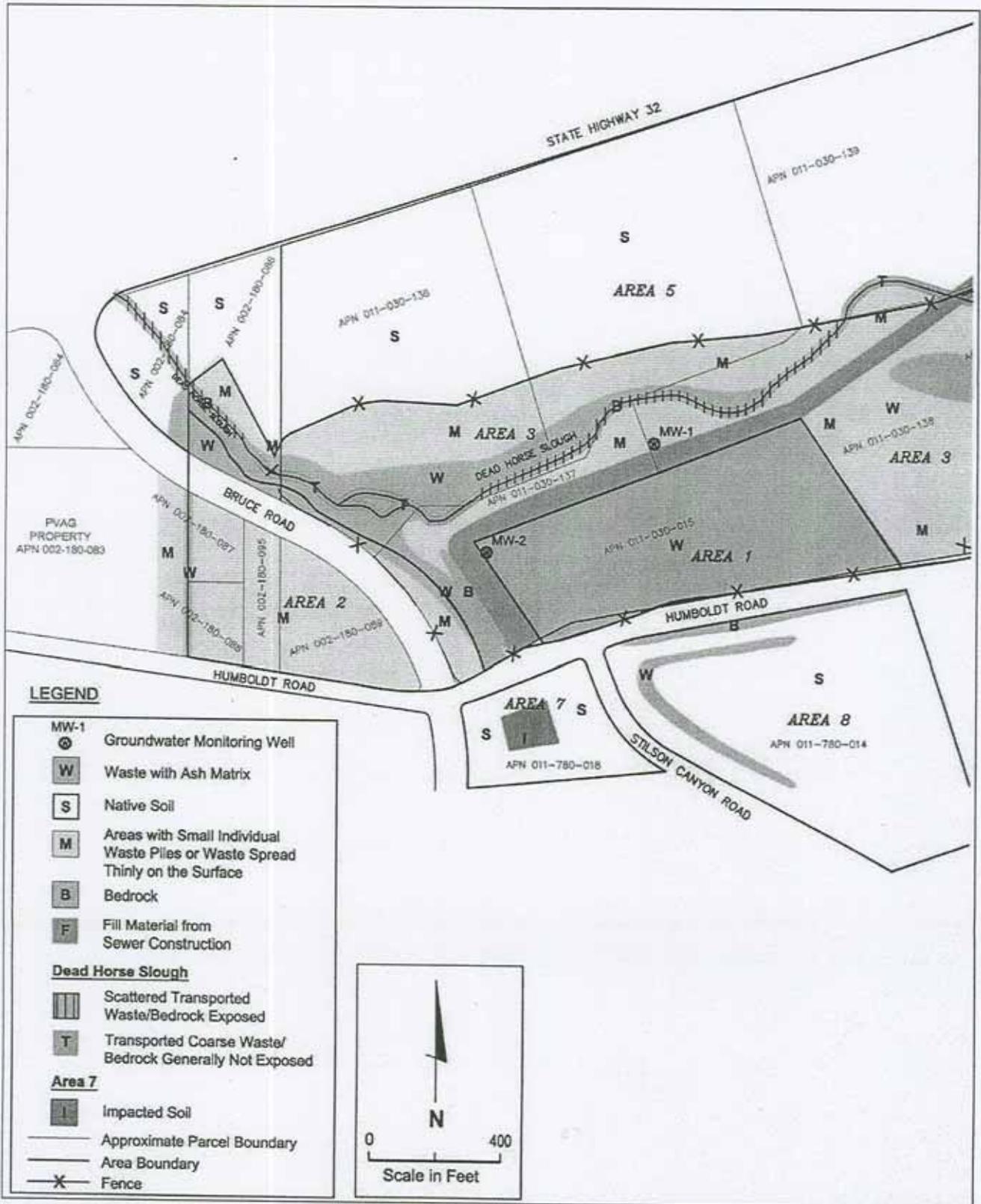
Very truly yours,



David R. Frank
City Attorney

jlr
Attachments
cc via facsimile:

Robert H. Schneider, Chair CVRWQCB
Frances McChesney, Esq., Staff Counsel
James C. Pedri, Assistant Executive Officer ✓
Randall Nelson, Esq.
Mac Goldsberry, Esq.



Source: EMKO Environmental 2004

Observed Material Types

Humboldt Road Burn Dump

1T133.01 04/04

EXHIBIT 2

EDAW



OFFICE OF THE
CITY MANAGER

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PS-51-14-3-2/Chrono

September 10, 2004

Virginia Drake
P.O. Box 1448
Chico, CA 95927

Rene Verduyn
c/o Baldwin Contracting Co.
1764 Skyway
Chico, CA 95928

Dear Ginger and Rene:

I am writing as a follow-up to our meeting regarding the Humboldt Road Burn Dump held on July 27, 2004. After discussing the matter with the City Attorney and the City Council, it is still our belief that the City has no legal liability in this matter. However, in an attempt to resolve the issue, I have been authorized to indicate that the City would be willing to pay up to \$150,000 to help resolve the matter and ensure that the site is cleaned up. Our offer, of course, is contingent upon a complete, full release from all parties and again is proposed in the form of a settlement with the belief that the City has no liability in this matter.

Sincerely,

Thomas J. Lando
City Manager

TJL:km

cc: ACM/CA - 2

RECEIVED

JAN 19 2006

CITY OF CHICO
ENGINEERING DIVISION

EMKO Environmental, Inc.

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El Dorado Hills, CA 95762-3772
(916)939-0133
(916)939-0529 FAX
akopania@sbcglobal.net

MEMORANDUM

January 17, 2006

To: Fritz McKinley
From: Andy Kopania *AAK*
Subject: Feasibility of Placing Drake Waste in the RDA Cell
Humboldt Road Burn Dump

At your request, I have prepared this memorandum to evaluate the feasibility of reopening the Chico Redevelopment Agency (RDA) containment cell at the Humboldt Road Burn Dump to accept approximately 7,000 cubic yards of waste material from Areas 7 and 8, which is currently owned by Drake and Simmons. The design for the RDA cell included adequate space to accommodate the Area 7 and 8 waste material. An agreement with the Area 7 and 8 owners, however, could not be reached and the RDA cell was completed by adding up to 14,000 cubic yards of fill material to attain the proper slope on the top of the cell.

In an attempt to resolve Administrative Civil Liability Complaint Numbers R5-2005-0524 and R5-2005-0525, Regional Water Quality Control Board (RWQCB) staff have suggested that the RDA cell could be reopened, an appropriate quantity of the 14,000 cubic yards of fill material removed, and the waste material from Areas 7 and 8 be placed in the RDA cell prior to final closure. At this time, the RDA cell is substantially complete. All waste material from RDA-controlled parcels has been excavated and placed in the cell, the material in the cell has been compacted to appropriate standards, the gas migration layer (sand) and gas recovery piping have been installed, the low-density polyethylene (LDPE) geosynthetic cover has been placed on the cell, and the perimeter drainage system has been installed. The only items remaining to complete the cell are the geocomposite drainage layer (GDL) and the vegetative cover. To place the waste material from Areas 7 and 8 in the RDA cell, the following activities would need to occur:

1. The LDPE cover and perimeter drainage system on the eastern side of the cell would need to be removed to allow for re-construction of the haul road to the top of the cell.
2. At least two-thirds of the LDPE cover on the top of the cell would need to be removed

- or "peeled back".
3. The gas migration layer sand and gas collection system piping would need to be removed in the area where the LDPE cover was removed.
 4. Approximately 7,000 cubic yards of the fill material within the cell would need to be removed and disposed of properly.
 5. The 7,000 cubic yards of waste material from Areas 7 and 8 would need to be placed in the cell and adequately compacted.
 6. The gas migration layer sand and gas collection system piping would need to be reconstructed in the area where the LDPE cover was removed and linked with the remaining piping that was not removed.
 7. The haul road on the east side of the cell would need to be removed.
 8. The LDPE cover would need to be replaced on the top and east side of the cell.
 9. The perimeter drainage system would need to be reconstructed on the east side of the cell.
 10. The GDL and vegetative cover would then be placed over the re-constructed cell.

Implementation of the above 10 steps may not be possible, and would likely result in a consolidation cell that does not comply with RWQCB Title 27 regulations. During review of the cell design, RWQCB staff were very clear that vehicles would not be permitted to drive across parts of the cell where the LDPE cover has been installed. Thus, large areas of the cover will need to be removed or peeled back to allow construction of an access road and to open up the top of the cell. As the LDPE is removed, the existing seams within the removed material will likely be damaged or compromised. Thus, all-new LDPE may need to be purchased for step 8 to cover the top and east side of the cell.

The sand for the gas migration layer has very little shear strength. Therefore, the sand under the edges of the top cover that is not removed will likely spill out from under the cover and cause the edges of the LDPE cover to sink around the open area. It will be very difficult to push this sand back under the cover without damaging the remaining gas collection piping and the edge of the LDPE. In addition, it will be very difficult to align and connect the replacement gas collection piping with the piping that would remain in place.

RWQCB staff have assumed that the 14,000 cubic yards of fill that were placed on top of the cell to attain the appropriate slope consists of completely clean material. The clean fill that was placed on the cell, however, is intermingled with the decontamination pad from the West of Bruce Road excavation area and residual waste material that was identified at various locations on the RDA parcels and removed at the end of cell grading. Thus, it is quite likely that waste material will be encountered while removing the 7,000 cubic yards of material from the cell for step 4. It is uncertain if the removed material would be a hazardous waste requiring disposal at a Class 1 landfill, but at a minimum it will almost certainly require disposal at a Class 2 facility as was done for the Pleasant Valley Assembly of God (PVAG) soil berm.

It is very unlikely that the 7,000 cubic yards of new waste material placed in the cell for step 5 could be compacted to the same degree as the material that is currently present in the cell. The limited access to the top of the cell, differences in material type, and the duration for which the current material has been in the cell suggest that the new material can not be adequately compacted. Therefore, the new waste material from Areas 7 and 8 will most likely cause differential settlement, which may inhibit runoff and cause water to pond on the top of the cell. The edges of the area of differential settlement will correspond to the locations of major seams in the LDPE cover, where the new cover material would have to be spliced to the existing cover material. The combination of differential settlement along with reduced runoff and ponding at the location of weak areas in the LDPE cover would substantially reduce the factor of safety of the cover system and increase the potential for cover failure and resulting infiltration of water into the waste material within the cell.

Based on the above discussion, the suggestion by RWQCB staff that the RDA cell could be reopened to accommodate the Area 7 and 8 waste material is not feasible. It would compromise several critical components of the cell and the cover system, and would still require approximately 7,000 cubic yards of material to be disposed of in an offsite landfill. The compromise to the gas collection piping, perimeter drainage, and cover systems would also likely result in the cell being out of compliance with the substantive requirements of Title 27 landfill construction regulations.

On another note, it has also been suggested that the waste material from Areas 7 and 8 could be placed in an auxiliary cell located in the "notch" between the RDA cell and the Fogarty cell. This alternative is also infeasible because it would block surface drainage that currently runs through this area, would damage the perimeter drainage system for the RDA cell, and likely damage the cover systems for the RDA cell and the Fogarty cell because they were not designed to bear a surface load of such magnitude.

Although the opportunity existed as recently as six to seven months ago, placement of the Area 7 and 8 waste anywhere north of Humboldt Road is no longer feasible. The only feasible and cost-effective option for addressing the Area 7 and 8 waste material is to cap it in place or contain it in a separate cell within Area 7 or 8. The onsite alternative is fully supported as the only viable alternative in the RWQCB-approved January 2002 Feasibility Study Report for the HRBD.