

California Regional Water Quality Control Board
North Coast Region

CLEANUP AND ABATEMENT ORDER No. R1-2009-0128
(Replaces CLEANUP AND ABATEMENT ORDER No. R1-2009-0023)

And

ORDER REQUIRING TECHNICAL AND/OR MONITORING REPORTS FOR THE
INVESTIGATION OF POLLUTION

For

Harwood Products, Limited Partnership
Arthur H. Harwood and Morris J. Harwood,
General Partners of Harwood Investments Company
Harwood Products, Incorporated
Wells Fargo Bank, N.A

14210 Branscomb Road
Branscomb

Mendocino County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. Harwood Products, Limited Partnership, Arthur H. Harwood and Morris J. Harwood, General Partners of Harwood Investments Company, Harwood Products, Incorporated ("Harwood"), operated a sawmill, wood treatment facility and wood waste disposal site at 14210 Branscomb Road, Branscomb, California, between 1950 and 2008. Wells Fargo Bank N.A ("Wells Fargo"), Harwood's lender, was granted a security interest in all of Harwood's assets, both real and personal. Harwood and Wells Fargo are hereinafter referred to as "Dischargers". The property is located in the southeast quarter of Section 22, Township 21 North, Range 16 West, Mount Diablo Baseline and Meridian (Assessors Parcel Numbers 013-910-10, 11, 12, 13, 18, 21 and 013-920-03).
2. Site operations included a teepee burner, planing mill, vehicle maintenance and truck wash area, lumber storage, wood treatment by spray booth and dip tank, petroleum above ground storage tanks, storm water and leachate collection systems, chemical storage, and a wood waste disposal site.

Solid Waste Disposal Site

3. The solid waste disposal site is approximately 27 acres and encompasses a gully which is tributary to the South Fork Eel River. Originally, the owners and operators proposed that a seven acre disposal site would received approximately 28,000

cubic yards of wood waste per year until the maximum fill volume amount of 160,000 cubic yards was reached. The waste disposal site met the criteria for a Class II-2 disposal site as specified in California Code of Regulations, title 27, section 20200 et seq. The original fill volume of 160,000 cubic yards was exceeded in mid-1983, and the size of the new solid waste disposal site was expanded from 7 to 27 acres. Zone 1 would receive wood waste annually with a capacity of 350,000 cubic yards. Zone 2, with an estimated capacity of 417,000 cubic yards to be used for ash disposal from a proposed wood-fired power plant and/or wood waste. In 1989, the site received a change in classification to a Class III Waste Management Unit. The wood-fired power plant was never built and ash disposal never occurred. To date, the Class III unit has only accepted wood waste.

4. To control discharges from the operation of the solid waste disposal site, the Regional Water Board issued Waste Discharge Requirements (WDR) and accompanying Monitoring and Reporting Program in 1977 (Order 77-51 and M&R 77-51), and updated the permit in 1989 (Order No. 89-147 and M&R 89-147, issued to Arthur H. Harwood, Morris J. Harwood dba Harwood Products) and 1994 (Order 94-111 and M&R 94-111).
5. On August 5, 1997, M&R 94-111 was revised to include semiannual groundwater monitoring of hardness, pH, tannins and lignins, chemical oxygen demand and total dissolved solids. Surface water was monitored on a monthly basis for turbidity, settleable solids, pH, flow rate, and oil and grease. Leachate monitoring occurred monthly between October and April for chemical oxygen demand, general minerals, biochemical oxygen demand, pH, and EPA Method 601.601 for volatile organics. Eventually, the WDRs for the solid waste disposal site were incorporated into the NPDES Permit described in more detail below.

National Pollutant Discharge Elimination System

6. The mill operations processed approximately 200,000 board feet per day of redwood, fir, and pine logs into lumber. Domestic waste for 180 employees was discharged to a septic tank/leachfield system. In addition, 5,000 gallons per day (gpd) of edger water was discharged to an evaporation/percolation pond, and the log deck sprinkling water was recycled. To control discharges of waste to surface water that could occur from operations on the Site, the Regional Water Board issued Waste Discharge Requirements Order No. 77-96 (Order 77-96) (NPDES No. CA0024171) and Monitoring and Reporting Program No. 77-96 (M&R 77-96) in 1977. Order 77-96 provides: no discharge of edger water or process wastewater pollutants to the South Fork Eel River; no discharge of log deck sprinkling water to the South Fork Eel River; no discharge of storm water runoff for volatile suspended matter and hydrogen ions; no surface discharge of domestic waste; and no toxic or other deleterious substances shall be present in any discharge to the South Fork Eel River. Receiving water limitations included: levels for dissolved oxygen; oils, grease, waxes, other materials in concentrations that result in a visible film or coating on the water surface; substances in concentrations that result in the deposition of material that causes nuisance or adversely affects beneficial uses;

discoloration or the South Fork Eel River; no increase in the turbidity of the South Fork Eel River; and no taste or odor-producing substances. M&R 77-96 (as updated periodically) requires: weekly sampling for volatile suspended matter, settleable matter, and hydrogen ion and monthly fish bioassay tests; chemical oxygen demand and rainfall, gate structures inspections; and monitoring of the two gate structures daily to determine if a discharge is occurring along with daily measurement of rainfall. The NPDES Permit and accompanying Monitoring and Reporting Program was updated and reissued in 1983 (adding receiving water limitations) and 1988 (revising discharge prohibitions).

7. On May 16, 2002, the Regional Water Board consolidated the WDRs for the Class III Waste Management Unit and NPDES Permit for Site operations into Waste Discharge Requirements Order R1-2002-0031 (Order 2002-0031) (NPDES No. CA0024171) and Monitoring and Reporting Program No. R1-2002-0031 issued to Harwood Products, Inc. Order No. R-1-2002-0031 contains prohibitions for sawmill discharges, landfill discharges, effluent discharges for the sawmill and landfill, receiving water limitations, solids disposal and handling requirements, landfill operation requirements, landfill construction specifications, and landfill provisions. M&R 2002-0031 requires monitoring of sawmill operations and receiving waters, waste management unit monitoring of groundwater, surface water, leachate seepage, leachate pond, and settlement monitoring of the lower-permeability layer to evaluate for repairs. Sawmill operation monitoring reports must be submitted monthly with an annual storm water report. Waste management unit monitoring reports must be submitted on February 1 and July 1 of each year.
8. On February 15, 2005, the Regional Water Board issued Administrative Civil Liability Complaint No. R1-2005-0015 to Harwood Products, Inc. for a failure to file monthly monitoring reports in a timely manner in compliance with Order 2002-0031. The complaint was for a total liability of \$60,000. The ACL Order provided that \$37,500 could be permanently suspended if the Executive Officer determined that the Discharger provided scheduled progress reports toward completion of a Supplemental Environmental Project. A Watershed Assessment was completed primarily from a grant by the California Department of Fish and Game totaling \$190,000. Regional Water Board staff understands that the Discharger contributed some portion toward that effort. The Mendocino Country RCD has indicated that certain bills remain outstanding.
9. In April, 2008, Regional Water Board staff met with Art Harwood at the Site to discuss steps to renew Order R1-2002-0031. That permit contains a permit renewal date of May 16, 2007; however, the permit remains in force and effect until a new permit is issued. The parties discussed dividing the permit into three different permits to cover the NPDES discharges, wood waste disposal leachate, and storm water. Operations had ceased at that time and so the point source discharge from the log sprinkling system was not occurring and therefore the facility may not require NPDES point source permit coverage. Regional Water Board staff informed Mr. Harwood that he would be required to maintain permit

requirements for the wood waste pile and storm water. Staff observed that some measures had been taken to implement storm water BMPs.

10. In May, 2008, Harwood Products, Inc. filed for Chapter 11 bankruptcy in federal court. Under Chapter 11, a debtor can continue operations while reorganizing the business under the control of the court. Business debtors have an obligation to manage or operate estate property in accordance with state and federal environmental laws under section 959(b) of the Bankruptcy Code. The case was later converted to a Chapter 7 bankruptcy. Under Chapter 7, a business ceases operations and the assets are liquidated and distributed to creditors. Chapter 7 bankruptcy greatly increases the health and safety concerns on the Site because the property may revert to a debtor that lacks any assets to conduct ongoing maintenance and other measures necessary to protect water quality. This Order is necessary to ensure that all responsible parties are notified of their responsibility for certain actions that must occur to prevent unauthorized discharges and clean up the property to an acceptable level.

Hazardous Materials and Waste

11. On September 24, 2008 Wells Fargo elected to pursue its secured remedies against Harwood.
12. On December 10, 2008, the Mendocino County Department of Environmental Health (MCDEH) conducted a site inspection. MCDEH determined there was an imminent and substantial endangerment to public health and safety and the environment from past and present operations at the Site. Imminent threats included hazardous material and waste releases from improper dismantling of the equipment purchased during the auction. MCDEH staff notified Regional Water Board staff about its findings and concerns about threats to beneficial uses of surface and groundwater, and asked Regional Water Board staff to inspect the sawmill.
13. On December 23, 2008, Regional Water Board staff conducted an inspection of the Site. Staff observed chemical storage without secondary containment, uncontrolled water flowing from the chemical mixing room and across the yard into a storm water catchment basin along the site boundary. An empty tank in the chemical mixing room was labeled Britewood 2-40 and the label indicated that the contents were 40% propiconazole and 60% inert ingredient. A literature search indicates that Britewood can be toxic to fish. Staff from the firm Safety Kleen were at the Site and in the process of removing hazardous materials and stained soils. Safety Kleen staff reported 11,000 gallons of hydraulic fluid and at least 148 55-gallon drums of contaminated material were identified and removed from the Site with several drums noted as bulging and/or leaking. Removal actions were ongoing. Staff also observed that the planar building floor appeared to be bare dirt with drains cut into the floor. These drains appeared to contain fluids from equipment and appeared to discharge directly to soil. Staff also observed sediment transport in surface water from the former log storage area(s), discolored

(black) surface water runoff collecting in ponds with a threat of additional discharge in the event of future rainfall events.

14. Chemicals used in the wood treatment process may have included pentachlorophenol, tetrachlorophenol, trichlorophenol, 2 chlorophenol, 2,4 dichlorophenol, Britewood 2-40 and other wood treatment chemicals. Petroleum products and lubricants were used in the machinery and operations at the sawmill. The petroleum products may have or likely included gasoline, diesel, oil, hydraulic fluids, solvents, arochlor 1254 and 1260 (PCBs), solvents (volatile organic compounds) and other similar chemicals. Chemical wastes such as waste oil and contaminated soils were also generated.
15. Staff concluded that the existing and potential beneficial uses of the South Fork Eel River and local groundwater could be impacted by historic and current Site activities.
16. On January 28, 2009 and September 4, 2009 fires occurred at the Site. Multiple agencies and twenty (20) trucks responded to the first alarm and battled the blaze for over three hours. Cause of the blaze is unknown. A portion of a building, several drums and equipment potentially containing hydraulic fluid were burned. The resulting fire suppression water and surface discharge flowed to and was contained by the Site storm water system. The storm water system containment ponds are full and could overflow with during future rainfall events. Dioxin furans and other hazardous wastes may have been generated by the fire. The cause of the second fire was still unknown.
17. On November 3, 2009 Regional Water Board , California Department of Fish and Game and MCDEH staff conducted a site inspection. Observations included burned material, damaged drums, storm water retention ponds close to or at capacity, oily water, drums and other hazardous waste floating in a subsurface pit in the mechanics shop, a transformer leaking into the subsurface pit, wood waste piles, and other observations consistent with observations on December 23, 2009
18. The existing and potential beneficial uses of the South Fork Eel River include:
 - a) Municipal and domestic supply
 - b) Agricultural supply
 - c) Industrial service supply
 - d) Industrial process supply
 - e) Groundwater recharge
 - f) Freshwater replenishment
 - g) Navigation
 - h) Hydropower Generation
 - i) Water contact recreation
 - j) Non-contact water recreation
 - k) Commercial and sport fishing
 - l) Warm Freshwater habitat

- m) Cold freshwater habitat
- n) Wildlife habitat
- o) Rare, threatened, and endangered species
- p) Migration of aquatic organisms
- q) Spawning, reproduction, and/or early development of fish
- r) Aquaculture

19. The existing and potential beneficial uses of the groundwater in the North Coast Region include:

- a) Municipal and domestic water supply
- b) Agricultural supply
- c) Industrial supply
- d) Freshwater replenishment to surface waters

20. Section 13304 of the California Water Code provides:

Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement 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.

21. The Dischargers have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged where it is, or probably will be, discharged into waters of the State and creates, or threatens to create, a condition of pollution or nuisance. Pollution is defined in Water Code section 13050(l) (1) as the alteration of the quality of the waters of the state by waste to a degree which unreasonably affects the waters for beneficial uses. The discharge and threatened discharge of pollutants at the Site may unreasonably alter water quality to a degree that affects beneficial uses. The discharges at the Site, if not remediated, would ultimately end up in the South Fork Eel River and would be deleterious to the above described beneficial uses. The discharges at the Site may also have impacted, or may impact the groundwater that underlies the sites to such an extent that it no longer meets the water quality objectives necessary to protect beneficial uses. The discharge at the Site may also meet the definition of nuisance set forth in Water Code section 13050(m) if there are sensitive receptors identified in the sensitive receptor survey that have been affected by the discharge.

22. The California Water Code and accompanying regulations and policies require cleanup and abatement of discharges. Cleanup to background levels is the presumptive standard. Alternative cleanup levels greater than background concentrations shall be permitted only if the Discharger demonstrates that: it is not

feasible to attain background levels; the alternative cleanup levels are consistent with the maximum benefit to the people of the State; alternative cleanup levels will not unreasonably affect present and anticipated beneficial uses of such water; and they will not result in water quality less than prescribed in the Basin Plan and Policies adopted by the State and Regional Water Board. Any proposed alternative that will not achieve cleanup to background levels, must be supported with evidence that it is technologically or economically infeasible to achieve background levels, and that the pollutant will not pose a substantial present or potential hazard to human health or the environment for the duration of the exceedance of background levels (State Water Resources Control Board (SWRCB) Res. Nos. 68-16 and 92-49); California Code of Regulations, title 27, section 20400, subds. (c) and (d).

23. Water Code section 13267 also authorizes the Regional Water Board to investigate the quality of any waters of the State within its region and require persons to furnish technical or monitoring reports where the burden, including costs, of these reports bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. This Order contains a requirement for the submittal of technical reports describing cleanup and investigative actions initiated and proposed to reduce the discharge of pollutants from the Site. All of the technical reports required by this Order are necessary to ensure that the prior harm and future threat to water quality created by the discharge of waste described above are properly abated and controlled. In light of the Discharger's unauthorized discharge of sediment, discolored surface water, unpermitted discharges of water from chemical mixing room, petroleum products to the ground surface and other waste(s) and regulatory agencies' observations that current conditions at the Site, as described in Findings 11 through 15, pose a continuing threat of discharge, the burden, including costs, of the reports required by this Order bear a reasonable relationship to the need for the reports and the benefits to be obtained therefrom.
24. Reasonable costs incurred by Regional Water Board staff in overseeing cleanup or abatement activities are reimbursable under Water Code section 13304(c) (1).
25. Any person affected by this action of the Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If the Discharger chooses to appeal the Order, the Discharger is advised to comply with the Order while the appeal is being considered.

26. The issuance of this cleanup and abatement order is an enforcement action being taken for the protection of the environment and, therefore, is exempt from the provisions of CEQA in accordance with sections 15308 and 15321, title 14 of the California Code of Regulations.
27. Failure to comply with the terms of this Order may result in enforcement under the Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to Water Code section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267(b) and 13304, the Dischargers shall cleanup and abate the discharge and threatened discharges forthwith and shall comply with the following provisions of this Order, including the submittal of technical and monitoring reports identified below:

1. The Dischargers shall conduct all work under the direction of a California registered civil engineer or professional geologist experienced in surface water, soil, landfill, and groundwater investigation and remediation. All work plans and technical reports submitted to the Regional Water Board shall be signed and stamped by a licensed professional.
2. The Dischargers shall take no action that causes or permits or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be discharged into waters of the state.
3. The Dischargers shall coordinate investigation and cleanup activities of the surface waters, soils, landfill, and groundwater with Regional Water Board staff, Mendocino County Environmental Health staff, and staff of other regulatory agencies involved in the cleanup of the Site and closure of the waste management unit.
4. The Harwood Branscomb mill historically has discharged sediments in stormwater runoff due to the volume of both raw logs and finished lumber that had filled most of the active portions of the sawmill site. With the absence of these materials as well as the absence of mill machinery, controlling sediments and other pollutants contained in storm water runoff can best be achieved by erosion source control methods. The Dischargers must **immediately** implement practices to control sediments and other pollutants that threaten to discharge to the Eel River in stormwater runoff. These include the following:

- a) Clean out and properly disposed of sediments now contained within all of the settling ponds. This will create additional capacity within the ponds and prevent re-suspension of existing sediments from significant rain events. The settling ponds are intended to provide for **final** treatment of stormwater runoff, they are **not intended to accept unimpeded and untreated sediment discharges.**
 - b) Grade flat and scarify soils in the vicinity of the settling ponds where active flow from the finished lumber storage area drains to the ponds. Seed and mulch the scarified soil in order to generate a grassy belt that will help to drop out sediments prior to runoff entering the ponds.
 - c) Replace missing K-rails and replace broken gravel bags that had previously been used to block the openings at the bottom of the K-rails. The settling ponds need to be completely rimmed with K-rails and wattles along the north (finished lumber storage area) boundary of the ponds.
 - d) Install clean drain rock check dams in those areas where sediment plumes are noted as discharging either to drop inlets or to the settling ponds.
 - e) Plug interior drains and any other drains that will accept highly polluted stormwater runoff from fire damaged buildings. It is much safer to store this runoff onsite than it is to allow it to discharge to Buck Creek or the Eel River.
 - f) Clean up the mass of trash, equipment and rotting wood wastes existing throughout major portions onsite.
5. The Dischargers shall submit to the Executive Officer, a work plan to secure the Site from trespassers and vandals and shall implement the work plan to control stormwater runoff impacts **within fifteen (15) days** of the date of receipt of this correspondence.
6. The Dischargers shall develop and submit a work plan for measures to meet land disposal requirements including but not limited to:
- a) Water quality protection standards for existing monitoring wells;
 - b) Preliminary closure and post closure maintenance plan;
 - c) Establishment and annual update of a formal financial mechanism for closure, post closure maintenance and known and reasonably foreseeable releases;
 - d) Notification of the Regional Water Board 45 days prior to commencing construction of the final cover and submittal of construction and installation specifications and California Environmental Quality Act information;
 - e) Installation of erosion control and storm water best management practices, including leachate management, by October 1 of each year;
 - f) Notification of the Regional Water Board in the event of a release;
 - g) Institution of an evaluation monitoring program; and
 - h) A proposal to provide adequate financial assurance, as required.

The work plan to meet the landfill requirements shall be submitted to the Executive Officer for concurrence by **December 31, 2009**. The work plan shall include a reasonable schedule for implementation.

7. The Dischargers shall implement the work plan to meet landfill disposal requirements within thirty days concurrence by the Executive Officer.
8. By **January 4, 2010**, the Dischargers shall submit a sensitive receptor survey report to the Executive Officer. The Dischargers shall conduct a sensitive receptor survey within 1500 feet of the boundaries of the Site. The sensitive receptor survey must include, at a minimum, locations of water supply wells, preferential pathways, sensitive environmental habitats, and the identification of any potential health and safety issues.
9. By **January 4, 2010**, the Dischargers shall submit to the Executive Officer a work plan to define the complete horizontal and vertical extent of contamination in soil and/or groundwater at the Site. The work plan shall include a reasonable schedule for implementation.
10. The Dischargers shall implement the work plan within 30 days of concurrence with the work plan by the Executive Officer.
11. The Dischargers shall submit a report of investigative findings within sixty days of completing the work set out in the plan to define the extent of surface and groundwater contamination. The report of investigative findings must include recommendations for any further investigative activities and monitoring of defined contaminant plumes.
12. The Dischargers shall within thirty days of defining the complete vertical and horizontal extent of the soil and/or groundwater plumes submit to the Executive Officer a feasibility study/remedial action plan to cleanup the contamination in soil and groundwater. The remedial action plan shall contain a reasonable schedule for implementing the recommended cleanup activities.
13. The Dischargers shall implement the selected remedial action within sixty days concurrence of the remedy by the Executive Officer.
14. The Dischargers shall pay all cost recovery invoices within 30 (thirty) days of issuance of the invoice.
15. The Discharges shall comply with all requirements contained in Board Order No. R1-2002-0031 including submittal of self-monitoring reports until the Board Order is rescinded or revised.
16. If, for any reason, the Dischargers are unable to perform any activity or submit any documentation in compliance with the directives contained in this order or submitted pursuant to this Order and approved by the Executive Officer, the Discharger may request in writing, an extension of time as specified. The extension request must be submitted ten days in advance of the due date and shall include justification for this delay including the good faith effort performed to achieve compliance with the due date. The extension request shall also include a

proposed time schedule with new performance dates for the due date in question and all subsequent dates dependent on the extension. A written extension may be granted for good cause, in which case the order will be revised accordingly.

This Order in no way limits the authority of this Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the site consistent with state and federal law. This Order may be revised by the Executive Officer as additional information becomes available.

Ordered by: _____

Catherine Kuhlman
Executive Officer

December 3, 2009

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Attachment