

California Regional Water Quality Control Board  
North Coast Region  
Cleanup and Abatement and 13267 Order No. R1-2014-0049

For  
John Douglas Hale

For

Discharges and Threatened Discharges of Waste  
to  
Receiving Waters  
in  
Seely Creek  
A Tributary to the South Fork Eel River  
On Humboldt County APNs 220-261-072, 220-261-046, 222-163-005, 222-163-007, and  
222-220-003  
251 Seely Creek Road, near Redway  
WDID No. 1B14037CNHU  
  
Humboldt County

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

1. On December 12, 2013, Regional Water Board staff (Staff) inspected property located at 251 Seely Creek Road, near Redway, identified as Humboldt County Assessor's Parcel Numbers 220-261-072, 220-261-046, 222-163-005, 222-163-007, and 222-220-003 (hereinafter "property"), accompanied by representatives from the California Department of Fish and Wildlife, and Humboldt County Environmental Health and Code Enforcement, and observed the following:
  - a) A 2-3 acre area<sup>1</sup> densely packed with operable and inoperable vehicles and heavy equipment, kitchen appliances, greenhouses, tools, scrap metals, fuel tankers, garbage and/or other debris. This area is bisected by and adjacent to two streams, which appear to be impacted by the observed debris placed and stored on the Site.
  - b) An unnamed tributary Class 1 restorable stream bisecting the 2-3 acre area filled with metal and wood debris, crossed by failing and unmaintained stream crossings, subject to road surface erosion and erosion at stream crossings, and instream erosion resulting from instream debris diverting flows into stream banks.
  - c) Miscellaneous scrap metal, refuse, derelict vehicles and car parts, heavy equipment, fuel tanker trucks, foam rubber, motor homes and pieces of motor homes and campers, and other debris stacked, piled, and strewn throughout the

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<sup>1</sup> Identified as Site 1 in the attached Regional Water Board staff inspection report.

area, in locations where such materials and the spillage from such materials can reach Seely Creek and an unnamed tributary to Seely Creek.

- d) A pond developed in a tributary Class II spring/stream storing water on the 2-3 acre area described previously. The pond does not appear to have any spillway designs. Overflow appears to flow into the debris piles and then to the unnamed restorable Class I stream, representing a threatened discharge.
2. Humboldt County Assessor records indicate that John Douglas Hale is the owner of record for the subject property. For the purposes of this Order, Mr. Hale is hereinafter referred to as the "Discharger."
  3. The subject property is located adjacent to Seely Creek. Stormwater runoff flows from the property and connecting roads into Seely Creek and unnamed tributaries of Seely Creek. Seely Creek is a tributary of the South Fork Eel River, which is federal Clean Water Act section 303(d) listed as impaired for sediment and temperature. In December 2004, the United States Environmental Protection Agency adopted a Total Maximum Daily Load for the South Fork Eel River.
  4. The Water Quality Control Plan for the North Coast Region (Basin Plan) designates the following beneficial uses for the Benbow Hydrologic Subarea of the South Fork Eel River Hydrologic Area:
    - 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. Cold freshwater habitat
    - m. Wildlife habitat
    - n. Rare threatened or endangered species
    - o. Migration of aquatic organisms
    - p. Spawning, reproduction, and/or early development
    - q. Aquaculture
  5. The storage of derelict vehicles, motor homes, buses, heavy equipment, trash, tools, engines, and other debris adjacent to or in locations where such materials may pass into waters of the state and United States, and the discharge of waste wood and metals to streams that are waters of the state and United States without filing a report of waste

discharge violates the Porter Cologne Water Quality Control Act (Water Code) sections 13260 and 13376 and represents an unauthorized discharge of waste.

6. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to discharges from roads and waste storage sites associated with storing wrecked and abandoned vehicles and associated debris, include the following:
  - Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
  - Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
  - Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
  - Sediment: The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
  - Turbidity: Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.
  - Oil and Grease: Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in visible film or coating on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.
  - Biostimulatory Substances: Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths cause nuisance or adversely affect the beneficial uses.
7. As described above, the Discharger and/or his agent(s) have placed earthen materials and debris into and adjacent to two streams where such materials are in and can pass into waters of the State and United States, in quantities likely deleterious to fish, wildlife and other beneficial uses. This discharge violates section 13260 and 13376 of the Porter Cologne Water Quality Control Act as described in finding 5 above.
8. The State Water Resources Control Board (State Water Board) has adopted Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304", setting forth the policies and procedures to be used during an investigation or cleanup of a polluted Site and requiring that cleanup levels be consistent with State Board Resolution 68-16, the "Statement of Policy with Respect to Maintaining High Quality of Waters in California". Resolution No. 92-49 requires cleanup and abatement of the effects of discharges in a manner that promotes

attainment of either background water quality levels, or the best water quality which is reasonable if background levels of water quality cannot be restored, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.

9. The Basin Plan includes numeric water quality objectives for chemical constituents in groundwater and surface waters, which incorporate the state drinking water maximum contaminant levels. The Basin Plan also includes narrative water quality objectives for toxicity for surface waters and a narrative taste and odor water quality objective for surface waters and groundwater. The groundwater taste and odor objective states that: "Groundwater shall not contain taste or odor producing substances at concentrations which cause nuisance or adversely affect beneficial uses." Storage of abandoned or derelict vehicles, buses, heavy equipment, and fuel tankers, can result in releases of petroleum hydrocarbon products into the environment leading to discharge to streams during rainfall or through direct run off of free product; the free product can also infiltrate the ground and deliver to groundwater over time. In accordance with State Water Resources Control Board Resolution No. 92-49, site cleanup may require groundwater testing and cleanup.
10. 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 that prescribed in the Basin Plan and Policies adopted by the State and Regional Water Board. In the event that the discharger demonstrates that it is not feasible to attain background levels, alternative cleanup levels that are consistent with the maximum benefit to the people of the State may be approved and applied, as long as such alternative clean up levels; protect human health and the environment; will not unreasonably affect present and anticipated beneficial uses of such water; and will not result in water quality less than that prescribed in the Basin Plan and Policies adopted by the State and Regional Water Board.
11. The conditions on the Site are therefore subject to cleanup and abatement under Water Code section 13304. Water Code section 13304, subdivision (a) provides, in relevant part: "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 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."
12. Pursuant to Water Code section 13304 subdivision (c)(1), the Regional Water Board is entitled to and can seek reimbursement for reasonable costs incurred to investigate the

unauthorized discharge of wastes, to oversee cleanup of the wastes, supervising cleanup and abatement activities, or taking other remedial actions required by this Order.

13. Water Code section 13267, subdivision (a), authorizes the Regional Water Board to investigate the quality of any waters of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation, may require Dischargers to furnish, under penalty of perjury, technical or monitoring program reports. A technical report, and clean up and monitoring work plan required by this Order, pursuant to Water Code section 13267, is necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly assessed, abated, and controlled. Due to the importance of protecting water resources as explained herein, the costs associated with developing a technical report and cleanup work plan bear a reasonable relationship to the benefits that will be realized once the work plan is implemented.
14. This is an enforcement action taken by a regulatory agency for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, section 21000 *et seq.*), in accordance with California Code of Regulations, title 14, sections 15308 and 15321.
15. Permits and approvals from other local, state and/or federal agencies may be necessary to perform the work required under this CAO.
16. Failure to comply with the terms of this Order may subject the Discharger to administrative civil liability, pursuant to sections 13350 and 13385 of the Water Code in an amount of up to five thousand dollars (\$5,000) per day of violation or ten dollars (\$10) per gallon of waste discharged to groundwater, and up to \$10,000 per day of violation and ten dollars (\$10) per gallon of the volume discharged to surface water and not cleaned up that exceeds 1,000 gallons. Furthermore, failure to provide the technical reports required by this Order may also subject the Discharger to administrative civil liability in the amount of up to \$1000 per day pursuant to section 13268 of the Water Code.
17. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations, sections 2050-2068. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. Note that filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. Additionally, if a Discharger files a petition with the State Water Board, the Discharger must comply with the Order while his/her request for reconsideration and/or petition is under consideration.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code sections 13304 and 13267, the Discharger shall provide the following information and perform the following cleanup and abatement actions:

1. Retain a California Licensed Professional to assess the site for hazardous wastes commonly associated with derelict vehicle and miscellaneous rubbish, trash, and debris, and develop a cleanup plan including a map of the site areas reviewed and locations of hazardous wastes, and to remove hazardous wastes and other debris with the potential to impact receiving waters. The Discharger shall submit the plan to the Regional Water Board Executive Officer for review and approval by **September 1, 2014**. Upon approval, the Discharger's designated licensed consultant shall implement the cleanup plan and provide any recommendations for soil sampling by no later than **October 15, 2014**.
  - a. The plan must include identification of the volume of materials that need to be removed and assessment for hazardous wastes prior to removal.
  - b. Copies of all receipts and trucking manifests for disposal of all wastes, including hazardous wastes, shall be provided to the Regional Water Board as generated.
2. Retain a California Licensed Professional to develop an erosion control, stream restoration, road mitigation, and monitoring plan (Restoration Plan) showing all watercourses, roads and existing features that includes designs and specifications to accomplish the following: 1) remove all illegally placed earthen material and miscellaneous debris from streams; 2) restore the vegetative and hydrological functions of the damaged streams to ensure the long term recovery of the affected streams; 3) restore fish passage; 4) mitigate controllable sediment sources (See RWB Staff inspection report); 5) replant the slopes and streamside areas with native vegetation to prevent erosion and delivery to streams; 6) as necessary to provide streamside protection, provide additional planting of native species to reduce the potential for sediment delivery; and 7) develop an erosion control plan assessment for all roads and pads, and mitigation schedule for all controllable sediment sources identified (refer to the Regional Water Board staff inspection report). The Restoration Plan is due to the Regional Board Executive Officer by no later than **September 30, 2014**. The Restoration Plan should include interim erosion control measures as necessary to stabilize the site through the 2014-15 winter period. The Restoration Plan must include design and construction standards, and a monitoring plan to accomplish and report upon these requirements stipulated herein and as follow:
  - i. All debris must be disposed of in a proper manner and stabilized in a location where there is no potential for discharge. The Restoration Plan must include the following: 1) removal of the pond or demonstration through a written report developed and certified by a civil or geophysical engineer licensed in the state of California that analyzes the stability of the pond and identifies that the pond is stable and the overflow functional, and that all applicable water right and diversion permits are procured; 2) road and pad mitigation and erosion control plan; 3) removal of earthen materials and debris from streams; 4) restoration of natural drainage paths in form and functionality including revegetation and

hydrologic function; 5) culvert and stream crossing assessment for 100-year flows and debris and fish passage; and 6) mitigation to control instream erosion and surface erosion from exposed earthen materials prior to construction, during construction, and post construction until vegetation is established.

- ii. The Restoration Plan must include: maps at 1:12000 or larger scale (e.g., 1:6000) that delineate existing site conditions including existing and buried stream channels, the projected restored slopes and stream channels, illustrating all restoration plan work points, spoil disposal sites, re-vegetation planting areas, and any other factor that requires mapping or site construction details to complete the scope of work; design and construction standards for earthen material compaction, stream crossing installation and removal, and for re-planting to ensure stabilization of exposed soils with native vegetation; and erosion control methods and standards for unanticipated precipitation during remediation.
  - iii. To ensure a successful re-vegetation/earthen stabilization effort, site restoration and any necessary plantings shall be monitored and maintained (including irrigation if necessary) for five years. All tree and shrub plantings shall have a minimum of 85% success of thriving growth at the end of five years with a minimum of two consecutive years (two growing seasons) of monitoring after the removal of irrigation. In the event the re-planting fails, re-planting is required and the monitoring shall be extended until the 85% success rate of vegetation re-establishment is accomplished. The Discharger is responsible for replacement planting, additional watering, weeding, invasive/exotic eradication, or any other practice to achieve these goals. In addition, the plan must include a time schedule for completing the work including receiving any necessary permits from State, County and/or federal agencies that may be required.
  - iv. A monitoring plan is required for all site remediation to determine the success of stream restoration efforts and re-vegetation. The monitoring plan must include regularly scheduled inspections for five years or until the Site is restored, mitigation is complete, vegetation is re-established, erosion is no longer ongoing and monitoring is no longer necessary. Each monitoring event must include a report within 30 days that describes the inspection findings, and provides corrective actions for any failures of the Site(s); failures include but are not limited to erosion controls, and instream work and revegetation success. Each year an annual monitoring report shall be submitted documenting verbally and photographically any necessary mitigation and evidence of successful restoration and Site recovery for five years or until the Site is recovered. We recommend that for the first two winters, a predetermined rainfall value is used to trigger monitoring inspections.
3. Progress reports are due on the first day of each month starting **September 1, 2014**, until the completion of cleanup and restoration efforts triggers the required monitoring and reporting programs described above.

4. Conduct all work under the direction of a California registered civil engineer or professional geologist experienced in surface water, soil, and groundwater investigation and remediation, road construction and mitigation, and stream restoration.
5. Following Executive Officer written concurrence with the restoration plan, the Discharger shall implement the work plan. The Discharger must complete all vehicle, trash, and debris cleanup work including installation of erosion controls materials at the cleaned up site by **October 15, 2014**. A Summary Report of all work and remediation efforts is due **January 15, 2015**.
6. The restoration and erosion control plan implementation must be complete by **September 15, 2015**. A summary report is due on **December 1, 2015**.
7. If the Discharger is unable to perform any activity or submit any documentation in compliance with the deadlines in this Order, the Discharger may request, in writing to the Executive Officer, an extension of the time schedule as specified. In the written extension request describe why the delay is beyond the reasonable control of the Discharger. The request must be received by the Regional Water Board no less than 15 calendar days prior to the respective deadline. The Executive Officer, for good cause, may grant an extension.
8. 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 the Water Code.

Ordered by:

Original Signed By

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Matthias St. John  
Executive Officer

August 1, 2014