

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**STAFF SUMMARY REPORT  
STAFF: Stephen Morse  
MEETING DATE: October 20, 2004**

**ITEM: 5. B.**

**SUBJECT: Authorizing the Executive Officer to Enter into an Agreement for Mutual Release and Covenant Not to Sue with 301 Industrial LLC, for property located at 301 Industrial Way, San Carlos, San Mateo County– Adoption of Resolution**

**CHRONOLOGY:** Not previously considered by the Board.

**DISCUSSION:** Communications and Power Industries (CPI), the current owner of the property at 301 Industrial Way, San Carlos, proposes to shut down its industrial activities and build new facilities elsewhere. Board and Department of Toxic Substances Control (DTSC) staffs have previously dealt with contamination on this property and have agreed that cleanup to commercial levels is appropriate for this 18-acre, currently industrial-zoned property. Because of the actual and/or perceived contamination on the site, the property has the potential of becoming a brownfield site and lie unused and unproductive. However, 301 Industrial LLC (301) proposes to buy the property from CPI and also proposes to further cleanup the site to unrestricted use for possible sale and use as a hospital. To facilitate the sale and redevelopment of the property, 301 has requested that the Board enter into a Mutual Release and Covenant Not to Sue (“Mutual Release”, interchangeably called a Prospective Purchaser Agreement or “PPA”).

By entering into a PPA, 301 seeks a commitment from the Board that 301, and its members, officers, partners, successors, etc. will not be named as dischargers (or responsible parties) in any Board enforcement order with regard to existing known conditions of contamination, solely by virtue of being involved in the purchase and redevelopment of the property. Specifically, 301 requests that the Board issue it a Mutual Release for the property. Without this assurance from the Board, 301 states that it may not be able or willing to complete the purchase or that it may not be able to attain the full potential redevelopment of the property.

The currently proposed project, a hospital, is still awaiting its entitlements from the City of San Carlos and that process may take several years. Redevelopment of the property to an unrestricted use that would allow for a hospital would have economic and social benefits to the local community, the environment, and to the public at large. The proposed redevelopment will provide increased payroll, property, and income taxes accruing to the State and municipality. It is anticipated that redevelopment would create about 1450 additional jobs and an annual payroll of about \$90,000,000.

Mutual Releases or PPAs are one tool the Board has to prevent or eliminate “brownfields” (i.e., sites not being fully developed or redeveloped from the fear or perceived fear of pollution liability), where it is in the public interest. This proposed use of a PPA fits within the State guidelines for the use of PPAs. Over the past five years, the Board has authorized PPAs for about a dozen redevelopment sites. This draft PPA is consistent with prior PPAs approved by the Board. The project would exemplify productive reuse of a potential brownfield property.

The Tentative Resolution and attachments (Appendix A) would authorize the Executive Officer to enter into an agreement with 301, for a mutual release and a covenant not to sue (i.e., “PPA”). A PPA essentially releases *future* owners from liability from Board ordered

cleanup of the site for the known existing pollution. CPI, as current owner, and former owners remain liable for the known existing pollution, even after the PPA is executed. Staff believe this is a “win-win” scenario with almost no negative impacts. The circulation of the proposed PPA resulted in one comment from DTSC (Appendix B) on a proposal on how to close out CPI’s on-site operations. Staff is still considering DTSC’s comment, but it does not effect the approval of the PPA. We expect to resolve DTSC’s comment within the next several months.

Staff recommends that the Board authorize the Executive Officer to finalize negotiations and enter into a PPA with 301. Staff believe that the benefits are significant; the risk of default by the prior owners is minimal; especially with the proposed buyer willing to clean the site to unrestricted use. The site has been investigated enough to determine that human health, the environment, and water quality will be protected under the proposed remediation and subsequent land-use change, and that with the proposed cleanup by 301 to unrestricted use, the remaining residual risks will be even of less significance. There is no known opposition to this PPA and no testimony is expected.

- RECOMM-  
ENDATION:** Adoption of the Tentative Resolution
- FILE NO.:** 41S0002 (SIM)
- APPENDIX:**
- A: Tentative Resolution (w/attachments)
  - B. Correspondence
  - C. Site Location Map

# APPENDIX A

Tentative Resolution  
And Attachments

# Appendix B

Correspondence received on Tentative Resolution etc.

# Appendix C

## Site Location Map