

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

STAFF SUMMARY REPORT (Stephen Morse)
MEETING DATE: November 16, 2005

ITEM: 13

SUBJECT: **Property at 327 Moffett Boulevard, Mountain View, Santa Clara County
– Hearing to Consider Procedural Options for Naming Additional
Dischargers to Site Cleanup Requirements**

CHRONOLOGY: May 1989 – Site Cleanup Requirements adopted
June 1990 – Site Cleanup Requirements amended
August 1993 – Site Cleanup Requirements amended
March 2005 – Hearing on procedural options for naming additional parties

DISCUSSION: Solvents released at this Mountain View site have impacted soil and groundwater. The Board has overseen site investigation and cleanup since the late 1980s. Pollutant concentrations have declined substantially since then, due to active cleanup and natural attenuation, and active cleanup ended several years ago. Union Bank was named to the Board's cleanup order after it foreclosed on the property and has since requested that the Board name additional parties to the order. If the Board names additional dischargers to the order, they and Union Bank will be required to undertake the task(s) remaining in the order, which in this case consists of periodic groundwater monitoring.

The issue in this matter is about selecting a procedural option for determining whether or not to name additional parties to the order for this site. During its March Board meeting, the Board decided to hold an adjudicatory hearing to determine whether or not two additional parties should be named to the order. The Board reached that decision after considering testimony that Union Bank wished to add two parties to the order and then considering staff's estimate that it would take about a day of the Board's time to conduct a hearing to consider naming those two parties. Since then, there has been increasing uncertainty in the estimate of the Board's time that would be necessary to conduct a formal adjudicatory hearing in this matter. That uncertainty is due to the fact that there may be many more parties involved than Union Bank and the two other parties mentioned in March.

In July, Union Bank requested that the Board consider naming a total of ten additional parties (the two discussed with the Board in March plus eight additional parties) to the order. As the Board's hearing officer in this matter, I consulted with the Chair who determined that it was appropriate to bring the matter back to the Board. The Board could consider once again whether it still

wished to have a formal adjudicatory hearing in this matter given the larger number of parties involved and the substantial likelihood that the Board would be unable to conduct the hearing in a day. Rather, a formal hearing could take several consecutive full days of the Board's time. We informed the parties of that determination. Since that time there has been considerable flux in the number of parties that might be required to participate in a formal hearing on this matter so as to provide a full resolution of the issues in connection with this site.

After we informed the parties that we would bring this matter back to the Board, Union Bank submitted a revised request indicating that it no longer wished the Board to consider naming ten parties but instead wanted the Board to add only three parties. One of those parties has since commented that a hearing "cannot proceed without all potentially responsible parties present" and must therefore include two additional parties (for a total of five) as well as Union. In the event that the Board elects to hold a formal hearing in this matter, it is uncertain whether the number of potentially responsible parties may increase during the hearing process.

The procedural options available to the Board today are the same as those available to it last March. Those options, as described in a Memorandum dated September 30, 2005, (Appendix A) are:

- 1) defer action until:
 - i) resolution of pending litigation between Rheem and Union Bank, or other developments that may address the disputed facts in this matter;
 - ii) an increased threat from site contamination to human health or the environment;
 - iii) the availability of substantially more staff resources that would allow staff to fully pursue this matter without undercutting its oversight of higher priority cases;
- 2) hold a formal board hearing;
- 3) hold a panel hearing; or
- 4) direct the Executive Officer to hold a paper hearing.

Two of the parties have added a refinement to the first option that was not specifically considered by the Board in March. They have suggested that the Board defer action on this matter in light of the current settlement discussions between the parties. One has recommended that the Board specifically defer action until after April 30, 2006, in light of the fact that it and Union Bank are engaged in court-ordered mediation (which must apparently be ended by that date).

When the Board considered this matter in March it chose to hold a full Board hearing based on the understanding that the hearing could be conducted in about a day. Staff explained that such a time frame would require that staff and the parties do significant work before the hearing. Now that the number

of parties is in flux it is possible that it may take several full time days of Board hearings to resolve this matter, even with substantial prehearing preparation.

We received comments to the September 30, 2005, memorandum from Union Bank, Rheem, and Raytheon (Appendix B), and we have fully responded to those comments (Appendix C). Their responses and comments did not significantly change staff's assessment of the procedural options.

We have notified all ten of the potential dischargers mentioned by Union Bank of this hearing. We have informed them that the purpose of this hearing is to discuss the Board's procedural options only, and not the technical issues related to the naming of dischargers at the site. Thus, staff recommends that the Board not allow parties to comment at this hearing on the substantive issues regarding whether or not any party should be named to the cleanup order. Staff suggests that the Board defer hearing comments about the substantive issues until such time as the Board has noticed a hearing to consider them.

**RECOMMEN-
DATION:**

A recommendation will follow the hearing if the Board so requests.

File No. 43s0241 (vc)

Appendices:

- A. September 30, 2005, Staff Memorandum, includes:
 - January 13, 2005, Staff Memorandum
 - July 20, 2005, letter from Union Bank, and
 - September 19, 2005, letter from Union Bank
- B. Comments from interested parties to September 30, 2005, Staff Memorandum
- C. November 3, 2005, Staff Responses to Comments, includes
 - March 2, 2005, Staff Memorandum