CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER 98-050

ORDER SETTING ADMINISTRATIVE CIVIL LIABILITY FOR:

RHONE-POULENC INC.

1990 BAY ROAD SITE
EAST PALO ALTO
SAN MATEO COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter called the Board), finds that:

1. The Regional Board, on July 16, 1997, adopted Site Cleanup Requirements Order 97-095 (Order) which amended Site Cleanup Requirements Order 92-022 (1992 Order) and extended the remedy set forth in the 1992 Order into the South of Weeks Street (SOW) subarea of the Site. Order 97-095 also set forth a revised residential cleanup standard for soil of 20 mg/kg arsenic. The Order required the discharger, Rhone-Poulenc Inc. (RPI), to submit the results of a groundwater investigation as well as Remedial Design/Remedial Action Report Addendum for Soil (Workplan) for each of the three affected properties. RPI has submitted the groundwater investigation as well as acceptable Workplans for two of the three affected properties. The remaining Workplan, for the 1200 Weeks Street properties, proposed leaving arsenic affected soil exceeding the residential cleanup standard in-place. However, the Order provided that RPI may only propose such a remedy if it has obtained in advance the written consent of the affected property owner to deed restrict their property and apply a site management plan. The Order stated that if RPI did not obtain the property owner's consent to allow deed restrictions to be placed on the property within accessible areas, RPI must remove soil to the residential cleanup standard. RPI failed to obtain a deed restriction for this property, and failed to propose soil removal to the residential cleanup standard, and the Workplan was therefore deemed unsatisfactory.

2. On October 14, 1997, the Executive Officer issued RPI a Notice of Violation (NOV) letter informing RPI of the deficiencies of the Workplan and notifying RPI of the non-compliance with the requirements of Order 97-095. RPI was told to submit the appropriate documents within 10 days (a draft deed restriction agreed upon and signed by the property owner or an alternative cleanup plan). RPI did not submit the appropriate documentation.

3. On November 20, 1997, the Executive Officer issued Complaint 97-127 for Administrative Civil Liability to RPI alleging that RPI violated the Order, which was issued pursuant to Section 13304 of the California Water Code, by failing to submit a satisfactory technical

report. The Complaint proposed an administrative civil liability of $1,000 per day of violation for the 77 day period from September 2 through November 17, 1997. The matter was scheduled to be considered at the December 1997 Board meeting. RPI requested that the matter be continued to allow time for it to come into compliance.

4. On April 30, 1998, the Executive Officer amended Complaint 97-127 to address the additional time elapsed and continued non-compliance. The amended Complaint addresses the period from September 2, 1997 through April 30, 1998, the date it was issued. The amended Complaint proposed an administrative civil liability of $1,000 per day of violation for the 241 day period.

5. On May 18, 1998, RPI met with Board staff and provided a deed restriction for the 1200 Weeks Street property which had been agreed upon by the property owner. This documentation brought RPI into compliance with the requirements of the Order.

6. RPI violated a Cleanup and Abatement Order issued pursuant to Section 13304 of the California Water Code, by failing to submit a satisfactory Workplan as required pursuant to Site Cleanup Requirements Order 97-095. This Board is authorized to order payment of administrative civil liability pursuant to Section 13350 of the California Water Code.

7. As of the date of amended Complaint 97-127, RPI had been in violation for the 241 day period from September 2, 1997 through April 30, 1998. RPI continued in its non-compliance of the Order until May 18, when it submitted appropriate documentation to achieve compliance. RPI remained in non-compliance for a total of 258 days.

8. The Board, after hearing all testimony, determined that RPI is liable civilly and, in accordance with Water Code Section 13327, considered the following factors in determining the amount of liability:

    a. Nature, Gravity, Circumstances, and Extent of Violation: Historic releases of arsenic from the former 1990 Bay Road facility remain unremediated on portions of the 1200 Weeks Street properties, located immediately adjacent to wetlands and the San Francisco Bay. The concentrations of arsenic detected in soil exceed health based cleanup levels as set forth in Order 92-022 as amended by Order 97-095. Human exposure to arsenic has both carcinogenic and non-carcinogenic effects. Ecological exposure is detrimental to both wildlife and vegetation.

    b. Culpability: RPI is fully aware of its violation of Order 97-095, based on the Order language itself, conversations with Board staff, the Executive Officer's October 14, 1997 Notice of Violation letter and the previously issued Complaint 97-127.

    c. Prior History of Violations: The Board, in 1987, issued an ACL to RPI for non-compliance with the requirements of a Board Order. RPI had failed to install, sample and report analytical results of groundwater monitoring wells to the Board

as required by the schedule set forth in Order 85-67. Monitoring wells were installed 136 days late and the results were submitted 126 days late.

d. Susceptibility to Cleanup and Voluntary Cleanup Efforts: There are approximately 10,000 cubic yards of affected soil on the 1200 Weeks Street properties, much of which is believed to be accessible. The accessible material is susceptible to cleanup by excavation. Adverse risk presented by inaccessible affected soils (under the levee and around the sewer line) remaining on portions of the properties may be mitigated by application of a cap, site management plan and deed restriction.

With respect to other requirements of Order 97-095, RPI has submitted an acceptable Groundwater Quality Investigation Report for the South of Weeks Street Operable Unit Annex as well as Workplans for the two other affected properties. Remediation of these other affected properties has been completed.

e. Economic Savings: RPI may have realized cost savings by neither cleaning up the property to cleanup standards nor entering into an agreement with the property owner to cap and deed restrict the property. (Cost estimates for excavation and removal of the affected soil range from 1.5 to 4 million dollars, depending largely upon disposal options.)

f. Ability to Pay and Continue in Business: RPI is a major international chemical company with considerable assets. An ACL issued by the Board, within the amounts set forth in the Water Code of not to exceed $1,000 per day for each day of violation, would not have any adverse effects on RPI's ability to continue in business.

g. Degree of Toxicity of the Discharge: The concentrations of arsenic detected in soil exceed health based cleanup levels as set forth in Order 92-022 as amended by Order 97-095. Human or ecological exposure to arsenic at the concentration found in soil on the 1200 Weeks Street properties could pose adverse health risk. Additionally, if left unremediated the impacted soil may act as a source to further degrade groundwater quality.

f. Other Matters as Justice May Require: This Board is not aware of other matters which need be considered.

9. The maximum civil liability which can be imposed by the Regional Board under Section 13350(f) of the California Water Code is $1,000 per day for each day of violation for the 258 day period from September 2, 1997 through May 17, 1998.

10. This action is an Order to enforce the laws and regulations administered by the Board. This action is categorically exempt from the provisions of CEQA pursuant to Section 15321 of the Resources Agency Guidelines.

11. The Board has notified RPI and all interested agencies and persons that it would hold a public hearing on this matter and has provided them with an opportunity to submit written comments.

12. The Board, at a public hearing, heard and considered all comments pertaining to this discharge.

IT IS HEREBY ORDERED, PURSUANT TO CALIFORNIA WATER CODE SECTION 13350(f), that RPI is civilly liable for this violation and shall pay administrative civil liability in the amount of $258,000. The liability shall be paid to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Order.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on June 17, 1998.

Loretta K. Barsamian

Loretta K. Barsamian
Executive Officer