

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER

**AMENDMENT OF CLEANUP AND ABATEMENT ORDER NO. 98-004 AND
RECISSION OF WASTE DISCHARGE REQUIRMENTS (ORDER NO. 92-105) FOR:**

***ALCOA CONSTRUCTION SYSTEMS, INC., ALCOA PROPERTIES, INC., AP
CONSTRUCTION SYSTEMS, INC., CHALLENGE DEVELOPMENTS, INC., DR. COLLIN
MBANUGO, F.M. SMITH AND EVELYN ELLIS SMITH, LEONA CHEMICAL
COMPANY, OCEAN INDUSTRIES, INC., REALTY SYNDICATE, RIDGEMONT
DEVELOPMENT, INC., WATT HOUSING CORPORATION, WATT INDUSTRIES
OAKLAND, WATT RESIDENTIAL, INC.***

for the property located at

***END OF MCDONELL AVENUE
OAKLAND, ALAMEDA COUNTY***

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

1. **Prior Water Board Orders:** The Leona Heights Sulfur Mine is a closed pyrite mine in the Oakland Hills (Figure 1). The Water Board adopted a cleanup and abatement order (CAO) for this site on January 30, 1998 (Order No. 98-004) to require remediation of the site, which contains exposed mine tailings that cause water quality and visual impacts on Leona Creek (Figures 2 and 3). That order was amended with Order R2-2003-0028 on April 14, 2003 to add a discharger, the current owner of the property Dr. Colin Mbanugo, and to modify the compliance schedule. This Order further amends Order No. 98-004 for the reasons listed in Finding 2. This amendment does not rescind Order No. 98-004 or Order No. R2-2003-0028.

The Water Board adopted Waste Discharge Requirements (WDRs) in 1992 (Order No. 92-105). Alcoa, Alcoa Construction Systems, Inc. (ACS) and Challenge Developments, Inc. (CDI) filed petitions to the State Water Resources Control Board (State Board) for review. The State Board found insufficient evidence to hold Alcoa liable as the alter ego of CDI or ACS. The State Board upheld the Regional Board's inclusion of CDI and ACS as dischargers and found that both should be considered primarily liable. This Order rescinds Order No. 92-105. The water quality requirements of the 1998 CAO and its amendments, including this amendment, will supersede the requirements of Order No. 92-105.

2. **Reasons for Amendment:** This amendment will accomplish the following objectives:
- a) Modify Compliance Dates: This Amendment establishes new compliance dates for corrective actions that were required in Order Nos. 92-105, 98-004, and R2-2003-0028, but which have not been implemented or completed.
 - b) Clarify Cleanup Requirements: This Amendment clarifies the tasks that are necessary for the Discharger to successfully implement the approved Corrective Action Plan (CAP). Specifically, before the CAP can be implemented, the Dischargers must obtain a number of permits from regulatory agencies with jurisdiction over various aspects of the project. Because these permits must be obtained in order to implement the CAP, we consider the submittal of complete and acceptable permit application packages to be part of the scope of tasks required by this Amendment and previous Orders. The Dischargers must obtain all permits required to comply with this Order.
 - c) Incorporate Requirements for Creek Restoration: Relocation and restoration of the Leona Creek streambed is a necessary element of the mine remediation project. Given the site's steep topography, the long-term stability of the corrective actions in and adjacent to the streambed are critical to maintaining the beneficial effects on water quality from the corrective actions. Therefore, this Order clarifies the requirements related to creek restoration that are necessary to comply with Order Nos. 98-004 and R2-2003-0028.
 - d) Name Additional Dischargers: Ocean Industries, Inc. is a successor in interest to Watt Industries, a Discharger named in Order 98-004. Ocean Industries, Inc. has participated in the formulation of the remedial action plan that this CAO Amendment requires the Dischargers to execute.
 - e) Rescission of Waste Discharge Requirements: All water quality requirements will be administered via the CAO as amended. WDR Order No. 92-105 is therefore no longer necessary and will be rescinded.
3. **Applicability and Extension of Existing Orders:** Several orders have already been issued by the Water Board to parties legally responsible for environmental remediation at the site. These orders require those responsible parties to perform cleanup actions and to submit technical and monitoring reports. These orders include CAO 98-004 and R2-2003-0028. The obligations contained in this Order supersede and replace those contained in prior orders. However, the prior orders remain in effect for enforcement purposes; the Water Board and/or State Board may take enforcement actions (including, but not limited to, issuing administrative civil liability complaints) against responsible parties that have not complied with directives contained in previously issued orders.
4. **CEQA:** This action is an amendment of an order to enforce the laws and regulations administered by the Water Board. As such, this action is categorically exempt from the provisions of the California Environmental Quality Act (CEQA). (Cal. Code Regs., tit.

14, § 15321.) In addition, this CAO contemplates restoration and rehabilitation of an existing facility, activities exempt from CEQA. (*Id.* at § 15321.) The CAO is an action taken by a regulatory agency as authorized by state law to assure the maintenance, restoration, and enhancement of a natural resource and the environment. (*Id.* at §§ 15307 and 15308.) There are no exceptions to these categorical exemptions; there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. (Cal. Code Regs., tit. 14, § 15300.2.).

5. **Notification:** The Water Board has notified the discharger and all interested agencies and persons of its intent under California Water Code Section 13304 to amend site cleanup requirements for the discharge, and has provided them with an opportunity to submit their written comments.
6. **Public Hearing:** The Water Board, at a public meeting, heard and considered all comments pertaining to this discharge.

IT IS HEREBY ORDERED that Order No. 92-105 is rescinded. It is further ordered, pursuant to Section 13304 of the California Water Code, that Order No. 98-004 shall be amended as follows:

On page 4 of 98-004, to Finding 8.B, add:

8. Ocean Industries, Inc.:

On October 7, 1980, Caballo Hills Development Company (the former name of Ridgemont Development Company) acquired the mine site. Caballo Hills Development Company was formed pursuant to a Partnership Agreement involving Watt Industries, Inc., as a 50% general partner. Caballo Hills Development Company changed its name to Ridgemont Development Company on January 20, 1981. Watt Industries Inc., changed its name to Ocean Industries in 1993.

Effective March 2, 1992, Watt Residential, Inc. assigned its entire partnership interest in Ridgemont Development Company to Watt Industries/Oakland, Inc., the sole remaining party in connection with the dissolution of Ridgemont Development Company. By operation of law, as the sole remaining partner, Watt Industries/Oakland, Inc. (now known as Ridgemont Development, Inc.) succeeded to the ownership of the assets of Ridgemont Development Company, including the real property on which the mine is located. Ridgemont Development, Inc. sold the property at issue to Dr. Mbanugo in 2001.

On page 5 of 98-004 and page 2 of R2-2003-0028, to B. Remedial Measures:

Replace B.2. with

2. In order to comply with the 1998 CAO (Order No. 98-004), the dischargers must perform the following tasks:

I. **Mine Remediation and Creek Restoration Designs:** The Dischargers shall submit 100% designs for remediation (i.e., isolation and stabilization) of the mine tailings, and 90% designs for the restoration of Leona Creek that are acceptable to the Executive Officer.

a. **Remedial Design Plan:** As stated in the 1998 CAO,

Upon implementation... the discharge of acidic waters and elevated metals in the drainage water above water quality objectives shall cease... [and] shall provide for the prevention of further erosion of mine tailings, and shall encapsulate the mine tailings in a manner as to best isolate the mining waste from stormwater runoff and contact with groundwater.

To comply with the CAO, the Dischargers must submit a 100% design plan for the portions of the project involving stabilization of the mine tailings piles.

Previously approved plans may be revised and resubmitted, provided that:

- i. The design plans incorporate all requirements of all regulatory permits that are required for project implementation; and
- ii. The design plans address requirements listed in the Water Board's July 5, 2006 *Conditional Approval of the Revised Summary Design Report and Construction Documents* (Appendix A).

COMPLIANCE DATE: July 1, 2013

b. **Creek Restoration Design Plan:** The Dischargers must submit a 90% design plan, consistent with the approved conceptual cascade and step-pool design for creek restoration that provides details and specifications for field implementation of creek restoration actions. This design plan must also be included in the application for a Section 401 Water Quality Certification. It is understood that certain details of the creek restoration must be designed on-site during construction to address unknowns with respect to bedrock geology; however, the following design elements must be included in the 90% design plan:

- i. Plan views, cross-section views, and profile of:
 - 1) The location of the creek channel after restoration, including its length and width dimensions;
 - 2) Construction details of typical cascade and step-pool channel features, including linear dimensions for the rises and runs, along with specifications

- for the slope ranges of the underlying bedrock in which either cascade or step-pool channel features are to be constructed; and
- 3) The channel configuration at the downstream property boundary where the stream enters the Leona Street culvert;
 - ii. Specifications for keying boulders into bedrock to form cross-channel weirs (if any are proposed);
 - iii. The addition of boulders in the middle reach of the creek on site to dissipate energy more evenly along the gradient;
 - iv. A planting and erosion control plan to enhance the stability of the reconstructed waste piles and channel margins, using, to the extent possible, native plants that are well-suited to similar rocky substrate; and
 - v. A construction phase erosion control plan, prepared in site plan format, showing the actual location and areas of all mechanical and vegetation measures to reduce erosion and sedimentation, including the type and location of all temporary silt fencing, and areas to be hydro-seeded and/or landscaped upon project completion.

COMPLIANCE DATE: July 15, 2013

II. **Applications for Permits:** The Dischargers shall submit complete and acceptable applications, including all supporting documents and any associated fees, as required for all permits and agency agreements that are required to implement the mine remediation and creek restoration projects. This includes, *but may not be limited to:*

- a. A Creek Protection Permit from the City of Oakland;
- b. Encroachment, Grading, and/or Building Permits from the City of Oakland;
- c. A Tree Removal/Protection Plan to the City of Oakland;
- d. A technical memo in support of a CEQA Categorical Exemption to City of Oakland, including the biological justification;
- e. A Section 404 Permit from the US Army Corps of Engineers;
- f. Consultations and technical documents to the US Fish and Wildlife Service and the US Army Corp of Engineers, and other appropriate agencies, to comply with the Endangered Species Act;
- g. A Section 401 Water Quality Certification from the San Francisco Bay Water Board's Watershed Management Division; and
- h. A Lake and Streambed Alteration Agreement and Incidental Take Permit from the California Department of Fish and Wildlife (formerly Fish and Game).

COMPLIANCE DATE: July 15, 2013

- III. **Implement Mine Remediation and Creek Restoration Designs:** Upon receiving permits and authorization from the appropriate agencies, the Dischargers shall implement the designs from Remedial Measure B.1 of the CAO. Remediation construction activities must occur and be completed during the 2013 dry season. The professional engineer and project designer of the approved creek restoration design must be on site to direct construction.

COMPLIANCE DATE: September 15, 2013

- IV. **Recordation of Deed Restriction:** Submit a report acceptable to the Executive Officer documenting that the deed restriction has been duly signed by all parties and has been recorded with the appropriate County Recorder. The report shall include a copy of the recorded deed restriction.

COMPLIANCE DATE: 180 Days after completion of construction

On Page 4 of 98-004 and page 2 of R2-2003-0028:

Replace 3 and 4 with

3. **Monitoring and Maintenance Plans:** The Dischargers shall submit plans, acceptable to the Executive Officer, detailing how the site will be monitored and maintained to ensure water quality improves and the remedial and creek restoration infrastructure is stable. In addition to a water quality monitoring plan, the Dischargers must submit a plan for the Project Designer to examine the site after significant rain events, as it is expected that rocks within and adjacent to the streambed might move in response to high flows, and rocks may need to be repositioned to maintain stability. The plans must include:
- a. Water quality monitoring of the creek, and if necessary, groundwater for COCs;
 - b. Periodic inspections of the waste units (isolated mine tailings piles);
 - c. Monitoring of the geomorphic integrity of the restored channel;
 - d. Monitoring the successful establishment of the banks adjacent to the restored creek channel; and
 - e. Monitoring of the stability of the waste management units, and hillsides above the banks of the restored channel.

COMPLIANCE DATE: August 15, 2013

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on _____.

Bruce H. Wolfe
Executive Officer

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FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER MAY SUBJECT YOU TO ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO: IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY UNDER WATER CODE SECTIONS 13268 OR 13350, OR REFERRAL TO THE ATTORNEY GENERAL FOR INJUNCTIVE RELIEF OR CIVIL OR CRIMINAL LIABILITY
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Attachments:

- Figure 1. Site Location
- Figure 2. Leona Creek, headwaters on mine property
- Figure 3. Leona Creek, discoloration from acidophilic bacteria
- Water Board Letter, *Conditional Approval of the Revised Summary Design Report and Construction Documents* (July 5, 2006)



Figure 1. Site location



Figure 2. Leona Creek, headwaters on mine property



Figure 3. Leona Creek, discoloration from acidophilic bacteria