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Robert P. Doty
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File No. 52467

BY U.S. AND ELECTRONIC MAIL

February 10, 2012

Hillary Gitelman
Director, Conservation Planning and Development Department
1195 Third Street, Suite 210
Napa, CA 94559

Re: Proposal For Scaled Back Cleanup and Redevelopment of the Napa Pipe Site

Dear Ms. Gitelman:

My firm represents Napa Redevelopment Partners (“NRP”) in connection with the environmental remediation aspects of its proposed redevelopment of the former Napa Pipe facility. This letter addresses our concerns over, and strong opposition to, a proposal to truncate the proposed cleanup and redevelopment of the site. This letter supplements my prior correspondence on this topic (two letters prepared in 2009, which I understand have already been shared with your office). Rather than burdening you with a repetitive presentation of the points made in those earlier letters, I have simply enclosed copies of them. I would ask that you consider the points made there to be fully incorporated here.

As you know, my client and its consultants have prepared and obtained approval for a Remedial Action Plan (“RAP”) and a Remedial Design Implementation Plan (“RDIP”) pursuant to which the industrial pollution found at various locations on the Napa Pipe site would be thoroughly cleaned up to facilitate a mixed use redevelopment of the site. The RAP/RDIP effort took several years and cost hundreds of thousands of dollars. The cleanup program proposed in the RAP/RDIP is a multi-million dollar effort that would be consistent with NRP’s development proposal.

The County apparently plans to consider (as an alternative to NRP’s proposal) a radically different cleanup and redevelopment scenario. In this alternative scenario, development would essentially be (1) limited to approximately 300 units of predominantly low income housing and (2) confined to approximately 20 acres in the northeastern corner of the site. As that area appears to have no significant environmental contamination, the remediation of hazardous substances would be scaled back accordingly. The polluted areas west and south of the low income residents would remain industrial, with contamination at levels permissible for industrial uses. In other words, this alternative scenario would effectively create an island of poor people surrounded on at least two sides by unremediated industrial contamination.

My prior correspondence notes multiple levels at which this alternative scenario is fraught with practical, legal, and economic problems. A portion of that discussion needs further elaboration. The environmental justice implications of this alternative are simply appalling. Moreover, they cast very real doubt on the adequacy of the public review process that is being conducted.

As noted in my 2009 correspondence, environmental justice is not simply a matter of lofty rhetoric. It is statutorily defined in California to mean “the fair treatment of people of all . . . incomes with respect to the development, adoption, implementation, and enforcement of environmental laws and policies.” Cal. Gov. Code § 65040.12. The RAP and the RDIP, as well as the cleanup process more generally, have been and are being supervised by the Regional Water Quality Control Board. The state’s environmental justice policy calls on the Regional Board to “conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state.” Cal. Public Resources Code § 71110(a). State policy also directs the Regional Board to “[p]romote enforcement of all health and environmental statutes within its jurisdiction in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations.” Cal. Pub. Resources Code § 71110(b).

Environmental justice is not, however, a concern limited to the state legislature and state agencies. The County’s General Plan also addresses the fundamental tenant of environmental justice. Policy AG/LU-106 provides that the County shall seek to ensure equal treatment of all persons, regardless of “economic status” in planning matters. Furthermore, environmental justice cannot be dismissed as some passing fad. The concern over locating residents and other vulnerable populations too close to unremediated industrial contamination dates back nearly 30 years (to the border zone policy put in place in the 1980s). *E.g.*, 22 Cal. Code Regulations § 66260.10 (defining potential border zone properties to be lands within 2000 feet of a hazardous waste release site); Cal. Health & Safety Code § 25220 *et seq.* (process for border zone designations and land use controls on border zone properties).

Against this backdrop of statutes and regulations, the “island of poor people surrounded by unremediated industrial contamination” scenario presents very significant substantive and procedural problems. The substantive problem is obvious. The low-income-housing-only alternative shunts people needing affordable housing into close proximity to unremediated industrial contamination. That sort of planning almost certainly has not been promoted by County officials for affluent areas within the County. So this alternative scenario surely is not the fair and equal treatment envisioned in the Public Resources Code, the Government Code, or the General Plan. The procedural problem is equally apparent. There has been no evaluation of this issue in any of the documents vetted by the public agencies or the public. This topic is not addressed in either the RAP or the RDIP, and it is not in the Draft EIR or the Draft Supplemental EIR. In other words, the environmental justice implications have not

been addressed by the Regional Board, the County or the public comment process. Consequently, the goal of open and robust public input has been subverted.

Those procedural infirmities beget a very serious practical problem. The Regional Board's approval of the RAP and the RDIP are contingent upon the County's EIR being sufficient. For example, the Regional Board's approval of the RDIP makes clear that if the Regional Board has concerns over the adequacy of the County's CEQA process, the Regional Board will conduct its own CEQA review. *See* Regional Board Letter Dated Oct. 18, 2010 (enclosed); *see also* Regional Board Letter Dated Nov. 9, 2007 (enclosed – approving the RAP contingent upon the County's EIR and preparation of an RDIP, which relies on the County's EIR). In other words, a County EIR that ignores the environmental justice issues could well result in a Regional Board CEQA process that rejects the County's "island of poor people surrounded by unremediated industrial contamination" alternative as not viable. A Regional Board's CEQA process could also lead to other inconsistent end points (*e.g.*, different conditions of approval, mitigation measures, etc.). It obviously is not possible to determine just how the situation would play out, but it seems realistic to anticipate that the only sure winners would be litigators.

In sum, NRP believes this alternative scenario is highly problematic, and profoundly unwise. It undermines the Regional Board's technical work and the legitimacy of the Regional Board's public outreach efforts. Furthermore, it does not afford NRP's interests the respect called for in General Plan Policies AG/LU-107 (concerning predictability in the review process) and AG/LU-108 (concerning respect for property rights). We therefore respectfully request that consideration of this alternative scenario not proceed.

Please feel free to reach me at the direct dial number printed above if you would like to discuss this matter. On behalf of my client, I thank you for your consideration.

Very truly yours,



Robert P. Doty

RPD/seb
Enclosures
52467\4138108v4



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November 6, 2009

File No. 52467

Keith H. Rogal
Rogal, Walsh & Mol
Napa Redevelopment Partners LLC
5 Third Street, Suite 1014
San Francisco, CA 94103

Re: Request For Support Of Napa County's Proposal For Scaled Back Cleanup and
Redevelopment of the Napa Pipe Site

Dear Keith:

This letter addresses the severe legal and reputational problems that I perceive in connection with the County's desire to pursue a truncated version of the environmental cleanup program approved for the Napa Pipe site by the Regional Water Quality Control Board. The County's truncated cleanup would support a scaled-back redevelopment proposal. Consistent with the discussion below, my recommendation is that NRP should not support the County's truncated approach. Instead, NRP should, as politely as possible, distance itself from the County's truncated approach. That way, if the County's approach creates a public relations fiasco and/or legal challenges (as I fear it very well could), NRP hopefully will not be guilty by association.

As you know, it has taken several years, many meetings, and hundreds of thousands of dollars to develop and obtain approval for a comprehensive Remedial Investigation/Feasibility Study/Remedial Action Plan (RAP) for the Napa Pipe site, one that will facilitate the integrated mixed use redevelopment program presented in the development application package currently undergoing CEQA review. Notwithstanding the considerable investment of time and resources by both NRP and the Regional Board's staff, Napa County has requested NRP's support for a very different approach to the cleanup and redevelopment of the site.

As I understand it, under the County's alternative plan residential development would, at least for the present, be limited to a modest amount of affordable housing on approximately 20 acres of the site (the Implementing Action proposed in the County's Housing Element update would be to rezone for residential development only 20 acres rather than to rezone the entire property). Only those 20 acres would be remediated to the residential standard approved in the RAP. Further, those residentially oriented acres would be situated in one or more "islands" somewhere in the northern two-thirds of the site. Under the County's alternative, except for the island(s) of affordable housing, the site would remain zoned industrially, and would accordingly be remediated to an industrial standard (unless and until some further action was taken by the County regarding NRP's proposal). The County's plan would not *preclude* a future approval of the Napa Pipe project as proposed by NRP, but the County's request to NRP (and to HCD) is to endorse a

site reuse plan which addresses only 20 acres and leaves uncertain the balance of the site. Finally, it is my understanding that this revised approach is being presented as either (1) already tacitly approved by the Regional Board or (2) likely to be approved with only modest (and perhaps *de minimis*) effort.

The County's approach strikes me as extremely misguided and not practical at all. In my judgment, this revised approach is patently inconsistent with and contrary to the essential premise of the approved RAP. Based on 20 years of experience working with public and private sector entities involved in brownfield redevelopment projects, I believe it will be very difficult, and quite likely impossible, to get this revised approach approved any time in the foreseeable future. Furthermore, 20 years of experience litigating claims associated with brownfield redevelopment projects, including toxic tort claims, leads me to believe the County's approach is fraught with legal risk.

As an initial matter, the RAP approved by the Regional Board clearly does not sanction the truncated cleanup inherent in the County's preferred approach. Indeed, the County's approach involves going back essentially to square one, because the approved RAP is premised on a notion completely contrary to the County's truncated approach (e.g., cleanup of the entire northern two-thirds of the site to the conservative residential values in the Regional Board's Environmental Screening Levels (ESL) document).

The disconnect between the RAP's comprehensive, ESL-based, residentially focused cleanup on the one hand, and the truncated mostly industrial/commercial cleanup in the County's revised approach on the other hand, is underscored by the 2007 Fact Sheet for the site. As you may recall that Fact Sheet was issued by the Regional Board when the draft RAP was circulated for public comment. The text of the Fact Sheet is phrased in terms of "cleanup of the Napa Pipe Facility," and the map used to illustrate the text clearly encompasses the entire site (see enclosed). The "remedial action objectives" stated in the Fact Sheet are to achieve "safe" levels and minimize reliance on "institutional and/or engineering controls. Those objectives are to be achieved through "cleanup before the property can be redeveloped."

There is no discussion whatsoever in the Fact Sheet about a partial cleanup or islands of residential cleanup within a predominantly industrial cleanup; nor is that scenario presented in the RAP. Inasmuch as there is no such discussion, there obviously is no explicit or implicit approval for islands of residential usage surrounded by residual contamination at industrial levels. Furthermore, neither the RAP nor the Fact Sheet sanctions residents living next door to on-going remediation work (whether for industrial reuse or some later action by the County pursuant to NRP's submission). Indeed, the Remedial Action Objectives stated in the RAP and in the Fact Sheet seek to minimize the institutional and engineering controls that would be essential to the County's truncated version of the cleanup.

In sum, the County's approach means not just starting all over, but starting over with a fundamentally different and potentially much less protective remediation program. Make no mistake, the effort necessary to pursue that vision would be extensive and expensive, not modest or *de minimis*. If we had started down the County's path four years ago and from the outset, this path

might be viable. But given all that has transpired over the past several years, that hypothetical pathway is precisely that, hypothetical.

Second, while the RAP does note that the northeast corner of the site does not appear to require significant physical remediation work, that observation does not in any way, shape or form mean the Regional Board has approved that part of the site for immediate or near-term residential reuse as one of the County's islands for affordable housing. The statement does not mean the area is, in fact, free of contamination. Moreover, in my experience statements like that, do not suggest a willingness to create a residential island, either now or in the near term. Rather, and as illustrated by the Fact Sheet, the only concept approved by the Board is an extensive, site-wide cleanup "before the property can be redeveloped."

Moreover, the approved sequence of full cleanup before any residential redevelopment is no accident. Based on the sampling data we have, and the analysis that has been conducted (the "existing record" if you will), putting residents on the site prior to the cleanup envisioned in the approved RAP would be rolling the dice with the health of those residents. There is absolutely nothing in the record to suggest that the Regional Board is comfortable with that gamble, much less that it has approved it. Instead, the Board has approved a very different approach. As a result, I cannot recommend that NRP support an effort to characterize the RAP as endorsing the County's truncated cleanup. Any such assertion is simply false, and anyone who makes such a representation will have no credibility once the assertion is probed even minimally.

Third, the fundamental problem with the County's revised approach is not simply that many people (probably most people) would find it morally repugnant to shunt low income residents onto islands adjacent to or surrounded by contamination of the type known to exist at the site. The problem is not simply that the County's approach would invite toxic tort claims (though surely it would). The problem is that the County's approach lacks a proper technical foundation (see above) and is contrary to established "environmental justice" policies. It thus presupposes action by the Regional Board contrary to those policies. I see no indication whatsoever that the Board would accommodate the County in that fashion (and many indications to the contrary).

As we have discussed, environmental justice is statutorily defined in California to mean "the fair treatment of people of all . . . incomes with respect to the development, adoption, implementation, and enforcement of environmental laws and policies." Cal. Gov. Code § 65040.12. The boards, departments, and offices within Cal EPA (including the San Francisco Regional Water Quality Control Board) have environmental justice obligations pursuant to, among other things, Section 71110 of the Public Resources Code, Cal EPA's Environmental Justice Action Plan and similar administrative efforts. In light of those considerations, I am at a loss to understand how anyone could believe the Regional Board would reverse course from the approved RAP and the cleanup envisioned in the 2007 fact sheet, and approve instead the truncated cleanup/shunt the poor people onto islands surrounded by contamination approach proposed by the County.

In my judgment, it would be "whistle past the graveyard" foolishness to assume that the Regional Board would approve such an approach when it previously approved such a different approach. Apart from the lack of analysis needed to support the County's approach, one must

Keith H. Rogal
November 6, 2009
Page 4

appreciate that the Regional Board and its reputation have taken severe environmental justice hits in recent years at sites like Zeneca/Richmond and Sherwin Williams/Emeryville. Given those episodes I very much doubt the Board's willingness to risk further excoriation vis-à-vis the County's truncated approach to the cleanup of the Napa Pipe site.

Further, I am firmly convinced that NRP's credibility (with the Board and more generally) would be greatly damaged, perhaps destroyed, if NRP were to shift gears at this late stage and in the fashion requested by the County. In light of the RAP developed and paid for by NRP, and the approval thereof sought and obtained by NRP, it simply would not be credible for NRP to now pronounce to the world that (1) its RAP was an interesting academic exercise but (2) the County's truncated approach is fine (since, after all, we are only talking about commercial tenants and a few low income residents). It is in all honesty hard to imagine having a worse set of facts to present to a jury should the County's truncated approach ever give rise to any manner of claim relating to the contamination and/or the cleanup process.

It certainly is not my place to question or speculate on the County's motives in presenting this truncated approach to the cleanup and redevelopment of the site. However, my duty as your attorney is to advise you I see very, very little upside, if any, to NRP and very considerable downside to NRP from supporting the County's approach. I appreciate that maintaining the heretofore good working relationship with the County is important and valuable, but I do not think NRP should take the risks associated with supporting the County's alternative approach.

As always, call me at the direct dial number printed above or on my cell (415-713-6240) if you would like to discuss this matter.

Sincerely,



Robert P. Doty

RPD/se
Enclosure

cc: Richard Walsh, Esq.
Casper Mol, Esq.
Pamela S. Duffy, Esq.
Whitman F. Manley, Esq.



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

Clean-up Activity Fact Sheet:

Napa Pipe Facility
1025 Kaiser Road, Napa, CA

June 2007

INTRODUCTION

The San Francisco Bay Regional Water Quality Control Board (Water Board) has prepared this fact sheet to provide information about the proposed cleanup of the Napa Pipe Facility (Facility) located at 1025 Kaiser Road in Napa, California. This fact sheet summarizes information contained in project documents and is intended to facilitate community awareness.

FACILITY LOCATION AND BACKGROUND

The Facility is located about three miles south of downtown Napa along the east bank of the Napa River.



Since the late 1930s the Facility has been used for industry – first shipbuilding, and later pipe and other steel fabrication activities. Napa Pipe Corporation ceased steel pipe fabrication in 2005. The property is now used for warehousing with a limited amount of manufacturing. Plans are under way to redevelop the Facility into a mixture of residential, commercial and open space uses.

Industrial processes and operations at the Facility used a number of materials to fabricate the steel products, such as hydraulic oils, diesel and solvents. These materials have been found in soil and groundwater at

concentrations that require cleanup before the property can be redeveloped.

INVESTIGATION AND CLEANUP HISTORY

Environmental investigations of the Facility began in 1979 with Water Board oversight and approval. Over the years, the Water Board has issued orders to address cleanup. Currently, Orders No. 90-147 and R2-2005-0012 focus attention on seven areas within the Facility.

Prior to 2005, extensive environmental investigations designed to identify the sources and extent of the contamination in soil and groundwater were conducted. Numerous soil and groundwater samples were collected and cleanup was initiated at accessible areas. The prior cleanups (five in all) focused on activities that were feasible for an active industrial property while still being protective of human health and the environment. In many buildings, investigation/cleanup could not be started because the industrial equipment or operations limited access.

With oversight and approval by the Water Board, extensive additional sampling was completed in Fall 2006/Winter 2007 to find out if formerly inaccessible areas were contaminated, and to better understand the limits of the known contamination.

These various investigations have found that petroleum products such as diesel, motor oil and hydraulic oil; various volatile organic compounds such as solvents; and a handful of metals at a few locations, are present in soil and/or groundwater.

The results of the extensive site characterization process and the methods evaluated for cleaning up the identified areas of contamination are presented in a remedial investigation, feasibility study, and remedial action plan report (RI/FS/RAP), dated June 2007. This report is available at the Napa Library and on the internet (see below).

Volume 1 of the report provides an overview of the proposed cleanup and Volumes 2-5 give details about what was found and alternatives proposed to clean up the soil and groundwater in specific areas within the Facility.



PROPOSED REMEDIAL ACTION

Remedial action objectives for the proposed cleanup are:

- Reduce concentrations of chemicals in soil and groundwater to safe levels; and
- Minimize the use and reliance on institutional and/or engineering controls.

The Water Board's Environmental Screening Levels (ESLs) were used as the benchmark to evaluate the soil and groundwater data and as cleanup levels. ESLs are conservative indicators considered safe for human and environmental exposure.

Numerous possible remedial technologies for soil and groundwater cleanup were identified and evaluated against factors such as effectiveness, implementability, and cost. Based on this evaluation, one remedial alternative stood out: excavation and aboveground treatment of polluted soil and groundwater.

The proposed selected alternative includes excavation of 122,000 cubic yards of soil and extraction and treatment of groundwater that exceeds the cleanup levels based on Water Board ESLs. The excavated soil would be dried, segregated, and characterized to determine the most appropriate treatment/reuse/disposal option. The alternatives evaluation and proposed remedy are discussed in sections 9-11 of the June 2007 RI/FS/RAP.

Groundwater that seeps into the excavations would be collected and treated onsite using the facility's existing industrial wastewater treatment system. The excavations would be backfilled with soil following confirmation that cleanup levels have been met.

The proposed remedial action is anticipated to begin in early 2008 and continue, as needed, until all soil/groundwater is excavated, treated and properly managed. Water Board staff will provide regulatory oversight throughout the remediation.

The Water Board's oversight and public review process pertains to the cleanup plans only. Napa County is conducting a California Environmental Quality Act (CEQA) review process for the mixed residential/commercial/open space redevelopment project. The County's CEQA process will provide opportunity for public review and comment on the redevelopment project. Cleanup plans would not be implemented until after the County's CEQA review process for the redevelopment project is complete.

PUBLIC REVIEW OF CLEANUP PLANS

A 30-day public review period for the proposed clean-up plans is scheduled to begin on June 11, 2007. A public meeting regarding the proposed cleanup is scheduled for June 20, 2007 at 7:00 p.m. at the Napa Valley College, 2277 Napa-Vallejo Highway (Room 2240, Classroom Annex Building). Written comments (email preferred) should be sent to the Water Board project manager identified below before the close of the public comment period on July 13, 2007.

FOR MORE INFORMATION

Water Board staff is available to answer questions and discuss the Napa Pipe Facility Cleanup Project. Please contact the following Water Board staff:

Alec W. Naugle, Project Manager
Water Board – San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2510
email: anaugle@waterboards.ca.gov

CLEANUP-RELATED DOCUMENTS

The June 2007 RI/FS/RAP and other relevant documents are available for review at:

Napa Library
580 Coombs Street
Napa, CA 94559
(707) 253-4241

Regional Water Quality Control Board San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

www.waterboards.ca.gov/sanfranciscobay/sitecleanupdocs.htm





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Robert P. Dory
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June 26, 2009

VIA E-MAIL AND U.S. MAIL

ccreswell@hcd.ca.gov

Ms. Cathy E. Creswell
Deputy Director
Housing & Community Development
1800 Third Street, Suite 430
Sacramento, CA 95811-6942

Dear Ms. Creswell:

We are writing to you on behalf of our client Napa Redevelopment Partners and in connection with the approximately 150-acre Napa Pipe facility. This letter addresses technical/regulatory concerns relating to the environmental cleanup of the site and a reduced-scale reuse scenario now being discussed in various quarters (the economic implications of this scenario will be separately addressed by Napa Redevelopment Partners).

As you know, the Napa County Board of Supervisors issued a notice of intent to approve a new Housing Element with approximately 300 units (all affordable) on approximately 20 acres of the Napa Pipe site. In discussions with our client concerning its proposed cleanup and redevelopment of the site, County staff have similarly identified a scenario in which the residential component of the reuse plan would total approximately 300 units (all of them affordable) on approximately 20 acres. One particular area of concern with this 20-acre/300-unit scenario is how it fits (or more precisely does not fit) with the current plan for cleaning up the hazardous substances released at the site during its long history of industrial use.

Residential development on the southern portion of the site (approximately 50 acres) is constrained by a nearby airport, but the northern portion (approximately 100 acres) will be suitable for residential use once the environmental cleanup plan approved by the Regional Water Quality Control Board has been implemented. The reduced-scale scenario, in which residential use is confined to approximately 20 acres within the 100 acres north of the airport restriction line, is problematic at several levels relative to the approved cleanup plan and the environmental cleanup process.

First, as of today there is no cleanup plan geared toward the 20-acre/300-unit scenario. The only plan that has been prepared, much less approved, would bring about thorough cleanup in all the significantly impacted areas of the whole site. Consequently, a plan very different from

the approved plan would have to be prepared. Whatever its merits, that new plan would be a striking course reversal from the past several years of effort with and by Regional Board staff and management. There is no assurance that the Regional Board would willingly invest its resources in revisiting the approved cleanup plan, particularly when the new plan would only partially address the contaminated areas of the site.

Second, preparing a technically sound cleanup plan for the 20-acre/300-unit scenario is not a simple matter. Once specifically identified, the 20 acres in question would have to be analyzed relative to the existing data concerning the nature and extent of nearby contamination. In particular, the existing data would have to be evaluated to assess the potential for mobile and volatile contaminants outside the 20-acre area to re-contaminate the 20-acre area. None of that analysis has been done thus far, because the premise of the existing plan makes such analysis unnecessary. Moreover, this sort of "risk modeling" would not be easy work for various reasons. For example, utility corridors and other existing subsurface features (such as abandoned pipes) can create migration pathways that compromise the modeling process. In addition, the risk modeling has to account for new utility corridors to and from the 20-acre site as those corridors could also impact the subsurface migration of contaminants. Separate and apart from their potential impact on future occupants of the housing units, the new utility corridors would also have to be assessed to address risk to construction and maintenance workers who might be exposed to contamination while working in or near those corridors.

Third, assuming a technically sound cleanup plan could be written, there is no assurance that it would be acceptable to or approved by the Regional Board. Indeed, there are strong reasons to doubt that such a plan would be approved. The Regional Board has a long-standing policy preference for "source removal" (i.e., removing contaminant mass whenever possible and practicable, whether by treatment, excavation and off-site disposal, or some combination of such methods). Scaling back the residential cleanup to only 20 acres would underperform (relative to the current, approved plan) in terms of the Regional Board's source removal policy. The Regional Board could reject the scaled back approach on that basis.

The scaled-back cleanup approach also creates for the Board a serious potential for conflict in the future between its desire for source removal and its desire to avoid impacts on residents. In other words, once a meaningful number of residents live at the site, further site remediation (outside the 20-acres) becomes highly problematic on account of the potential dust, noise and fume impacts to the residents. So in approving a limited cleanup plan now, the Regional Board would have to be concerned that it was foreclosing a comprehensive cleanup later. Inasmuch as it would have no assurance against subsequent changes in land use (i.e., converting some additional part of the northern portion of the site to residential use as need arises in the future), the Regional Board could reject the scaled-back approach in light of such concerns.

Finally, a new cleanup plan would involve a new public review/comment process. Relative to that process the Regional Board could be understandably reluctant to put its

Ms. Cathy E. Creswell
June 26, 2009
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imprimatur on a cleanup plan that environmental justice advocates could fairly criticize as consigning low income residents to a 20-acre island within an otherwise unremediated site (or a site remediated only to commercial/industrial standards). No governmental agency wants or needs that sort of adverse publicity.

In sum, the scaled-back cleanup and reuse scenario is quite problematic from the technical/regulatory perspective associated with the environmental cleanup process. The site needs the thorough cleanup envisioned in the approved remedial action plan, not a partial cleanup. While a complete cleanup will be a challenging and expensive proposition, two things can be said with confidence about that approach: the Regional Board supports it, and the cost can be absorbed by Napa Redevelopment Partners' proposed reuse of the site. Neither of those things can be said with confidence about the scaled back approach.

Please feel free to contact me at the number above if you would like to discuss this further.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert P. Doty", written in a cursive style.

Robert P. Doty

RPD/se

cc: Keith Rogal



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

Date: October 18, 2010
File No: 2139.3007 (AJK)

Rogal+Walsh+Mol
ATTN: Keith Rogal
5 Third Street, Suite 1014
San Francisco, CA 94103

SUBJECT: Conditional Approval of the Remedial Design and Implementation Plan (RDIP) for the Former Napa Pipe Facility, 1025 Kaiser Road, Napa, Napa County

Dear Mr. Rogal:

This letter conditionally approves the subject submittal. Water Board staff have received and reviewed the draft RDIP for the former Napa Pipe facility, prepared by PES Environmental, Inc. (PES) and dated July 15, 2010. The RDIP outlines the specific methods by which soil and groundwater at the facility will be remediated to residential and commercial cleanup standards, where applicable. The facility is comprised of seven sites/areas, of those seven only four are addressed by the RDIP: Sites 2/3, 4, 6 and "other areas". Site 1 is permitted and maintained as a Class II Waste Management Unit (WMU), Site 7 is up-gradient of the other six sites and no environmental issues have been identified there, and prior soil and groundwater investigations have indicated Site 5 is absent of substantial environmental impacts (See Figure 2 for a Site Delineation Map). Site 2/3 soil and groundwater are impacted by diesel, motor oil, naphthalene, volatile and semi-volatile organics (VOCs and SVOCs); Site 4 soil and groundwater are impacted by diesel, motor oil, hydraulic oil and VOCs; Site 6 soil and groundwater are impacted by diesel, motor oil and VOCs; and the "other areas" have soil and groundwater impacted by diesel, motor oil, hydraulic oil, arsenic and selenium.

Several different remedial methods were evaluated in the multi-volume Remedial Action Plan (RAP) (June 2007), and conditionally approved by Water Board staff in November 2007; conditional approval was granted pending receipt of the RDIP. These methods include first excavating approximately 122,000 cubic yards (cy) of soil from areas with contaminants of concern (COCs) above the selected applicable Environmental Screening Levels (ESLs) and facility-specific cleanup standards, then treating by one or more of the following methods: 1) Low Thermal Temperature Desorption (LTTD) to treat approximately 84,300cy of motor oil and/or hydraulic oil-contaminated soils; 2) Bioremediation by landfarming within biocells to treat approximately 37,200cy of diesel-contaminated soils; and 3) Offsite landfill disposal for approximately 500cy of metals-contaminated soils. During the excavation process, groundwater will be encountered in many areas; groundwater will be pumped out and routed to the existing on-site wastewater treatment system prior to testing and subsequent release to the sanitary sewer system.



The 2008 ESLs were selected by PES as appropriate cleanup goals for soil, soil vapor and groundwater at the facility. Water Board staff concur with PES's proposal to select ESLs for the facility cleanup goals. Currently, the Water Board is updating the ESLs. In an email dated October 6, 2010, PES stated "When the updated ESL values are published, Napa Redevelopment Partners (NRP) will update the cleanup goals for the Napa Pipe Site (most likely via an addendum to the RDIP) to reflect the new values (including updated, site- specific values recalculated with RWQCB concurrence). The updated values will then be used going forward (i.e., for remedial work not yet implemented, but not retroactively to remedial work already completed, if any)."

Water Board staff agree with and approve the implementation of the above-listed remedial technologies; however, this is conditioned upon final certification of the Environmental Impact Report (EIR) prepared by Napa County. Upon our review of the final EIR we will determine whether the California Environmental Quality Act (CEQA) requirements have been met. If the final EIR is determined to be inadequate or does not fully address impacts associated with the RDIP, we will perform our own CEQA evaluation prior to updating our Site Cleanup Requirements (SCRs). The updated SCR order will be brought before the San Francisco Bay Regional Water Quality Control Board for formal consideration by the board members.

A list of minor concerns was sent via email on September 29, 2010 to PES for clarification and/or correction, and will be addressed in the Final RDIP.

Should you have any questions please contact Alyx Karpowicz of my staff at 510-622-2427 or akarpowicz@waterboards.ca.gov.

Sincerely,



Digitally signed by

Terry Seward

Date: 2010.10.18

10:17:18 -07'00'

Terry Seward, Division Chief

Groundwater Protection Division

Napa Pipe RDIP Conditional Approval-Oct2010.doc

Attachments: Figure 2. Site Delineation Map

cc: Sean Trippi- Napa County Sean.Trippi@countyofnapa.org
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Carl Michelson- PES Environmental CMichelsen@pesenv.com
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California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

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<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

Date: November 9, 2007
File No: 2139.3007 (AWN)

Napa Redevelopment Partners, LLC
ATTN: Keith Rogal
5 Third Street, Suite 1014
San Francisco, CA 94103
Sent via email to: keith@rogalwalshmol.com

SUBJECT: Remedial Action Plan Approval for the Napa Pipe Facility, 1025 Kaiser Road, Napa, Napa County

Dear Mr. Rogal:

Water Board staff has reviewed and hereby approves the cleanup plan (i.e., remedial action plan or RAP) proposed for the former Napa Pipe facility. The RAP consists of the five volumes listed below, each dated June 2007 and prepared by PES Environmental, Inc.

1. Executive Summary (Vol. 1)
2. Site 2/3 - External Coating Building Area (Vol. 2)
3. Site 4 – Former Pipe Mill Building, Maintenance Garage, and Paint Storage Building (Vol. 3)
4. Site 6 – Former Machine Shop, Former Drum Storage Area, Southeastern Portion of Fabrication Buildings (Vol. 4)
5. Other Areas, including Fabrication Buildings Area, Double-Ender Building, Internal Coating Building, and Former Acid Drain Line (Vol. 5)

Background

The former Napa Pipe facility is located about three miles south of downtown Napa along the east bank of the Napa River. Since the late 1930s the facility was used first for shipbuilding and later for pipe and other steel fabrication activities. Steel pipe fabrication ended in 2005 and the property was sold. The property is currently used for warehousing with a limited amount of manufacturing. Plans are under way to redevelop the facility into a mixture of residential, commercial and open space uses.

Cleanup Plan

The June 2007 RAP proposes cleanup of soil and groundwater to both residential and commercial standards based on proposed redevelopment plans. The Water Board's Environmental Screening Levels were selected as the cleanup standards because they are conservative indicators considered safe for human and environmental exposure. Potential



remedial technologies for soil and groundwater cleanup were identified and evaluated against factors such as effectiveness, implementability, and cost. Based on this evaluation, excavation with aboveground soil and groundwater treatment was selected. The proposed alternative would include excavation of about 122,000 cubic yards of soil along with extraction and treatment of groundwater. Excavated soil would be dried, segregated, and characterized to determine the most appropriate treatment/reuse/disposal option. Groundwater that seeps into the excavations would be collected and treated onsite. The excavations would be backfilled with clean material (imported or remediated soil) following confirmation that cleanup levels have been met.

Implementation Plan Requirements and Next Steps:

The RAP proposes submittal of a Remedial Design Implementation Plan (RDIP) providing details about how soil/groundwater treatment will be implemented and managed. These details are necessary before the Water Board can approve implementation of the RAP. At a minimum, the RDIP must describe the soil/groundwater treatment methods selected, the soil/groundwater management protocols for excavating and stockpiling soil, managing runoff, and dewatering excavations, the storm water management practices, verification sampling protocols, and noise and dust abatement methods, and any other necessary control or contingency plans. Submittal of the RDIP is expected in late 2008.

Napa County is conducting a California Environmental Quality Act (CEQA) review process for the mixed residential/commercial/open space redevelopment project. The County's CEQA process will provide opportunity for public review and comment on the redevelopment project. Initiation of cleanup will begin after the County's CEQA process for the redevelopment project is complete, which is anticipated in 2008 or 2009. Water Board staff plans to prepare a tentative order containing site cleanup requirements for implementation of cleanup plans at that time.

Should you have any questions please contact Alec Naugle of my staff at 510-622-2510 or anaugle@waterboards.ca.gov.

Sincerely,



Terry Seward, Senior
Groundwater Protection Division

cc w/attach: mailing list

Napa Pipe RAP Approval-Nov07.doc

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