

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

U.S. Department of Navy  
Mare Island Naval Shipyard

ID No. CA7170024775

Respondent.

Docket HWCA 20030187  
CONSENT AGREEMENT

Health and Safety Code  
Section 25187

The California State Department of Toxic Substances Control (Department) and the U.S Department of Navy, Mare Island Naval Shipyard (Respondent) enter into this Consent Agreement and agree as follows:

1. Respondent previously generated, handled, stored and disposed of hazardous waste at the Mare Island Naval Shipyard (Facility). The Facility had Interim Status and is regulated under California Code of Regulations, title 22, chapter 15, section 66265 and California Code of Regulations, title 22, chapter 20.

2. The Department identified potential violations in the Department's Comprehensive Groundwater Monitoring Evaluation Report dated April 30, 2004.

3. The Department alleges Respondent was out of compliance with regulatory requirements as set forth below:

3.1 On or about February 24, 2003, Respondent violated California Code of Regulations, title 22, section 66265.91(b) when Respondent failed to follow the procedures in the January 2003 Water Quality Sampling and Analysis Plan (WQSAP) (Weston, 2003a).

3.1.1 Respondent was not following Step 1 of the four-step equipment decontamination procedures on page 6-2 of the January 2003 WQSAP in that they were not rinsing equipment with potable water. Respondent was omitting this step. Respondent was also not consistently following Step 4 of the four-step equipment decontamination procedures on page 6-2 of the January 2003 WQSAP in that they were not always rinsing with de-ionized water by applying the de-ionized water from a stainless steel Hudson-type sprayer or Nalgene squeeze bottle. Respondent was rinsing equipment by submerging the items in a bucket filled with de-ionized water.

3.1.2 Respondent obtained groundwater samples during February 2003 rather than during March as specified on page 5-3 of the January 2003 WQSAP.

3.1.3 Respondent did not place sample bottles in a chilled cooler immediately after sample collection as required by page 6-2 of the January 2003 WQSAP.

3.1.4 Respondent did not maintain custody of sample coolers during the time immediately prior to pickup by the laboratory courier as required by page 5-9 of the January 2003 WQSAP.

3.2. On or about October 1, through December 31, 1998, July 1 through December 31, 2001, January 1 through March 31, 2002 and July 1 through September 30, 2002, Respondent violated California Code of Regulations, title 22, section 66265.99(e)(3) when Respondent failed to collect groundwater samples from the upper most aquifer. On or about February 24, 2003, Respondent also violated this provision when Respondent failed to obtain groundwater samples from the Intermediate Water-Bearing Zone (IWBZ) and Deep Water-Bearing Zone

(DWBZ) during the first quarter 2003 groundwater sampling event. California Code of Regulations, title 22, section 66265.99(e)(3) requires that groundwater samples from each monitoring point and each background point shall be collected at least quarterly.

3.3 On or about July 1, 2001 through September 30, 2001, October 1, 2001 through December 31, 2001, January 1, 2002 through March 31, 2002 and July 1, 2002 through September 30, 2002, Respondent violated California Code of Regulations, title 22, section 66265.97(e)(15) when Respondent failed to obtain groundwater level measures that can be used to determine the groundwater flow rate and direction. California Code of Regulations, title 22, section 66265.97(e)(15) requires that groundwater direction and flow be determined at least quarterly.

3.4. For five years prior to July 2, 2003, Respondent violated California Code of Regulations, title 22, section 66265.92 when Respondent failed to identify a water quality protection standard that included a complete list of Constituents of Concern (COCs) under California Code of Regulations, title 22, section 66265.93 in the WQSAP. This citation requires that the water quality protection standard include a list of constituents, representative of the waste constituents, reaction products, and hazardous constituents that are reasonably expected to be in or derived from waste contained in the regulated unit. For example, organotins and Benzene, Toluene, Ethylbenzene, Xylene (BETX) were not included in the list of constituents and consequently, were not analyzed during the first quarter 2003 groundwater sampling event.

3.5. For five years preceding March 31, 2003, Respondent violated California Code of Regulations, title 22, section 66265.19(a)(2) when Respondent

failed to institute the appropriate monitoring program for each regulated unit at the Facility. Respondent maintained a detection monitoring program and did not institute an evaluation monitoring program even though there was statistically significant evidence of a release. California Code of Regulations, title 22, section 66265.91(a)(2) states, in part, that the owner or operator shall institute an evaluation monitoring program under California Code of Regulations, title 22, section 66265.99 whenever there is statistically significant evidence of a release.

3.6. For five years preceding March 31, 2003, Respondent violated California Code of Regulations, title 22, section 66265.97(b)(1)(A) when Respondent failed to have a sufficient number of background monitoring points installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that represent the quality of groundwater that has not been affected by a release from the regulated unit.

3.7. For five years preceding July 2, 2003, Respondent violated California Code of Regulations, title 22, sections 66265.99(b) and 66265.97(b)(1)(C) when Respondent failed to collect and analyze all data necessary to assess the nature and extent of the release from the regulated unit.

3.8. For five years preceding July 2, 2003, Respondent violated California Code of Regulations, title 22, section 66265.97(b)(1) when Respondent failed to identify the uppermost aquifer and hydraulically interconnected aquifers.

3.9. On or about November 30, 2002, Respondent violated California Code of Regulations, title 22, sections 66265.15(c) and 66265.97(b)(4) when Respondent failed to conduct well maintenance necessary to ensure the integrity of well 06W03. The November 2002 wellhead inspection for well 06W03 noted that

the area around the well was inundated with water and that the manhole lid bolts could not be tightened. In February 2003, the inspection team observed that the well vault had filled with clay sediment at a thickness that covered the top of the well cap. Replacement of the bolts for the manhole in November 2002 would have prevented infilling of the well vault, and potentially the well casing, with sediment.

3.10. On or about March 12, 2003, Respondent violated California Code of Regulations, title 22, section 66265.73(b)(6) when Respondent failed to maintain monitoring data to fulfill the Article 6 requirements in the written operating record until closure of the Facility. Well Inspection forms, calibration forms and daily field Quality Control (QC) reports for the third quarter 2000 and the first quarter 2001 were not maintained in the operating record. Respondent failed to provide complete well construction records for the Article 6 well network in either the WQSAPs (Weston, 2003ab) or RFI Reports (Weston 2002a; Weston 2003d).

3.11. For the five years prior to December 31, 2002, Respondent violated California Code of Regulations, title 22, section 66265.99(e)(6) when Respondent failed to analyze samples from all monitoring points within the extend of impacted groundwater for all constituents contained in Appendix IX to chapter 14 at least annually.

4. The Department finds that Respondent is in compliance with the regulatory requirements set forth above.

5. A dispute exists regarding the allegations of non-compliance.

6. The parties wish to avoid the expense of litigation and to ensure prompt and continuing compliance.

7. Jurisdiction exists pursuant to Health and Safety Code section 25187.

8. Respondent waives any right to a hearing in this matter.

9. This Consent Agreement shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

10. Liability: Nothing in this Consent Agreement shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Agreement. Compliance with the terms of this Consent Agreement, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

11. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Agreement is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Agreement; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Agreement.

12. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Agreement. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Agreement. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Agreement. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Agreement. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Agreement.

13. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Agreement, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Agreement.

OTHER PROVISIONS

14. Additional Enforcement Actions: By agreeing to this Consent Agreement, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Agreement.

15. Parties Bound: This Consent Agreement shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Agreement.

16. Effective Date: The effective date of this Consent Agreement is the date it is signed by the Department.

17. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

18. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

Dated: February 29, 2008                      original signed by Laura Duchnak  
U.S. Department of Navy  
Respondent

Dated: March 5, 2008                      original signed by Charlene Williams  
Charlene Williams  
Senior Hazardous Substances Scientist  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control