

Hector Hernandez - Re: Beneficial Reuse Program and Problems associated to Prop. 65 and SARA Title III requirements

From: Hector Hernandez
To: David White
Date: 3/30/2005 9:40 AM
Subject: Re: Beneficial Reuse Program and Problems associated to Prop. 65 and SARA Title III requirements
CC: DTSC - Andre Amy; ebrannon@consvr.ca.gov; Harvey Packard; InfoCons@dir.ca.gov; Lori Okun; mbierdzinski@ci.santa-maria.ca.us; Roger Briggs; SBCO Super Fifth Dist Bob Royster; Sheila Soderberg ; tness@ci.santa-maria.ca.us

Good Morning Mr. White,

Thank you for your comments and suggestions regarding our **DRAFT Staff Report concerning proposed Resolution No. R3-2005-005; General Waiver of Waste Discharge Requirements for Reuse of Non-hazardous Crude Oil Impacted Soil and Non-Hazardous Sandblasting Aggregate on Active Oil Leases and Fee Properties**. As you may know, at this time the referenced draft document has **not** received legal review from our State Board Counsel and has not been finalized. Until it is finalized, the document continues to be an ever changing draft.

To ensure complete and thorough legal review of the proposed Waiver is achieved and all public concerns are adequately addressed, this item is now scheduled for the **July 8, 2005 Regional Board meeting in San Luis Obispo**. We anticipate the entire item including a Staff Report, proposed WDR Waiver and a proposed Monitoring and Reporting Program, will be finalized by mid April 2005 and sent out for public comment. We will include you in our interested parties list so that you may have an opportunity to comment on the draft-Waiver document during the public comment period.

We are aware and sensitive to your concerns regarding past inappropriate management practices of petroleum-impacted soils within or adjacent to residential areas. As you know, we have already provided you a specific response letter concerning your inquiry associated with a housing development (Park II Villas) in the Santa Maria area. The only response I can provide concerning your concerns and comments at this time is that, as inferred by the proposed documents' title, the proposed WDR Waiver is intended to **only** authorize the beneficial reuse of **Non-hazardous** crude oil impacted soils **within** active oil field leases.

Please contact me directly if you have any other comments or concerns.

Hector

Hector Hernandez
 Water Resources Control Engineer
 California Regional Water Quality Control Board
 Central Coast Region
 895 Aerovista Place, Suite 101
 San Luis Obispo, CA 93401-7906
 (805) 542-4641
 (805) 788-3530 (fax)

>>> "White, David" <David.White@gcinc.com> 03/29/05 05:50PM >>>

Hector,

**Supplemental Sheet
 Item No. 17 Attachment 1
 September 9, 2005 Meeting**

A copy of the draft staff report on Beneficial Reuse for the May 13, 2005 Central Coast RWQCB meeting was forwarded to me and I would like offer the following comments:

I support the beneficial reuse concept, but believe that it has been ineffectively managed in Santa Barbara County and should be limited to only industrial property or other locations not proximate to residences and public open spaces. I believe that any future implementation of the program must include significantly improved documentation and mapping of the nature and concentration of contaminated materials, and that this information must be readily available to both the public and to public works contractors.

The materials emplaced in beneficial reuse vary considerably in source, nature and concentrations of various petroleum contaminants, and have been known to include light fractions with significant volatility. While those agencies implementing the beneficial reuse program may consider that the "interred" materials are "out of sight and out of mind," they indefinitely retain most of their associated hazards. Under the federal Emergency Planning and Community Right to Know Act (aka SARA Title III), and the OSHA Hazard Communication Standard at 29 CFR 1210 and equivalent state regulations, residents and workers have a right to be informed of those kinds of hazards, and to be prepared with both appropriate training and with appropriate personal protective equipment.

As an example, last year in Santa Maria a contractor was cutting a trench through a pavement underlain with beneficial reuse materials on San Diego Street. The contractors were connecting utilities at a depth of approximately four feet below grade in a trench approximately 75 feet long and three feet wide. I personally can attest to the fact that strong petroleum vapors were apparent to bystanders more than 50 feet from that trench; in the trench the conditions must have been quite hazardous due to the workers' proximity to the source (the beneficial reuse materials). Yet the workers had no previous knowledge that the beneficial reuse materials were there, had no appropriate knowledge of the kinds of contaminants in those materials and also had no appropriate Personal Protective Equipment (i.e., SCBA) to work in that hazardous workplace environment. If one of those workers, standing four feet deep in that trench had been overcome by those fumes, it would have been directly attributable to the failure of the Beneficial Reuse Program to adequately characterize or map those materials. Staff of the County of Santa Barbara Protection Services Division only informed the workers of the nature of the beneficial reuse materials after the issue was raised by the homeowners, and they were not provided with any specific information about the specific materials that they were working in. This was a clear violation of all hazard communication standards.

I think it is critical that the agencies intending to manage the beneficial reuse program recognize that both federal and state laws protect the communities that live near such hazardous materials as well as the rights of any future worker that might have to cut through these materials. Currently, there is inadequate communication regarding the hazards associated with beneficial reuse materials placed under residential streets. This situation fails to communicate the nature and extent of these hazards to these residents, to future residents, and certainly to future contractors which might have a need to work in them. Until this situation is rectified, I believe that the implementation of this program is contrary to both federal and state law, and adequate modifications should be made immediately.

I would like to suggest that responsible agencies must more thoroughly characterize the materials employed for beneficial reuse under residential streets and adjacent to public open spaces. Currently the number of samples and the verification of analytical data by the agencies is inadequate. It is probable that a sample of the materials under the pavement at San Diego Street would in no way correlate to any data submitted by the entities responsible for placing those materials, otherwise those fumes would not have been so readily apparent from such a distance. This also represents a hazard to ground water resources because ground water is less than 50 feet from the surface at that location. I believe that it is imperative that the Regional Water Quality Control Board take an active role through a program of confirmatory random samples, data verification and independent documentation of depth to ground water in both past and future Beneficial Reuse locations. This could be paid for through an additional assessment for Beneficial Reuse Permit Applications. To date, these data have had little or no verification, and therefore any attempt to accurately describe or characterize those materials would necessarily be flawed. On that fact alone this program would fail the state and federal hazard communication standards.

Detailed mapping of the source and nature of the contaminants must be documented and made readily available, perhaps through some kind of notice program such as the "dig alert" process employed to limit impacts to underground utilities. However, their presence must also be made known to every single residential property for any past or future beneficial reuse project in accordance with State of California Proposition 65 requirements

because of the presence of known Prop 65 compounds in oil field drilling fluids, diluent, paints, paint thinners and solvents. Furthermore, if these materials continue to be emplaced under residential streets or adjacent to public open spaces, there must be widespread and verifiable notice to residents, homeowners and the general public, of their presence under the requirements of Proposition 65. Failure to adequately conform with these legal requirements will potentially open city, county and state agencies and agency personnel to litigation.

This is a serious issue, and I am forwarding a copy of this email to both state and federal OSHA enforcement offices.

Please do not hesitate to contact me if you have any questions.

Regards,

dw

David J. White
Environmental Manager
Granite Construction Company
Santa Barbara Branch
P.O. Box 6744
Santa Barbara, CA 93160
(805) 964-9951
email: david.white@gcinc.com
<<White, David.vcf>>