

San Francisco Bay Conservation and Development Commission

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April 18, 2025

TO: Commissioners

FROM: Lawrence J. Goldzband, Executive Director, (415/352-3653; larry.goldzband@bcdc.ca.gov)
Amanda Boyd, Staff Attorney, (415/352-3643; amanda.boyd@bcdc.ca.gov)

SUBJECT: Executive Director's Recommended Enforcement Decision and Proposed Stipulated Civil Penalty Order No. CCD2024.003.00, Union Pacific Railroad, Unauthorized Dumping, Rodeo, Contra Costa County (Enforcement Case ER2023.019.00)
(For Commission consideration on May 1, 2025)

Summary

The Executive Director recommends that the Commission votes to adopt this Recommended Enforcement Decision (RED) to resolve two violations of Section 66632(a) of the McAteer-Petris Act. This recommendation includes issuing Proposed Stipulated Civil Penalty Order CCD2024.003.00 (Exhibit A), which requires Union Pacific Railroad (the "Respondent") to pay \$60,000 in administrative civil liability within thirty days of Order issuance.

Prior to March 15, 2023, fill consisting of waste and debris including approximately 250 automotive tires, 16 shopping carts, plastic, and other trash, was placed by unknown parties in the bay and adjacent shoreline on property located in Contra Costa County owned by Respondent. (Exhibit B: VR&C [Exhibit 9]). In addition, prior to March 15, 2023, fill consisting of a homeless encampment was established in the shoreline band along Respondent's railroad right of way in the same area. *Id.* On February 23, 2024, BCDP staff contacted Respondent informing them that they must remove the unauthorized fill immediately. Between February 23, 2024, and September 19, 2024, Respondent failed to demonstrate that the unauthorized fill was removed.

On November 14, 2024, the Enforcement Committee voted to adopt a Recommended Enforcement Decision (Exhibit C: Nov. 14 2024 RED) that included a proposed Cease and Desist and Civil Penalty Order (Exhibit C: Nov. 14 2024 RED [Exhibit A]) which would require Respondent to: 1. Submit a plan to remove all used automotive tires, shopping carts, plastic, and other unauthorized material, floating or sunk, from San Pablo Bay to a legal disposal site; 2. Receive BCDP approval for the fill removal plan; 3. Fully implement the fill removal plan by June 1, 2025; and 4. Pay \$60,000 in administrative civil liability within thirty days of Order issuance.

To date, the RED adopted by the Enforcement Committee to issue CCD2024.003.00 (Exhibit C: Nov. 14 2024 RED) has not been calendared on a Commission meeting agenda. By January 10, 2025, Respondent complied in substantial part with the proposed terms of CCD2024.003.00 by removing the unauthorized fill in entirety. Therefore, the Respondent's main outstanding obligation as set forth in CCD2024.003.00 is payment of fines. Staff and Respondent have engaged



in confidential settlement negotiations which have resulted in Proposed Stipulated Civil Penalty Order CCD2024.003.00 to resolve the two unresolved physical violations through payment of \$60,000 in fines.

If the proposed stipulated Order is adopted by the Commission, it will become effective as of the date of execution by the Executive Director. Adoption of this Recommended Enforcement Decision by the Commission shall immediately resolve Enforcement Case ER2023.019.00 and, at such time, this matter, including the proposed Order, shall be referred to BCDC Compliance for compliance monitoring until Respondent demonstrates full compliance with the terms and conditions of the Order. Should Respondent fail to comply fully with the Order, this matter shall be referred to the Office of the Attorney General for resolution by the superior court.

Background

Prior to March 15, 2023, fill consisting of waste and debris including approximately 250 automotive tires, 16 shopping carts, plastic, and other trash, was placed by unknown parties in the bay and adjacent shoreline on property located in Contra Costa County owned by the Respondent. (Exhibit B: VR&C [Exhibit 9]). In addition, prior to March 15, 2023, fill consisting of a homeless encampment was established in the shoreline band along Respondent's railroad right of way in the same area. *Id.*

The reference materials attached indicate that Respondent owns a railroad right of way, partially within BCDC's Bay jurisdiction and shoreline band jurisdiction in and abutting San Pablo Bay. (Exhibit B: VR&C [Exhibit 3]; Exhibit C: Nov. 14 2024 RED [Exhibit C]). The parcel is located in the vicinity of Latitude: 38.038655, Longitude: -122.268261, in the census-designated place of Rodeo, where the railroad tracks run between Lone Tree Point, 413 San Pablo Avenue, Rodeo, California 94572 and Rodeo Sanitary Water District Treatment Plant, 800 San Pablo Avenue, Rodeo, California 94572. *Id.*

On March 15, 2023, BCDC staff inspected the site and collected photographic evidence depicting the fill. (Exhibit B: VR&C [Exhibit 4]).

On February 23, 2024, via e-mail, BCDC staff contacted Respondent, explaining that "tons of hazardous material in the San Francisco Bay and an illegal encampment" had been observed on Respondent's property within BCDC's permit jurisdiction. (Exhibit B: VR&C [Exhibit 5]). BCDC staff indicated that the unauthorized fill potentially violated the McAteer-Petris Act and needed to be removed immediately. *Id.*

On March 1, 2024, BCDC staff met with Respondent's representative, Ms. Peggy Ygbuhay, via teleconference, during which time staff reiterated the nature of the alleged violations. At Respondent's request, BCDC staff emailed Respondent on March 11, 2024, attaching photos of the unauthorized fill and reminding Ms. Ygbuhay that the unauthorized fill must be removed. (Exhibit C: Nov. 14 2024 RED [Exhibit D]).

On June 27, 2024, BCDC staff and Respondent convened again over the phone, and Respondent committed to providing an update during the first week of July. (Exhibit C: Nov. 14 2024 RED [Exhibit E]). After no update was provided, BCDC staff again contacted Respondent on August 15,

2024. *Id.* BCDC staff provided a marked up copy of the Contra Costa County, California Assessor's Parcel Map indicating the location of the unauthorized fill. *Id.*

On August 20, 2024, Respondent indicated that scheduling of the removal of the unauthorized fill was ongoing, and promised to update BCDC staff when the removal was scheduled. (Exhibit C: Nov. 14 2024 RED [Exhibit F]).

Between February 23, 2024, and September 19, 2024, Respondent failed to demonstrate that the unauthorized fill was removed from BCDC's Bay and shoreline band jurisdiction. On September 19, 2024, BCDC staff issued a Violation Report and Complaint for Administrative Civil Liability for the ongoing violations via electronic and certified mail. (Exhibit B: VR&C).

On October 17, 2024, Respondent contacted BCDC staff to arrange a site visit, which took place on October 24, 2024. (Exhibit C: Nov. 14 2024 RED [Exhibit G]). At the site visit, BCDC staff observed that part of the unauthorized fill giving rise to Violation Two, the temporary shelter, had been removed although some trash remained. At that time, some of the tires and shopping carts had been removed from the Bay and individuals in a dinghy were continuing to work to remove shopping carts from the Bay. At this time, BCDC staff provided Respondent with a tide chart to aid in organizing the removal and restoration.

On October 24, 2024, Respondent filed its Statement of Defense ("SOD") form. (Exhibit C: Nov. 14 2024 RED [Exhibit H]). Respondent attached photographs demonstrating that part of the unauthorized fill, the homeless encampment, had been removed. *Id.* Respondent had not fully abated the MPA violations at the property at that time.

On November 14, 2024, the Enforcement Committee voted to adopt the Recommended Enforcement Decision to issue a cease and desist and civil penalty order which would require Respondent to develop and implement a plan to remove the unauthorized materials and pay \$60,000 in administrative civil penalties. (Exhibit C: Nov. 14 2024 RED).

Between November 14, 2024 and January 10, 2025, Respondent worked diligently to remove the remaining unauthorized materials, including more than 250 tires and 16 shopping carts. In addition, Respondent has continued to monitor the site to prevent reestablishment of homeless encampments. To date, Respondent has fully abated the MPA violations at the property.

Admitted and Contested Essential Allegations

As this is a stipulated Order, there are no admitted and contested essential allegations.

Unresolved Issues

As this is a stipulated Order, there are no unresolved issues.

Previous Enforcement Actions

No prior enforcement actions have been taken in this matter.

Recommendation

The Executive Director recommends that the Enforcement Committee adopt this Recommended Enforcement Decision and recommend that the full Commission issue the proposed stipulated Civil Penalty Order.

For Violation One, unauthorized fill consisting of waste (including tires, shopping carts, and other trash) in the Bay and shoreline band, staff have determined that the gravity of the harm is major, and the extent of deviation from the statutory requirement to remove the unauthorized fill is major. For Violation Two, unauthorized fill consisting of an encampment, staff have determined that the gravity of harm is moderate, and the extent of deviation from the statutory requirement to remove the unauthorized fill is major.

BCDC staff believes that the nature and extent of harm caused by these violations is significant. The bay and shoreline in this area contains household trash, personal items, and, most significantly, a plethora of tires in varying stages of decay. As the tires break down, they may leach harmful chemicals into the Bay which may be lethal to several fish species including the Central California Coast coho salmon, a federally listed endangered species. (Exhibit B: VR&C [Exhibits 6, 7, and 8]; Exhibit C: Nov. 14 2024 RED [Exhibit J], also available: <https://baynature.org/2023/03/02/a-nasty-salmon-killing-tire-chemical-is-in-bay-waterways-can-it-be-cleaned-up/>). While staff believes the area can be restored, the introduction of pollutants to San Pablo Bay cannot be undone.

BCDC staff have assessed the Respondent's degree of culpability, history of violations, resolution efforts, any economic benefit to the violator, violator's ability to pay, costs to the state in pursuing the enforcement action, and other facts as justice may require.

There is no history of prior violations at this particular site. However, in 2021, BCDC opened enforcement case ER2021.123.00 concerning the accumulation of trash within the shoreline band on nearby property also owned by Respondent. On February 10, 2022, BCDC contacted Respondent informing them of the alleged violation. (Exhibit C: Nov. 14 2024 RED [Exhibit K]). On February 22, 2022, BCDC staff conducted a site visit which demonstrated that the site had been cleared of trash and closed ER.2021.123.00. The clean-up was not conducted by Respondent, but by Phillips 66 Company as part of an effort to resolve their own enforcement case, ER2021.122.00. (Exhibit C: Nov. 14 2024 RED [Exhibit L]). Accordingly, while the previous violation against Respondent was resolved without the need for formal enforcement proceedings, the resolution was accomplished by a third party. As for any voluntary resolution efforts to resolve the instant violations, Respondent has consistently communicated an intention to remove the unauthorized fill, but the partial removal of fill evidenced by the photographs attached to Respondent's SOD occurred only *after* the Violation Report was issued despite steady encouragement from BCDC over a nearly six-month period.

Staff does not believe Respondent derived any economic benefit from the placement of unauthorized fill on its property. However, it is Respondent's burden to demonstrate an inability to pay, and Respondent did not introduce any such evidence into the record as part of its timely SOD.

Based on these penalty factors, staff finds Violations One and Two eligible for the maximum daily administrative penalty of \$2000 and \$1600 per day, respectively. Although satellite imagery indicates that the unauthorized fill has been present since 2008 and 2022, staff set the start date for both violations on February 1, 2023 around when the enforcement case was opened. Even had Violation Two been fully resolved on October 24, 2024, each violation has persisted for over 600 days. Accordingly, the maximum allowable penalty for each violation is \$30,000 and a \$60,000 total penalty is appropriate. A proposed stipulated Civil Penalty Order consistent with this recommendation is attached (Exhibit A).

In accordance with Cal. Code Regs. tit. 14, § 11332(c), Respondent has agreed in writing to accept this Recommended Enforcement Decision (Exhibit D). As this is a stipulated order between the parties, Respondent hereby waives any rights they may have to file a writ of mandate for review of this order. The Executive Director also agrees to accept the recommended enforcement decision.

The Executive Director recommends that the Commission adopt this Recommended Enforcement Decision and issue proposed stipulated Civil Penalty Order CCD2024.003.00.

Proposed Order CCD2024.002.00

Proposed Civil Penalty Order CCD2024.003.00 consistent with this recommendation is attached (Exhibit A), along with the Violation Report and Complaint dated September 19, 2024 (Exhibit B), the November 14, 2024 Recommended Enforcement Decision with Exhibits (Exhibit C), and Respondent's written acceptance of this Recommended Enforcement Decision (Exhibit D).

Attachments: RED Exhibit A: Proposed Stipulated Civil Penalty Order CCD2024.003.00

RED Exhibit B: Violation Report and Complaint with exhibits

RED Exhibit C: November 14, 2024, Recommended Enforcement Decision with Exhibits

RED Exhibit D: Respondent's Written Acceptance of this RED