Matthew Rodriquez
Secretary for
Environmental Protection

California Regional Water Quality Control Board
San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • FAX (510) 622-2460
http://www.waterboards.ca.gov/sanfranciscobay

Edmund G. Brown Jr.
Governor

September 7, 2011

By e-mail to the following Responsible Parties (no hard copy to follow):

Karl R. Morthole, Law Offices of Karl R. Morthole, Karl@Mortholelaw.com
Peter Kung, Metro Poly Corp., peter.kung@metropolybag.com
Richard T. White, Fitzgerald Abbott & Beardsley, LLP, RWhite@fablaw.com
Robert L. Hines, Farella Braun + Martel, LLP, RHines@fbm.com
Sally Law, Unipoly Inc., sally.law@metropolybag.com
Stephen Choi, E* Poly Star, Inc., steven@epolystar.com
Tommy Law, Unipoly, Inc., tommy.law@metropolybag.com

Dear Sirs and Madams:

SUBJECT: CONDITIONAL APPROVAL OF THE CORRECTIVE ACTION PLAN SUBMITTED TOWARDS COMPLIANCE WITH CLEANUP AND ABATEMENT ORDER NO. R2-2011-033

Thank you for the submittal of a Corrective Action Plan pursuant to Cleanup and Abatement Order No. R2-2011-033, which was provided to us by your consultant, Otis Institute, Inc. on August 3, 2011. Otis Institute, Inc. has been contracted to develop the Corrective Action Plan for the Cleanup of the Tidal Salt Marsh (wetlands) by the following responsible parties under Cleanup and Abatement Order No. R2-2011-033:

- Kaneka Texas Corporation, For The Property Located At: 2451 Polvorosa Drive San Leandro, Alameda County, California,
- E* Poly Star, Incorporated For The Property Located At: 2085 Burroughs Avenue San Leandro, Alameda County, California,
- Metro Poly, Incorporated For The Property Located At: 1651 Aurora Drive San Leandro, Alameda County, California, and,
- Unipoly, Incorporated For The Property Located At: 2020 Williams Street San Leandro, Alameda County, California.

We hereby approve the Final Corrective Action Plan, which we modified from the August 3, 2011, submittal. We have attached, for your convenience, a final copy as well as a "Track Changes" copy to highlight the modifications that we made. Also attached are letters from the US Fish and Wildlife Service and the California Department of Fish and Game, which provide assurance that, if the cleanup is conducted as described in the attached modified Corrective Action Plan, the responsible parties will avoid take of species protected under the federal Endangered Species Act or the California Endangered Species Act.

We trust that you will move forward expeditiously in preparations for the first cleanup event, which will take place on the extreme high tides of October 27, 2011. Also, we want to emphasize your commitment to submit reports to us, as described in the attached final Corrective Action Plan, following each cleanup event. We, in turn, are committed to meeting with you following each cleanup event to discuss your progress and address any "adaptive management" decisions that come up in the course of this cutting-edge project.

If you have any questions regarding this letter and its attachments, please contact my staff, Christine Boschen, at (510) 622-2346 or cboschen@waterboards.ca.gov.

Sincerely,

Thomas E. Mumley
Assistant Executive Officer

Enclosures
1. Final Corrective Action Plan
2. "Track Changes" copy of the Final Corrective Action Plan
3. USFWS Letter
4. CA DFG Letter

CC:
by e-mail to the following:
David Boyers, dboyers@waterboards.ca.gov
Gary Deghi, g.deghi@h-bgroup.com
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Troy Christensen, troy@otisinstitute.com

and hard copy to:
LBA RIV-Company, LLC
17901 Von Karman Ave., Ste. 950
Irvine, CA 92614

Enclosure 1

Final Corrective Action Plan

Final Corrective Action Plan – Tidal Salt Marsh

Cleanup and Abatement Order No. R2-2011-033 for The Waters Of The State Located At: Approximately 4.7 Acres Of Tidal Salt Marsh, Parallel To Neptune Drive Along The Southeastern Edge Of Oyster Bay Regional Shoreline, San Leandro, Alameda County, California

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

Project Number: PRJ03820110070
Revision: A

Date Finalized: September 6, 2011

Prepared by:

OTIS INSTITUTE

1026 Folsom Street, Unit 10
San Francisco, CA 94103
(415) 992-7458

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Section One

Certification

This is an engineering report of opinions and conclusions based on the data provided by Kaneka Texas Corporation, based on the contents of the Cleanup and Abatement Order No. R2-2011-033, Dated June 7, 2011 from the San Francisco Bay Region California Regional Water Quality Control Board (SFBRWQCB), recommendations of wetland specialist, Gary Deghi, Senior Environmental Scientist (Huffman-Broadway Group, Inc. (HBG)) and by actual field observations made of the waters of the State located at: approximately 4.7 acres of tidal salt marsh, parallel to Neptune Drive along the southeastern edge of Oyster Bay Regional Shoreline, San Leandro, Alameda County, California by Troy Christensen, PE or personnel working under my direction.

By this certification, I attest that:

- This Final Corrective Action Plan (Plan) proposes to remove pre-production plastic pellets and trash from the tidal salt marsh area ensuring that our plan minimizes adverse impact during cleanup operations to ensure the health of the estuary and wetlands and any other biologically sensitive area. See Section Four “Final Corrective Action Plan” for details on the cleanup plan.
- This Final Corrective Action Plan meets the plan submittal requirements and intent of the
    - Cleanup and Abatement Order No. R2-2011-033 (Order), Section B. Cleanup and Abatement Tasks - 1. Submit and Implement Final Corrective Action Plan for Cleaning Up Oyster Bay Regional Shoreline.
    - Follow-up emails, meetings, and conversations with San Francisco Bay Regional Water Quality Control Board staff and other appropriate agencies.
- Biological requirements of the order are documented in Section Three “Biological Requirements”.
- Restoration of the wetlands' function and performance standards related to their full re-establishment is documented in Section Five “Verification and Monitoring”.
- This Final Corrective Action Plan should not have any adverse impact on hydrology and channel morphology at and in the vicinity of the site and neighboring areas, including but not limited to the estuary, wetlands and waterways of the Oyster Bay Regional Shoreline.

August, 3, 2011

Troy A. Christensen, PE Date
California Registered Professional Engineer, C64870

Section Two

Background

Otis Institute, Inc. has been contracted to develop the Final Corrective Action Plan for Cleanup of the Tidal Salt Marsh (wetlands) on behalf of:

- Kaneka Texas Corporation, For The Property Located At: 2451 Polvorosa Drive San Leandro, Alameda County, California,
- E* Poly Star, Incorporated For The Property Located At: 2085 Burroughs Avenue San Leandro, Alameda County, California,
- Metro Poly, Incorporated For The Property Located At: 1651 Aurora Drive San Leandro, Alameda County, California, and,
- Unipoly, Incorporated For The Property Located At: 2020 Williams Street San Leandro, Alameda County, California.

This order requires the above listed companies to develop a Final Corrective Action Plan for:

- 1. Final Corrective Action Plan for Oyster Bay Regional Shoreline
- 2. Final Corrective Action Plan for 2451 Polvorosa Drive and Adjacent Areas

Troy Christensen, PE, consultant and managing principal in charge for all parties listed above, requested an extension to August 3, 2011 in a letter dated July 20, 2010 sent to Ms. Christine Boschen, Section Leader of the California Regional Water Control Board, which was verbally granted by Christine Boschen on July 27th and reconfirmed on July 29, 2011 and documented in a letter dated August 2, 2011.

Terry Huffman, PhD, Wetland Regulatory Scientist and Gary Deghi, Vice President/Senior Environmental Scientist from the Huffman-Broadway Group, Inc. (HBG) were contracted by Otis Institute to meet the professional wetland biologist and/or wetland restoration specialist input requirement of the Order.

This Final Corrective Action Plan includes the waters of the State located at: approximately 4.7 acres of Tidal Salt Marsh, Parallel to Neptune Drive along the southeastern edge of Oyster Bay Regional Shoreline, San Leandro, Alameda County, California.

Definitions

The following definitions have been added to clarify meaning of words used within this Final Corrective Action Plan:

1. TAKE, which is defined under the federal Endangered Species Act (ESA) as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The U.S. Fish and Wildlife Service (USFWS) has also interpreted the definition of "harm" to include significant habitat modification that could result in take. Under the California Endangered Species Act (CESA) take is defined in the Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." Because CESA does not have a provision for "harm" California Department of Fish and Game (CDFG) considerations pursuant to

CESA are limited to those actions that would result in the direct take of a listed species.

2. MISCELLANEOUS TRASH, which is defined, for the purpose of this Cleanup and Abatement Order Final Corrective Action Plan, as litter and particles of litter, which include, but are not limited to, discarded toys, clothes, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state. Trash, as defined for the purpose of this Cleanup and Abatement Order Final Corrective Action Plan, are only those articles that can be reasonably removed by hand and skimmer net, and does not include
   a. large debris such as couches, tires, barrels, and lumber,
   b. wood, or other plant matter,
   c. any articles that, in picking them up from the project area, would endanger the safety and health of the workers.

Site Assessment – Visual Observations

Visual observations were conducted by Troy Christensen, PE, Principal Engineer in Charge, LaToya Christensen, Project Manager, and Laura Cremer, EHS Specialist/Junior Engineer (under direction of principal) of the Otis Institute of the wetlands:

1. On June 24th, 2010 from 22:30 to June 25th, 2010 00:30, Troy Christensen observed the 8.2 feet high tide above the Mean Lower Low Water [1](MLLW) at 23:31 hours. Beads were floating in the tide, but the pickleweed and other vegetation was still above the water's surface. Based on this visual observation and the HBG Report requirement to not come into contact with the vegetation within the marsh area, it was determined that a minimum tide of 8.6 feet above MLLW is required to raise the water level above the pickleweed such that cleanup activities may take place.
2. On November 6th, 2010, LaToya Christensen, Project Manager and Troy Christensen, PE performed a survey of the high tide from 12:15 PM to 1:00 PM and completed a second survey from 1:55 PM to 2:20 PM. The objective was to determine if the Final Corrective Action Plan dated August 22, 2010 was still valid. The predicted high tide for this date was at 12:33 PM PDT and was to reach 8.69 ft. MLLW at San Leandro Marina. Based on our survey it appears that it is not possible to remove the preproduction plastic pellets without the collection skimmer coming into contact with the pickleweed and other vegetation.
3. On July 13th, 2011, Laura Cremer performed a tidal survey from 10:25 AM t 1:34 PM with a predicted high tide of 6.07 feet MLLW at San Leandro Marina. It was determined that a small motor-less craft would have difficulty entering the channel of the wetlands based on the width of the channel.
4. On July 15th, 2011, Troy Christensen, PE and Laura Cremer performed a second survey to confirm findings and determine the extent of trash in the wetlands, access points into the wetlands area, and potential strategies based on the wording in the cleanup order.
5. On July 26th, 2011, Troy Christensen accompanied by Laura Cremer, Gary Deghi, HBG, Ms. Christine Boschen, RWQCB and Thomas Garrisi, PE of KTC performed a further survey to strategize potential cleanup of the wetlands with minimal impact on the wetland habitat. It was confirmed that an extreme high tide was necessary for cleanup activities, that a small craft would not be successful in accessing the marsh, and that impact on wildlife and wetland habitat would be minimized by using a skimmer net on a 15 foot pole to capture pellets and trash.
6. On July 29th, 2001, Troy Christensen accompanied by Christine Boschen, RWQCB, John Camp, City of San Leandro, Matt Graul, East Bay Regional Park District, performed on overview walk-through of the wetlands to confirm access points, owners of property on eastside of wetland that will need to be contacted for access to wetlands, and review of the proposed general cleanup plan for the wetlands.

[1] Tidal Data in this report for 2011-2013 is from "2010 & 2011 NOAA Tide Predictions: San Leandro Marina"

Final Corrective Action Plan Responsibility

The following table provides a list of primary responsibilities for the Final Corrective Action Plan (CAP) lead personnel on behalf of the parties.

Table 1: Final Corrective Action Plan Responsibility

Company and Contacts	Responsibilities
Troy Christensen, PE Otis Institute, Inc.	Engineering Principal in Charge of the Final Corrective Action Plan development and implementation. Coordination of contractors and biological monitor as needed for the implementation of the plan including cleanup, verification, monitoring and reporting.
Terry Huffman, PhD Huffman-Broadway Group, Inc.	Coordination of other wetlands specialists as needed to implement this Final Corrective Action Plan
Contractors/Workers To Be Determined	Provide waste disposal, labor, tools and necessary equipment to implement the Final Corrective Action Plan.

Limitations

This Final Corrective Action Plan has been prepared by consultants who have experience and are knowledgeable about environmental contamination, wetland restoration, and rare, threatened, or endangered plant or animal species. This Final Corrective Action Plan has been prepared based on information provided by the listed parties, based on the contents of the Cleanup and Abatement Order No. R2-2011-0033, Dated June 7, 2011 from the California Regional Water Quality Control Board, San Francisco Bay Region, and by actual field observations made of the Oyster Bay Regional Shoreline Area.

No warranty, express or implied, is made. In the event that changes in the nature, use, or layout of the wetlands are made or discovered, the information contained in this Final Corrective Action Plan may not be valid and may require a resubmit and update of the Final Corrective Action Plan upon discovery of the changes.

Section Three

Biological Requirements

California Seablite Survey

Upon approval of this Final Corrective Action Plan, biological monitor(s) will be selected and resumes sent to the U.S. Fish and Wildlife Service (USFWS) for approval of credentials who is (are) familiar with the California clapper rail, salt marsh harvest mouse, California Seablite, and any other special status species known or suspected to be in the area.

Upon approval of the biological monitor and approvals documented in Section Six, a biological survey of the wetlands will be performed that includes:

1. Determining if California Seablite is located within the wetlands area
2. Flagging California Seablite locations and setting up a 50-foot buffer
3. Documenting any new information that reveals effects of the proposed project, may affect listed species in a manner or to an extent not considered, or a new species is listed
4. Documenting this survey in a report
5. Provide a copy of the report to USFWS before cleanup

Biological Monitor Requirements

The approved biological monitor will perform the following at the beginning of each day that a cleanup activity is scheduled:

1. Verify that California Seablite 50 foot buffer is in place
2. Hold a “tail gate” meeting to discuss specific precautions and procedures to protect the special status species that may be on site.
3. The biological monitor will look out for (and train the cleanup crew to assist in looking out for) raptors, herons, and gulls. This is particularly important considering the proximity of a waste transfer station (which attracts gulls) to the cleanup area. If raptors, herons, or gulls are present, the biological monitor may halt the cleanup activities and assess the risk to sensitive species before deciding whether to continue the cleanup.
4. The biological monitor has the authority and the responsibility to shut down or alter operations at any time if he/she finds that operations endanger any sensitive species in the vicinity.
5. The biological monitor will report to the East Bay Regional Park District, California Department of Fish and Game, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, and the Regional Water Quality Control Board regarding their observations of wildlife activity in the area, including California clapper rails, salt-marsh harvest mouse, and other general wildlife such as wandering shrews, etc., and how the cleanup activities are affecting wildlife behavior.

Biological Effects

Additional information on the Biological Effects was prepared last year by the Huffman-Broadway Group, Inc. "Sensitive Species and Habitat Protection Plan in Support of Corrective Active Plan Developed In Response to RWQCB Cleanup and Abatement Order No. R2-20 10-0070 Oyster Point Bay Regional Shoreline". A copy of the Final Corrective Action Plan (20100823 Final Corrective Action Plan Oyster Bay Regional Shoreline With Attachments) that was submitted last year by Otis Institute on behalf of Kaneka Texas Corporation included this biological report as Attachment Three, for which a web-link appears below.

ftp://swrcb2a.waterboards.ca.gov/pub/swrcb/dwq/stormwater/GTG%20Stuff/SanLeandroPlastics/20100823%20Corrective%20Action%20PlanOyster%20Bay%20Regional%20Shoreline%20With%20Attachments.pdf

The linked report details the Biological Effects in Section 3.

Section Four

Tidal Marsh Cleanup Activities

The Plan developed herein recommends strategies that should be implemented during the cleanup operations to ensure compliance with federal and state regulations related to sensitive habitats and special status species. These strategies include measures to avoid or minimize unavoidable impacts to species and habitats. Methods of removing miscellaneous trash and pellets from the Oyster Bay Regional Shoreline tidal wetlands are set forth that would minimize (1) disturbing and remobilizing contaminated tidal marsh sediments and (2) adverse effects of the cleanup operations on federal or state listed species or species of special concern.

Based on our visual observations, cleanup operations can only take place during extreme high tides of 8.6-foot or higher MLLW at the San Leandro Marina during daylight hours (Monday – Friday) during good weather. There are seven (7) possible tidal events above 8.6-foot in September 2011- January 2012 year and nine (9) possible in September 2012 – January 2013. The first possible cleanup event is October 27th, 2011. See Attachment Two – Tidal Tables for addition tides.

At the completion of each set of high tide events, a report will be sent to RWQCB and a meeting held to document findings and determine if further clean up actions will be required based on Section Five Cleanup Verification and Success Criteria and the observations of areas cleaned up the preceding cleanup work day before.

Tidal Marsh Cleanup Activities

Within areas of tidal marsh depicted in the Order the following procedures would be used to remove miscellaneous trash and pellets:

1. Cleanup shall be conducted between September 1, 2011, to January 31, 2012, and September 1, 2012, to January 31, 2013, in order to avoid working during the California clapper rail breeding season. Cleanup events shall occur over the extreme high tides that cluster around the full moon each month.

2. Cleanup of the wetlands will be planned for either the east side or west side of the channel, but both sides will not be scheduled on the same date to minimize impact on wildlife.

3. Cleanup crews will consist of 2-4 personnel plus a biological monitor. The reduced size of the cleanup crews will minimize the impact to the wetlands and wildlife.

4. While moving through the marsh, the cleanup workers shall do the following:
    a. Keep noise to a minimum.
    b. At all times, observe the environment they are walking through to avoid disturbance.
    c. Plan and map their route to minimize environmental impacts and decrease running into hazards/barriers such as large channels.

5. Cleanup personnel will only enter and exit the wetlands through approved access points – See Attachment Three.
    a. Some access points may have a temporary access walkway installed at the beginning of the cleanup which will be removed at the end of each day to minimize impact to vegetation and soil.
    b. In addition to the temporary access walkway, Access Point 2 will have a jute ground cover installed (approximately 10-15 feet in length and 6 feet wide) to minimize erosion to the slope when people access the wetlands at this area.

6. Cleanup personnel will work in teams of two and will be equipped with protective gloves, waders, a walking stick, a ~15 foot pole with a pool leaf skimming net attached and a trash bag that is either attached to the waist or over the shoulder.

7. Cleanup personnel will be trained per the Health and Safety Plan that will be developed to protect workers while working in and around the wetlands. The Health and Safety plan will be created upon approval of this Final Corrective Action Plan.

8. Cleanup operations will start by personnel entering at the designated access point approximately 90 minutes before the daily predicted high tide at the San Leandro Marina and will proceed by staying approximately 15 feet from the central channel.
    a. Starting and staying close to the channel will allow wildlife additional time to retreat to higher vegetation while cleanup operations start and the high tide continues to come in.
    b. While walking down the wetlands, personnel will use the skimmer net to collect miscellaneous trash and pellets. Personnel will continue along the channel either until the waste bag is full or at the time of the high tide and proceed back to the original access point.
        i. Attachment Four shows proposed wetlands walking paths to minimize impact to vegetation by workers. Use of the paths will follow the procedure below:
            1. First pass will be approximately 15 feet from the central channel.
            2. Return/second pass will be approximately 45 feet from the channel
            3. Continuing to work towards the shore if multiple paths are required.
            4. Note personnel will not enter any areas with standing vegetation or vegetation that is sticking out of the water surface to minimize impact on wildlife and habitat.
    c. Skimming operations and personnel will be instructed to not skim with the net or enter any vegetated areas where vegetation is sticking out of the water.

d. It is to be noted that cleanup personnel may inadvertently collect fragments of vegetation during skimming operations.

9. Hand Removal. Workers will remove reasonably accessible miscellaneous trash and pellets by hand using disposable gloves during low tide following the first scheduled cleanup on October 27, 2011, along unvegetated upland portion of tidal shoreline (no closer than 5 feet of tidal marsh).

Note: All collected trash and pellets and waste gloves will be placed in trash receptacles and transported off-site and properly disposed of. No other equipment or supplies will be utilized during Tidal Marsh miscellaneous trash and pellet removal operations.

Section Five

Verification and Monitoring

Clean-up Verification – Success Criteria

Based on our understanding of the Biological Effects of the preproduction plastic pellets and the limitations on cleanup activities that restrict take or removal of plants and species from the wetland and waterway areas, we propose the following success criteria that the wetland and waterway areas are considered as clean as reasonably possible:

1. Clean reasonably accessible pellets and trash with a skimming operation beginning 90 minutes before and ending 90 minutes after a high tide event 8.6 feet above MLLW at the San Leandro Marina.
    a. The day following cleanup operations observations will be taken to document the status of previously cleaned up area.
    b. The cleanup crews will rotate through each area of the wetlands, conducting a cleanup event during each of the extreme high tide events that occur during the allowed work window of the 2011/2012 and 2012/2013 seasons.

2. Clean reasonably accessible pellets by hand along unvegetated tidal shoreline where beads may be found present following extreme high tide skimming operations.

3. At the end of each cleanup event, total trash and pellets removed shall be quantified by weight or by volume, whichever gives the most accurate description of the removal results (in other words, whichever is the measurement least skewed by water content). The relative percentage of pellets to trash shall also be estimated and reported with an explanation of how the estimate was arrived upon.
    a. This information shall be recorded and graphed to show the effectiveness of the cleanup efforts.
    b. This information shall be reported in writing to the Water Board (see next requirement.)

4. Within two weeks of each cleanup event, the Responsible Parties shall submit a written progress report to the Water Board. The report shall provide details of the materials removed, and it shall discuss observations of flora and fauna as relate to the protection of wildlife, California seablite, and any other issues relevant to the execution of this Final Corrective Action Plan.

5. By the final cleanup event of January 2013, Water Board staff will review and evaluate the overall cleanup effectiveness on the reduction of pellets in the marsh. If pellets continue to be present in the marsh in quantities similar to what was observed in the first year of cleanup activities, an additional season of cleanup may be required. Conversely, if, after the first season, if the cleanup activities reduce pellets to the point they are not detected in the marsh, Water Board staff may consider shortening the overall required cleanup period.

California Wetland Portal

Otis Institute will complete the standard California Wetlands Project form within seven (7) days of Final Corrective Action Plan approval providing Oyster Bay Regional Shoreline information describing impacts and mitigation/restoration measures. The completed California Wetlands Project form will be submitted electronically to habitatdata@waterboards.ca.gov and may be submitted as a hard copy to both: 1) San Francisco Bay Regional Water Quality Control Board, to the attention of Wetland Tracker, and, 2) San Francisco Estuary Institute, 7770 Pardee Lane, Oakland, CA 94621-1424, to the attention of Mike May. All monitoring activities will be documented and communicated using the standard California Wetlands Project form.

Section Six

Approval

Otis Institute, on behalf of the parties listed, requests that, in addition to Regional Water Quality Control Board (RWQCB) approval, both California Department of Fish and Game (CDFG) and U.S. Fish and Wildlife Service (USFWS) provide written approval that the activities and methodologies described in this Final Corrective Action Plan will not create a take or the potential for take of a listed species. To avoid legal exposure the companies named in the Order need assurance for the clean-up project, as ordered by the RWQCB, that the parties implementing the Order will not be subject to terms of a take under either the federal Endangered Species Act or the California Endangered Species Act.

To satisfy this request from the Responsible Parties, Water Board staff has obtained letters from the CDFG and the USFWS, and the letters are attached with the transmittal of this Final Corrective Action Plan.

Upon receipt of approval, Otis Institute will obtain the appropriate permits from East Bay Regional Park District for access to the park for the cleanup activities.

Attachment One

Cleanup and Abatement Order No. R2-2011-0033

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

CLEANUP AND ABATEMENT ORDER NO. R2-2011-033

KANEKA TEXAS CORPORATION,
DUDE, INCORPORATED,
AND
FOAMEX INNOVATIONS OPERATING COMPANY,
ALSO KNOWN AS FIOX AND/OR FXI

FOR THE PROPERTY LOCATED AT:
2451 POLVOROSA DRIVE
SAN LEANDRO, ALAMEDA COUNTY, CALIFORNIA

E* POLY STAR, INCORPORATED

FOR THE PROPERTY LOCATED AT:
2085 BURROUGHS AVENUE
SAN LEANDRO, ALAMEDA COUNTY, CALIFORNIA

METRO POLY, INCORPORATED

FOR THE PROPERTY LOCATED AT:
1651 AURORA DRIVE
SAN LEANDRO, ALAMEDA COUNTY, CALIFORNIA

UNIPOLY, INCORPORATED

FOR THE PROPERTY LOCATED AT:
2020 WILLIAMS STREET
SAN LEANDRO, ALAMEDA COUNTY, CALIFORNIA

AND FOR THE WATERS OF THE STATE LOCATED AT:
APPROXIMATELY 4.7 ACRES OF TIDAL SALT MARCH, PARALLEL TO NEPTUNE DRIVE ALONG THE SOUTHEASTERN EDGE OF OYSTER BAY REGIONAL SHORELINE, SAN LEANDRO, ALAMEDA COUNTY, CALIFORNIA

This Order is issued to KANEKA TEXAS CORPORATION; DUDE, INCORPORATED; FOAMEX INNOVATIONS OPERATING COMPANY; E* POLY STAR, INCORPORATED; METRO POLY, INCORPORATED; and UNIPOLY, INCORPORATED (hereafter "Dischargers"), based on provisions of California Water Code ("CWC") section 13304 and 13267, which authorize the Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Water Board") to issue a Cleanup and Abatement Order ("Order") where a discharger has caused or permitted waste to be discharged or deposited where it is or probably will be discharged into waters of the state and United States, and to require a discharger to submit technical and monitoring reports.

1. **Purpose of Order:** This Order requires the cleanup and abatement of pre-production plastic pellets and miscellaneous refuse that the Dischargers have discharged into the estuary, wetland, and waterway areas of Oyster Bay Regional Shoreline, to prevent future waste discharges of plastic pellets, and to submit technical and monitoring reports. These unauthorized discharges of plastic pellets in the waterway areas of Oyster Bay Regional Shoreline fill the wetlands. The Dischargers are thereby violating the Industrial Storm Water General Permit Order 97-03-DWQ ("Industrial General Permit") issued by the State Water Resources Control Board ("State Water Board"), violating the Water Quality Control Plan for the San Francisco Bay Basin ("Basin Plan"), and violating the federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1251 et seq.). In order for the cleanup of the receiving water to proceed in an organized fashion with the least impact to the marsh habitat, this Order is issued to all responsible parties.

2. **Supersedes Order No. R2-2010-0070:** This order supersedes Cleanup and Abatement Order No. R2-2010-0070, issued May 6, 2010, to KANEKA TEXAS CORPORATION ("KANEKA") and CRAIN INDUSTRIES, INC. for the cleanup of the estuary, wetland, and waterway areas of Oyster Bay Regional Shoreline and the industrial facility at 2451 Polvorosa Drive. KANEKA and CRAIN INDUSTRIES, INC. have successfully submitted and implemented a Corrective Action Plan for 2451 Polvorosa Drive and adjacent areas as required by Order No. R2-2010-0070. Neither KANEKA nor CRAIN INDUSTRIES, INC. presently requires coverage under the Industrial Storm Water General Permit since presently neither occupies nor operates industrial activity at the property.

3. **Site Locations and Descriptions**: The area requiring cleanup is about 4.7 acres of salt marsh that runs parallel to Neptune Drive, along the southeastern edge of Oyster Bay Regional Shoreline in San Leandro, Alameda County, California. The pre-production plastic pellets discharged from four properties in near Oyster Bay as described in Table 1. Attachment A is a photo with each facility identified.

Table 1. Site Locations and Descriptions

Site location	Types of pellets used at site	Main pellet exposure pathways	Facility map and/or site location map
2451 Polvorosa Drive	Expanded polypropylene plastic pellets delivered by truck	Warehouse designed for pneumatic conveyance to off-load materials from semi-trucks to internal storage.	See Attachment B Loading dock
2085 Burroughs Avenue	High Density and Low Density Polyethylene (HDPE and LDPE, respectively) pellets with primarily rail deliveries	Warehouse designed for on and off loading pellets from semi-trucks trailers (in front parking lot) and from rail cars (on back side rail spur). The majority of the pellets are received by rail, and are off-loaded by pneumatic conveyance to internal and external storage.	See Attachment C Rail spur
1651 Aurora Drive	The site uses LDPE in pellet form delivered primarily by rail	Warehouse designed for pneumatic conveyance to off load pellets from rail cars to internal storage.	See Attachment D Rail spur
2020 Williams Street	The site uses LDPE and HDPE in pellet form delivered primarily by rail	Warehouse designed for pneumatic conveyance to off load pellets from rail cars to internal storage.	See Attachment E Rail spur

4. **Responsible Parties**: The named dischargers are responsible parties for discharging pre-production pellets into Oyster Bay waterways. The following four properties are considered the "Originating Sites."

   a. **2451 Polvorosa Drive**

      i. KANEKA occupied part of the property from at least April, 2003 through approximately June, 2009. During that time, KANEKA used expanded polypropylene plastic pellets in manufacturing automobile bumpers.

      ii. DUDE, INC. owns the property. After KANEKA vacated the premises in 2009, expanded polypropylene plastic pellets left on the property continued to discharge through the storm drain and via wind into the waterways at Oyster Bay. In summer 2010, KANEKA removed the remaining expanded polypropylene plastic pellets from the property and surrounding areas pursuant to Order No. R2-2010-0070.

      iii. FOAMEX INNOVATIONS OPERATING COMPANY, INC. ("FOAMEX") is the present occupant with a limited partnership ownership rights.

   b. **2085 Burroughs Avenue:** E* POLY STAR occupies the property and continues to use high density and low density polyethylene (HDPE and LDPE, respectively) pellets in their manufacturing process.

   c. **1651 Aurora Drive:** METRO POLY CORPORATION ("METRO POLY") occupies the property and continues to use LDPE pellets in their manufacturing process.

   d. **2020 Williams Street:** UNIPOLY, INCORPORATED ("UNIPOLY") occupies the property and continues to use HDPE and LDPE pellets in their manufacturing process.

5. **Basis of Order**: Pre-production plastic pellets from the four Originating Sites continue to pollute and fill waters of the state and United States.

   a. The various types and colors of plastic pellets, used at the Originating Sites, have traveled into the wetlands of Oyster Bay Regional Shoreline. As Water Board staff observed over the course of three inspections of the marsh during the 2009-2010 winter, while some pellets remain in the marsh, many pellets have moved out to the San Francisco Bay and are unrecoverable. As pellets still remain in the marsh (to varying degrees) and are exposed to storm water at the Originating Sites, the threat of continued release of pellets to the marsh remains. Furthermore, so long as pellets are in use at the Originating Sites, if appropriate best management practices are not employed in perpetuity, the threat of future pellet release is possible.

   b. This Order requires the responsible parties to cleanup the marsh of remaining pellets they have discharged, and to cleanup miscellaneous trash as compensation for the pellets that have moved through the wetland out to the San Francisco Bay. This Order also requires cleanup of the Originating Sites and implementation of best management practices at the Originating Sites to abate ongoing and future pellet discharge.

   c. Table 2 summarizes the compliance status and inspections at the Originating Sites.

Table 2. Originating Site Inspections

Site Location	Inspection Date	Purpose of Inspection	Compliance Status at Time of Inspection	Related Documents[1]
2451 Polvorosa Drive	10/27/2009	Initial visit	Industrial General Permit violations. Follow up inspection needed.	
	01/13/2010	Follow-up to initial visit	Industrial General Permit violations. Staff inspected the surrounding area and parking lot. Staff collected plastic pellets in the loading dock areas, at the cyclone-fenced borders, and near the railroad line border.Staff lifted the grate covering the storm drain inlet near the Site's loading docks and in the middle of the parking lot and observed plastic pellets inside the storm drain inlet walls.	Daily logs and photos
	01/20/2010	Follow-up	Industrial General Permit violations. Staff inspected the Site and observed a profuse amount of plastic pellets in the parking lot, in the drain inlet in the parking lot, and under the loading dock.	Inspection report, daily logs and photos
	08/11/2010 and 08/20/2010	Post-cleanup inspection	Industrial General Permit violations. Staff observed site clean up activities. Site as clean as is reasonable. Fedex property next door could not be accessed for clean up at that time (it was later cleaned up).	Staff daily log
2085 Burroughs Avenue	03/24/2010	Initial visit	Industrial General Permit violations; follow up inspection needed	Inspection report
	12/15/2010	Enforcement follow up	Industrial General Permit violations; follow up inspection needed	Inspection report
1651 Aurora Drive	10/27/2009	Initial visit	Industrial General Permit violations; follow up inspection needed	Inspection report
	08/11/2010	Enforcement follow up	In compliance with the Industrial General Permit and on-site cleanup requirements.	Staff daily Log
2020 Williams Street	01/13/2010	Initial visit	Industrial General Permit violations; follow up inspection needed	Inspection report
	12/15/2010	Enforcement follow up	In compliance with the Industrial General Permit and on-site cleanup requirements.	Staff report

[1] All documents referenced are in the public files at the Regional Water Board and are available upon request. Should any interested party file a petition, the Prosecution Team will seek to include these referenced documents as incorporated herein and part of the administrative record.

d. Table 3 describes the Water Board staff inspections at the wetlands at Oyster Bay Regional Park shoreline.

Table 3. Wetland Inspections

Specific Focus Area of Marsh	Inspection Date	Purpose of Inspection	Summary of Observations	Related Documents
Upper area near path entrance to parkland and two storm drain inlets	10/27/2009	Initial investigation	Staff saw some pellets embedded in the wetland vegetation and at the water line. Staff determined that they would need to return for more information.	
Upper (northern) area, approximately 100 square feet near path entrance to parkland and two storm drain inlets; lower area was another approximately 100-square foot area at the mouth of wetland accessible from business on Neptune Drive.	01/13/2010	Formal documentation of extent of pellets using modified Rapid Trash Assessment protocol	Staff took samples and photographs of northern and southern portions of wetlands. At high tide, a person could put her hand down into the water and scoop up about 100 pellets.	Photographs, daily logs
Mouth of wetland accessible from business on Neptune Drive	01/20/2010	Additional wet weather observation of state of marsh	Significantly larger quantity and pervasiveness of pellets accumulated at mouth of wetland, embedded in and under debris	Photographs, daily logs
Mouth of wetland accessible from business on Neptune Drive	05/25/2010	Additional wet weather observation of state of marsh	Significantly fewer pellets accumulated at mouth of wetland, evidencing that large quantity of pellets have moved out of the wetland and into San Francisco Bay.	Photographs

6. **Regulatory Status:** After inspections, Water Board Staff determined that all four Originating Sites require Industrial General Permit coverage because they have Standard Industrial Classification (SIC) code 2673: Plastics, Foil, and Coated Paper Bags and having industrial materials exposed to storm water.

   a. **Permit Coverage:** Three of the four facilities have recently obtained coverage under Industrial Storm Water General Permit Order 97-03-DWQ ("Industrial General Permit")[2] in compliance with Notices of Violation issued by enforcement staff.[3] FOAMEX

[2] The Industrial General Permit and information about the program may be found at: www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.shtml.

[3] All Notices of Violations and associated responses from the dischargers are in the public file with the Regional Water Board and are available upon request.

INNOVATIONS OPERATING COMPANY (FOAMEX) already had permit coverage for 2451 Polvorosa Drive for its own foam recycling manufacturing process, and did not receive a Notice of Violation. KANEKA no longer occupies any portion of 2451 Polvorosa Drive, and thus does not require permit coverage. Table 4 describes permit coverage for the four sites where the responsible parties have discharged plastic pellets that have transported to Oyster Bay Regional Shoreline.

b. **Violations:** KANEKA, E* POLY STAR, INC., METROPOLY, INC., and UNIPOLY, INC. have all operated industrial facilities with plastic pellets exposed to storm water without Industrial General Permit coverage, violating California Water Code section 13376.

Table 4. Permit Coverage at Originating Sites

Site Location	Responsible Party Named in Permit Coverage	Date Permit Coverage Obtained	WDID (site tracking number)
2451 Polvorosa Drive	FOAMEX	07/07/2009	2 01I022211 Active 2 01I013970 terminated on 11/16/2010
2085 Burroughs Avenue	E* POLY STAR	05/04/2010	2 01I022621
1651 Aurora Drive	METRO POLY, INC.	04/06/2010	2 01I022583
2020 Williams Street	UNIPOLY, INC.	04/06/2010	2 01I022584

7. **Federal Clean Water Act:** The Federal Water Pollution Control Act (a.k.a. "Clean Water Act") requires any person who discharges any pollutant into a water of the United States to have a National Pollutant Discharge Elimination System ("NPDES") permit. The purpose of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. (33 U.S.C. §§ 1251 et seq.)

   a. **Violation:** All five Dischargers are violating Clean Water Act section 301 in that they have discharged and/or are likely to discharge plastic pellets into and filling the waters of the state and United States without complying with the NPDES program. (33 U.S.C. 1311.)

8. **Basin Plan Discharge Prohibitions:** The December 22, 2006, Water Quality Control Plan for the San Francisco Bay Basin ("Basin Plan") designates beneficial uses and water quality objectives for waters of the state, and includes programs to achieve water quality objectives.[4] The existing beneficial uses for the wetlands near and in Oyster Bay Regional Shoreline include: Estuarine Habitat, Preservation of Rare and Endangered Species, Water Contact Recreation, Non-Contact Water Recreation, Saltwater Habitat, Spawning, and Wildlife Habitat.

[4] The Basin Plan may be found at www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml

a. **Discharge Prohibition 6:** Prohibits all conservative toxics and deleterious substances to waters of the Basin above those levels which can be achieved by a program acceptable to the Regional Water Board. The plastic pellets are deleterious in that fish, birds and other marine animals eat the pellets but are unable to digest them, thus starving to death. This process is described further in the following Adverse Impacts to Animals section. The plastic pellets will take decades or centuries to fully degrade and may concentrate and transport other, persistent, organic pollutants that may have toxic effects on plants, fish and wildlife.[5]

b. **Discharge Prohibition 7:** Prohibits the discharge of rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they could contact or where they would eventually be transported to surface waters, including flood plain areas. The plastic pellets are a solid waste in that they are associated with human habitation from manufacturing operations in accordance with California Water Code section 13050(d).

c. **Violations:** The Dischargers are violating these Basin Plan Prohibitions by discharging plastic pellets, a deleterious solid waste, into and filling the wetlands. The plastic pellets are negatively impacting the wetlands' beneficial uses by impacting the habitat and wildlife in the estuary.

9. **Adverse Impacts to Animals:** The plastic pellets that have discharged and threaten to discharge into the wetlands are potentially deleterious to birds, fish, and other marine animals. Wildlife may feed on small plastic pieces because they resemble food, and field studies have linked consumption of plastic with negative biological impacts. Accumulation of plastic pieces in an animal's stomach can cause feelings of satiation, potentially leading to the animal's malnutrition or starvation.[6] Plastics can also adsorb persistent organic pollutants from their surrounding aquatic environments, with studies finding that persistent organic pollutants adsorbed by plastics mirror levels of the pollutants found in sediment-dwelling invertebrates, such as mussels.[7] Plastic debris may then mediate the transfer of these pollutants to wildlife, as the ingested mass of plastic material has been observed to correlate positively to the persistent organic pollutant concentration in birds.

10. **Endangered Species Acts:** United States Geological Survey ("USGS") has surveyed and mapped a 7.5 foot topographic quad that includes the wetland area of Oyster Bay Regional Shoreline. In the area, USGS has identified certain species that may be present that are federally designated as threatened and endangered under the Endangered Species Act (16 U.S.C. §§ 1531-44) and the California Endangered Species Act (CA Fish and Game Code sec. 2050 et. al.). See Table 5.

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[5] Interagency Marine Debris Coordinating Committee, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, *Interagency Report on Marine Debris Source, Impacts, Strategies & Recommendations, (*August, 2008), p. 24. *See also* National Oceanic and Atmospheric Administration.

[6] *Id.*

[7] National Oceanic and Atmospheric Administration, U.S. Department of Commerce, *Proceedings of the International Research Workshop on the Occurrence, Effects, and Fate of Microplastic Marine Debris,* (September 9-11, 2008), p. 9.

Table 5. Endangered and Threatened Species[8]

Scientific Name	Common Name	Federal	California
Rallus longirostris obsoletus	California clapper rail	Endangered	Endangered
Sternula antillarum browni	California least tern	Endangered	Endangered
Reithrodontomys raviventris	salt-marsh harvest mouse	Endangered	Endangered
Ambystoma californiense	California tiger salamander	Threatened	Candidate Endangered
Charadrius alexandrinus nivosus	western snowy plover	Threatened	None

11. **Future Changes to Cleanup Standards:** The goal of this Cleanup and Abatement Order is to restore the beneficial uses of the wetlands area affected by the discharges from the Originating Sites. Due to the nature of the discharges, it is unknown at this time whether full restoration of beneficial uses to the wetlands is possible. If full restoration of beneficial uses is not technologically or economically achievable within a reasonable period of time, then the Dischargers may request modification to the cleanup standards. Conversely, if new technical information indicates that cleanup standards can be surpassed, the Regional Water Board may decide that further cleanup actions should be taken. Any requests to modify the standards set pursuant to this Order must be submitted in writing to the Regional Water Board for approval.

12. **CEQA:** This enforcement action is being undertaken by a regulatory agency to enforce a water quality law. Such action is categorically exempt from provisions of the California Environmental Quality Act ("CEQA") according to Guidelines section 15321 in Article 19, Division 3, Title 14 of the California Code of Regulations. This Order requires the submittal of detailed work plans that address cleanup activities. The proposed activities under the work plans are not yet known, but implementation of the work plans may result in significant physical impacts to the environment that must be evaluated under CEQA. The appropriate lead agency will address the CEQA requirements prior to implementing any work plan that may have a significant impact on the environment.

13. **Conclusion:** Based on the above findings, Water Board enforcement staff concludes that the Dischargers have caused or permitted waste to be discharged, or deposited where it can be and has been discharged, or threaten to discharge waste into waters of the state and the United States, and have created and threatened to create a condition of pollution. The discharged wastes have resulted in unnecessary and avoidable adverse impacts to beneficial uses of waters of the state and United States in historic violation of the Industrial General Permit, and in violation of the federal Clean Water Act and the Basin Plan. This Order, therefore, contains tasks for investigating, cleaning up, and abating existing and future impacts to Oyster Bay Regional Shoreline.

[8] California Natural Diversity Database, California Department of Fish and Game.

IT IS HEREBY ORDERED, pursuant to California Water Code sections 13304 that the Dischargers, or their agents, successors, or assigns, shall clean up and abate the effects described in the above findings as follows:

A. Prohibitions

1. Discharging any pollutant, including plastic pellets, without coverage under the Industrial General Permit is prohibited.
2. Discharging any pollutant, including plastic pellets, without complying with the NPDES permit program is prohibited.
3. Discharging any wastes, including solid wastes such as plastic pellets, that will degrade, or threaten to degrade, water quality or adversely affect, or threaten to affect beneficial uses of the waters in violation of the Basin Plan is prohibited.

B. Cleanup and Abatement Tasks

1. **Submit and Implement Corrective Action Plan for Cleaning Up Oyster Bay Regional Shoreline**

	COMPLIANCE DATE
SUBMIT CORRECTIVE ACTION PLAN	**JULY 31, 2011**
SELECT APPROVED BIOLOGICAL MONITOR BY	**JULY 31, 2011**
BEGIN IMPLEMENTING APPROVED PLAN NO LATER THAN	**SEPTEMBER 01, 2011**
COMPLETE CLEANUP NO LATER THAN	**FEBRUARY 1, 2013**

Corrective Action Plan: The Dischargers shall submit a Corrective Action Plan to clean up the plastic pellets and miscellaneous trash in the marsh areas of Oyster Bay Regional Shoreline. The plan shall include the following requirements, which are intended to reduce the likelihood of "take" of the endangered California clapper rail *(Rallus longirostris obsoletus)*, salt marsh harvest mouse *(Reithrodontomys raviventris)*, and the potential for adverse effects to the California seablite *(Suaeda cali/ornica)* during the required cleanup activities in the marsh. These requirements were stipulated by U.S. Fish and Wildlife Service and the California Department of Fish and Game in consultation with East Bay Recreation Park District staff biologist:

a. Cleanup activities may not occur from February 1 through August 31 to avoid the California clapper rail breeding season. Trash and plastic pellet removal must be done by hand with crews limited to 25 people, working two weeks per month, for a period of three months each year. Removal of vegetation, in the course of the marsh cleanup, is strictly prohibited.

b. Cleanup events must start at high tide (estimated for the specific site location) and continue for two hours. California clapper rails and salt marsh harvest mice are most vulnerable to disturbance and predation during extreme high tides when they are forced out of the marsh into upland areas that often lack cover. Therefore, cleanup activities

shall cease within two hours of extreme high tides (e.g., within two hours before and after high tides exceeding 6.0 feet NGVD at the Golden Gate Bridge adjusted to the timing of local tidal peaks).

c. Before marsh cleanup commences, the Dischargers shall hire a qualified wetland biologist to survey the cleanup area for the California seablite. If California seablite is found in the marsh, the location of the California seablite must be flagged, and a minimum 50-foot buffer must be maintained around the California seablite plants.

d. The Dischargers must provide the results of the California seablite surveys to the U.S. Fish and Wildlife Service before cleanup commences. If the California seablite is found, then cleanup activities must not commence until the Service has given approval to proceed. The results of the surveys should be reported to the California Natural Diversity Database. Unless new information reveals effects of the proposed project that may affect listed species in a manner or to an extent not considered, or a new species is listed, no further action pursuant to the Endangered Species Act is necessary for the proposed project.

e. Cleanup activities must be conducted in the presence of and under direct supervision of a biological monitor, specifically approved by the U.S. Fish and Wildlife Service, who is familiar with the California clapper rail, salt marsh harvest mouse, California seablite, and any other special status species known or suspected to be in the area.

    i. Prior to starting clean up activities overall and prior to starting cleanup activities each day, the cleanup crew must hold a “tail gate” meeting, led by the U.S. Fish and Wildlife Service-approved biological monitor, to discuss specific precautions and procedures to protect the special status species that may be on site.

    ii. The biological monitor will look out for (and train the cleanup crew to assist in looking out for) raptors, herons, and gulls. This is particularly important considering the proximity of a waste transfer station (which attracts gulls) to the cleanup area. If raptors, herons, or gulls are present, the biological monitor should halt the cleanup activities and assess the risk to sensitive species before deciding whether to continue the cleanup.

    iii. The biological monitor has the authority to shut down operations at any time if he/she finds that operations endanger any sensitive species in the vicinity.

    iv. The biological monitor shall report to the East Bay Regional Park District, California Department of Fish and Game, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, and the Regional Water Board regarding their observations of wildlife activity in the area, including California clapper rails, salt-marsh harvest mouse, and other general wildlife such as wandering shrews, etc, and how the cleanup activities are affecting wildlife behavior.

f. To the extent possible, the cleanup crew shall access the salt marsh by non-motorized boat such as canoe or kayak. This is a precaution to creating sudden disturbances, which may cause clapper rail to flush and become vulnerable to predators.

g. While moving through the marsh, the cleanup workers shall do the following:

    i. Keep noise to a minimum.

ii. At all times, observe the environment they are walking/boating through to avoid disturbance.

iii. Avoid using multiple pathways through the marsh. Use trails if they exist.

iv. Plan and map their route to minimize environmental impacts and decrease running into hazards/barriers such as large channels.

v. When looking for a suitable place to jump a channel, do not walk along the edge of the channel/slough because these areas provide nesting habitat for many species including the endangered California clapper rail. To find an alternate jump site, walk parallel to the channel at a distance where vegetation is lower in height and where visibility of the ground surface is greater. Choose channel jump sites where vegetation is lower or you can clearly discern what you are jumping onto.

vi. In general, avoid walking adjacent and parallel to channels/sloughs.

2. **Cleanup the Originating Site at 2085 Burroughs Avenue**

	COMPLIANCE DATE
COMPLETE CLEANUP NO LATER THAN	**AUGUST 31, 2011**

To abate ongoing discharges from 2085 Burroughs Avenue, E* POLY STAR shall remove all plastic pellets from the entire Originating Site, and surrounding upland areas where pellets have discharged. This may include vacuuming the storm drains immediately accessible to the Originating Site, and cleaning railroad ballast and other such cleanup activities.

3. **Install, Implement, Maintain, and Update Best Management Practices (BMPs) that Meet Best Available Technology Standard**

	COMPLIANCE DATE
INSTALL AND IMPLEMENT BMPS	**OCTOBER 31, 2011**
MAINTAIN AND UPDATE BMPS	**ONGOING**

a. To abate ongoing discharges at 2085 Burroughs Avenue, 1651 Aurora Drive, and 2020 Williams Street, E* POLY STAR, METRO POLY, INC., and UNIPOLY, INC. shall implement the following BMPs.

i. Pellet Handling. When handling pellets, care must be taken to avoid spills. If spills happen indoors or outdoors, they must be cleaned up immediately and disposed of (or recycled) in a leak proof container.

ii. Pellet Storage. Pellets stored outside, such as in a rail car or silo, must be in a vessel that is completely enclosed from wind and rain. Pellets stored inside may be contained in Gaylord boxes or sacks, but care must be taken to avoid the puncture or rupture of the storage containers. If spills happen indoors or outdoors, they must be cleaned up immediately and disposed of (or recycled) in a leak proof container.

iii. Pellet Loading and Unloading. If vacuum unloading from outside storage area is used, there must be a complete seal between the storage container and the tube being used to offload the pellets. Secondary containment (such as a drip pan) must be used under the connection mechanism. A broom and dust pan or vacuum must be available at all times to allow for immediate cleanup of any spills.

iv. Spill and Leak Response. If spills happen indoors or outdoors, they must be cleaned up immediately and disposed of (or recycled) in a leak proof container.

v. General Housekeeping. Pellets must not be stored in a precarious manner that would increase the likelihood spilling or leaking pellets. Indoors, floors must be swept on a regular basis to avoid pellets leaving the building through open doorways. Outdoors, any release of pellets must be immediately cleaned up and disposed of (or recycled) in a leak proof container.

vi. Employee Training. All employees involved in the handling and/or use of pellets must be trained in "Zero Pellet Loss" activities.

b. E* POLY STAR, METRO POLY, INC., and UNIPOLY, INC. shall continue to operate best available technology ("BAT") procedures and equipment to avoid future discharges and to comply with the Industrial General Permit. BAT is a changing and evolving requirement. Thus, E* POLY STAR, METRO POLY, INC., and UNIPOLY, INC. must keep abreast of improvements in their industry through active involvement in trade industry organizations, communication with City of San Leandro and Water Board staff, and/or their own research and innovation. E* POLY STAR, METRO POLY, INC., and UNIPOLY, INC. shall then maintain and update their BMPs to meet BAT procedures and equipment to avoid discharges.

4. **California Wetlands Portal**

	COMPLIANCE DATE
SUBMIT COMPLETE WETLANDS TRACKER FORM	**WITHIN SEVEN (7) DAYS FROM CORRECTIVE ACTION PLAN APPROVAL**

It has been determined through regional, state, and national studies that tracking of mitigation/restoration projects must be improved to better assess the performance of these projects, following monitoring periods that last several years. To effectively carry out the State's No Net Loss Policy for wetlands, the State needs to closely track both wetland losses and mitigation/restoration project success. Therefore, this Order requires the Dischargers to use a standard form to provide site information related to impacts and mitigation/restoration measures for their Originating Sites and for Oyster Bay Regional Shoreline.

The Dischargers are required to use the standard California Wetlands Project (formerly known as "Wetlands Tracker") form to provide Originating Site and Oyster Bay Regional Shoreline information describing impacts and mitigation/restoration measures. Within seven days from the approval of the Corrective Action Plan, complete the standard form and submit electronically to habitatdata@waterboards.ca.gov, or submit a hard copy to

both: 1) San Francisco Bay Regional Water Quality Control Board, to the attention of "California Wetlands", and 2) San Francisco Estuary Institute, 7770 Pardee Lane, Oakland, CA 94621-1424, to the attention of "California Wetlands". Instructions are available at www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/401_certs/Wetlands_Instructions.doc.[9]

C. Provisions

1. **Cost Recovery:** The Dischargers are and shall be liable, pursuant to California Water Code section 13304, to the Regional Water Board for all reasonable costs actually incurred by the Regional Water Board and associated agencies to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. Such costs include, but are not limited to, staff time for investigation of the discharge, preparation of this Order, review of reports and correspondence submitted pursuant to this Order, work to complete the directives specified in this Order, and communications between Water Board staff and parties associated with the cleanup and abatement of the discharged waste, including the Dischargers, City of San Leandro, interested members of the public, and other regulatory agencies. These four Originating Sites have been enrolled in a State Water Board managed reimbursement program. Reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the Dischargers over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.

2. **Shared Submissions:** Regional Water Board enforcement staff encourages the Dischargers to share correspondence, technical reports, and other documents in an effort to accomplish the tasks assigned in this Order in the most efficient, resource saving manner. For example, one Corrective Action Plan may be submitted instead of four individual plans if all Dischargers are adequately represented in the submitted plan.

3. **Contractor/Consultant Qualifications:** Dischargers' reliance on qualified professionals promotes proper planning, implementation, and long-term cost-effectiveness of investigation, and cleanup and abatement activities. Professionals shall be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities. California Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of licensed professionals.

4. **Report Any Changes in Ownership or Occupancy:** The Dischargers shall file a written report on any changes in an Originating Site's ownership or occupancy associated with the site described in this Order. This report shall be filed with the Regional Water Board within 30 days following a change in site occupancy or ownership.

[9] If you have further questions, please contact Mike May of the San Francisco Estuary Institute at (510) 746-370 or by e-mail to mikem@sfei.org.

5. **Document Distribution:** The Dischargers shall provide electronic or hard copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order *upon request* within two weeks of the established directive deadline to the following recipients. The Assistant Executive Officer may modify this distribution list as needed.

   a. City of San Leandro
   b. California Department of Fish and Game
   c. U.S. Environmental Protections Agency
   d. U.S. Army Corps of Engineers
   e. U.S. Fish and Wildlife Service

6. **Delayed Compliance:** The Dischargers shall notify the Regional Water Board Assistant Executive Officer if they are delayed, interrupted or prevented from meeting any of the compliance dates specified in this Order or a key milestone in their approved Corrective Action Plans. The Dischargers may request in writing an extension for compliance dates, stating the basis for their request and what new compliance dates they are requesting. The Regional Water Board has the authority to revise this Order.

7. **Enforcement:** If, in the opinion of the Assistant Executive Officer, the Dischargers fail to comply with the provisions of this Order, the Assistant Executive Officer may pursue further enforcement action. The Assistant Executive Officer may refer this matter to the Attorney General for judicial enforcement, issue a complaint for administrative civil liability, or any take any other applicable enforcement action. Failure to comply with this Order may result in the assessment of an administrative civil liability up to $10,000 per violation per day, pursuant to California Water Code sections 13350, 13385, and/or 13268. The Regional Water Board reserves its right to take any enforcement actions authorized by law.

8. **Evidentiary Hearing before the Regional Water Board:** Any person affected by this action of the Regional Water Board may request an evidentiary hearing before the Regional Water Board. The Regional Water Board's Executive Officer may elect to hold an informal hearing or a "paper hearing" in lieu of scheduling a hearing before the Regional Water Board itself. If you decide to request an evidentiary hearing, send your request to the San Francisco Bay Regional Water Board Executive Officer, Attn: Bruce Wolfe. Please consider the following carefully:

   a. The Regional Water Board must receive your request within 30 calendar days of the date of this Order.

   b. Your request must include all comments, technical analysis, documents, reports, and other evidence that you wish to submit for the evidentiary hearing. However, please note that the administrative record will include all materials the Regional Water Board has previously received regarding these Dischargers. You are not required to submit documents that are already in the record.

   c. The Executive Officer or Regional Water Board may deny your request for a hearing after reviewing the evidence.

   d. If you do not request an evidentiary hearing, the State Water Board may prevent you from submitting new evidence in support of a State Water Board petition.

e. Your request for an evidentiary hearing, if you submit one, does not stay the effective date of the Order, whether or not a hearing is scheduled.

f. A request for a hearing does not extend the 30-day period to file a petition with the State Water Board (see below). However, you may ask the State Water Board to hold the petition in abeyance while your request for a hearing is pending. (Refer to CCR Title 23 section 2050.5(d).)

9. **State Water Board Petition:** Any person aggrieved by this action may petition the State Water Board to review the action in accordance with California Water Code section 13320 and Title 23, California Code of Regulations, section 2050 et al. The State Water Board, Office of Chief Counsel, must receive the petition by 5:00 p.m. 30 days after the date this Order becomes final (if the thirtieth day falls on a weekend or state holiday, the petition must be received by the next business day).[10] This Order is effective upon the date of signature.

10. **Periodic Cleanup and Abatement Order Review**: The Regional Water Board may review this Order periodically and may revise it when necessary.

_____ _____June 7, 2011_____

Thomas Mumley Date
Assistant Executive Officer

Attachment A: Overview Originating Sites
Attachment B: 2451 Polvorosa Drive Site Location Map
Attachment C: 2085 Burroughs Avenue Site Location Map
Attachment D: 1651 Aurora Drive Site Location Map
Attachment E: 2020 Williams Street Site Location

[10] Instructions for petitioning will be provided upon request or you may view them at: www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

Attachment A

Map of San Leandro, Alameda County, California, indicating the approximate location of:

(1) KANEKA TEXAS CORPORATION, DUDE, INCORPORATED, 2451 POLVOROSA DRIVE

(2) E* POLY STAR, INCORPORATED, 2085 BURROUGHS AVENUE

(3) METRO POLY, INCORPORATED, 1651 AURORA DRIVE

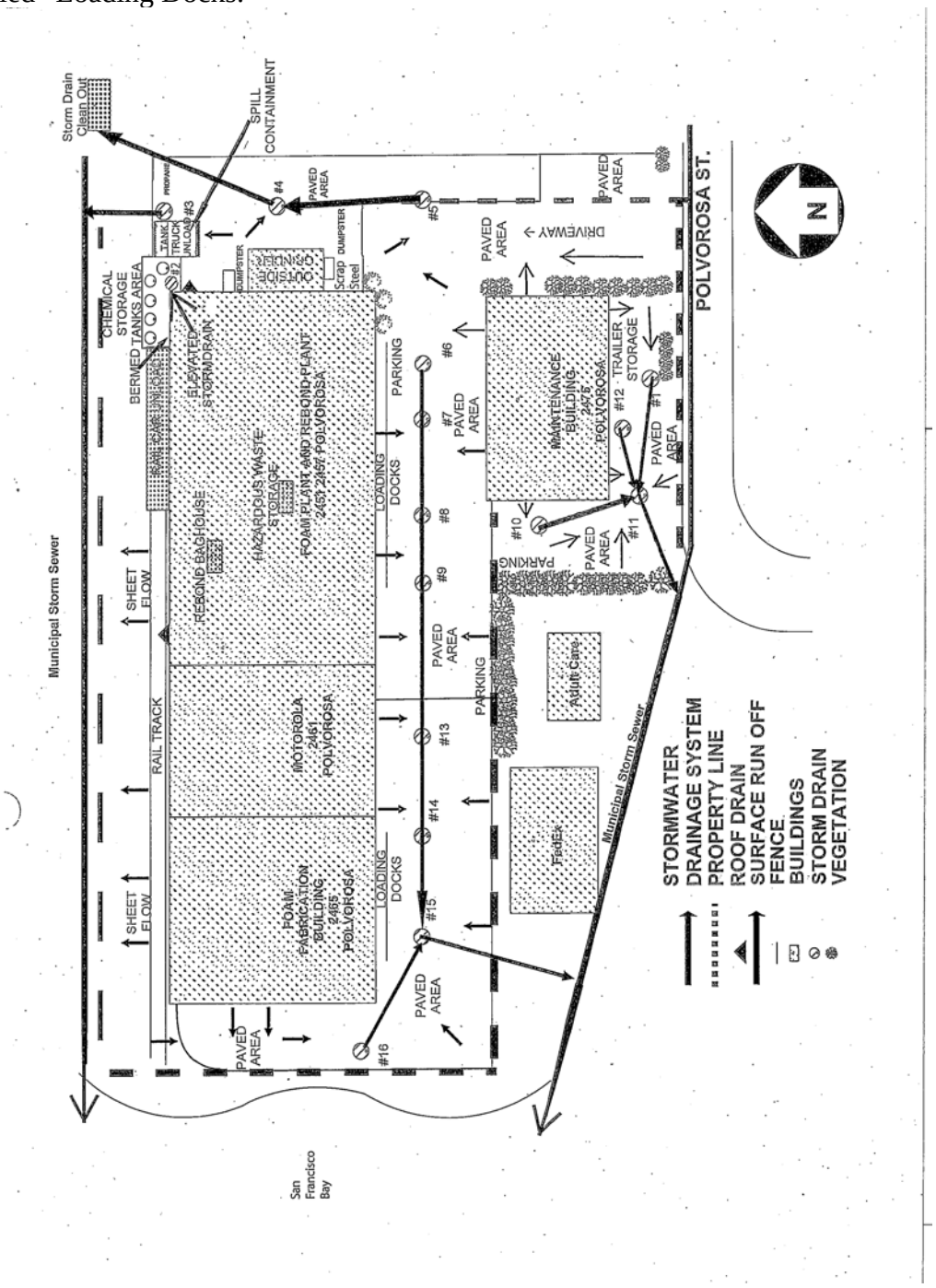
(4) UNIPOLY, INCORPORATED, 2020 WILLIAMS STREET

(5) WATERS OF THE STATE, APPROXIMATELY 4.7 ACRES OF TIDAL SALT MARCH, SOUTHEASTERN EDGE OF OYSTER BAY REGIONAL SHORELINE

1
2
3
4
5
Center Dr
Polvorosa Ave
Doolittle Dr
Williams St
Westgate Pkwy
Sundberg Ave
33B
33A
Merced St
Abram Ct
Verna Ct
Marina Blvd
Mulford Gardens
Republic Ave
Nicholson St
Sitka St
Aurora Dr
State St
Arctic St
Nome St
Fairbanks St
Juneau St
Barrow St
Yukon St
W Avenue 130th
Neptune Dr
Walnut Dr
W Avenue 133rd
W Avenue 134th
W Avenue 135th
W Avenue 136th
W Avenue 140th
Menlo St
Fairway Dr
Transom Way
Mulford Point Dr
Pescador Point Dr
Monarch Bay Dr
Jamaica Way
Tahiti Rd
Samoa Rd
Tortuga Rd
Fiji Way
Bermuda Ave
Acapulco Rd
Nassau Rd
Trinidad Rd
Santiago Rd
Sausalito Rd
Maracaibo Rd
Tiburon Rd
Blue Whale St
Seagate Dr
Outrigger
Catalina St
Burroughs Ave
Pike Ave
Farallon Dr
Marina Park
San Leandro
300 feet
100 m
Pictometry Bird's Eye © 2010 Pictometry International Corp. © AND
© 2010 NAVTEQ © 2011 Microsoft Corporation Image courtesy of USGS

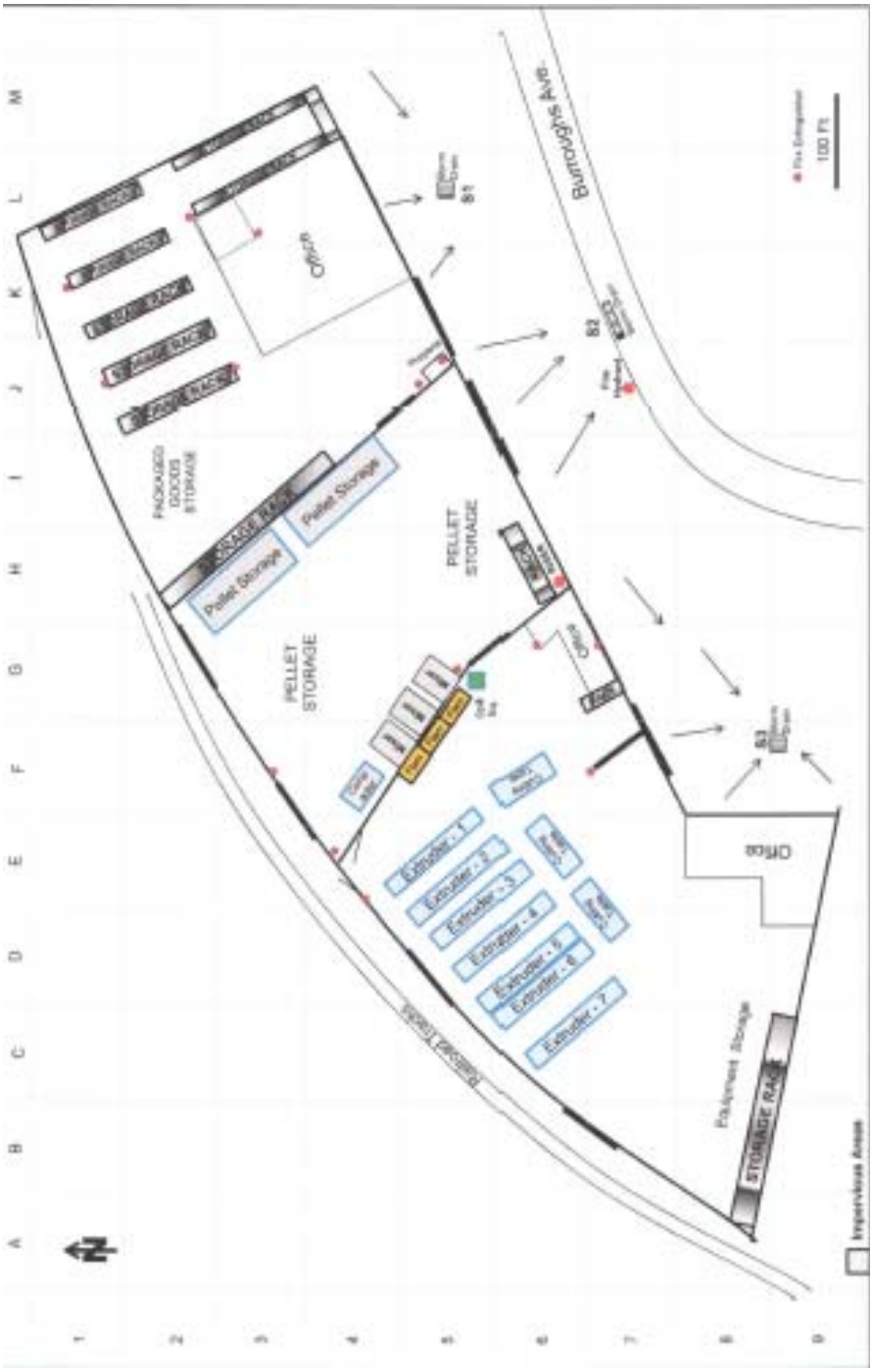
Attachment B

Kaneka & Dude, Inc., 2451, 2461, and 2465 Polvorosa Drive. Kaneka occupied 2465 Polvorosa. Expanded polypropylene plastic pellets were offloaded from truck trailers at the area labeled "Loading Docks."



Attachment C

E* Poly Star, 2085 Burroughs Avenue

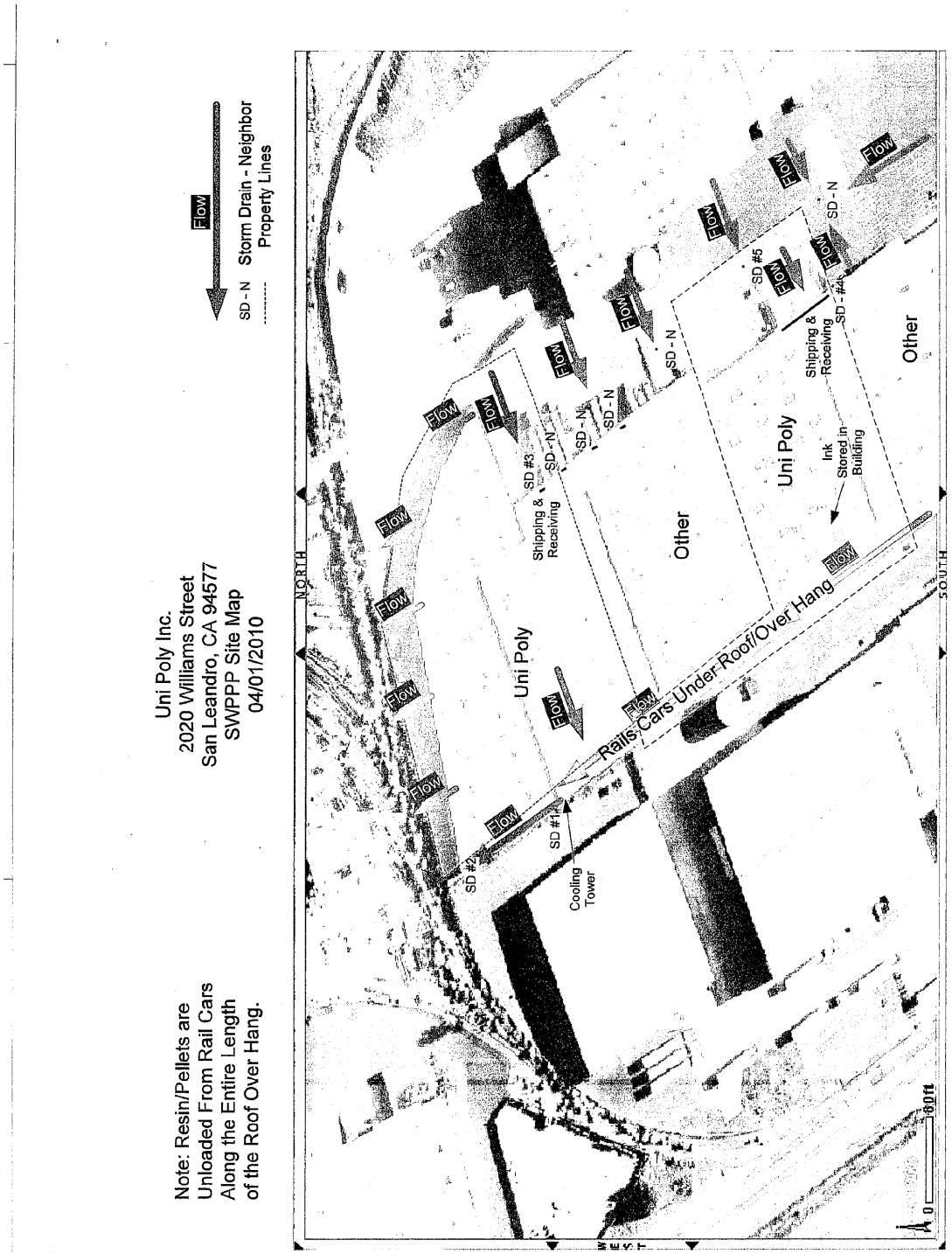


Attachment D

Metro Poly, 1651 Aurora Drive

Attachment E

Uni Poly, 2020 Williams Street. Rail cars are unloaded under roof in center of drawing.



Attachment Two

Tidal Tables

OTIS INSTITUTE

Golden Gate NGVD29 is 2.63 feet higher than MLLW therefore a NGVD of 6.0 is equal to a MLLW of	3.37	feet

NOAA/NOS/CO-OPS	NOAA/NOS/CO-OPS	NOAA/NOS/CO-OPS
Disclaimer: These data are based upon the latest information	Disclaimer: These data are based upon the latest information	Disclaimer: These data are based upon the latest information
Monthly Tide Prediction	Monthly Tide Prediction	Monthly Tide Prediction
Station Name: SAN FRANCISCO	Station Name: ALAMEDA	Station Name: SAN LEANDRO MARINA
State: CA	State: CA	State: CA
Stationid: 9414290	Stationid: 9414750	Stationid: 9414688
Prediction Type: Harmonic	Prediction Type: Harmonic	Prediction Type: Harmonic
Units: Feet	Units: Feet	Units: Feet
Time Zone: LST/LDT	Time Zone: LST/LDT	Time Zone: LST/LDT
Datum: MLLW	Datum: MLLW	Datum: MLLW
Interval Type: High/Low Tide Predictions	Interval Type: High/Low Tide Predictions	Interval Type: High/Low Tide Predictions

Date	Day	Time	MLLW Tide Height (ft)	High/Low	Golden Gate NGVD29 Height of Tide	Golden Gate NGVD29 ≥ 6.0	Date	Day	Time	MLLW Tide Height (ft)	High/Low	Date	Day	Time	MLLW Tide Height (ft)	High/Low
10/27/2011	Thu	11:59 AM	6.88	H	9.51	Extreme	10/27/2011	Thu	12:29 PM	7.66	H	10/27/2011	Thu	12:52 PM	8.67	H
10/28/2011	Fri	12:43 PM	6.85	H	9.48	Extreme	10/28/2011	Fri	1:12 PM	7.62	H	10/28/2011	Fri	1:37 PM	8.61	H
11/23/2011	Wed	9:05 AM	6.83	H	9.46	Extreme	11/23/2011	Wed	9:34 AM	7.59	H	11/23/2011	Wed	9:57 AM	8.62	H
11/24/2011	Thu	9:48 AM	7.02	H	9.65	Extreme	11/24/2011	Thu	10:17 AM	7.78	H	11/24/2011	Thu	10:41 AM	8.83	H
11/25/2011	Fri	10:33 AM	7.05	H	9.68	Extreme	11/25/2011	Fri	11:03 AM	7.8	H	11/25/2011	Fri	11:27 AM	8.84	H
11/26/2011	Sat	11:20 AM	6.92	H	9.55	Extreme	11/26/2011	Sat	11:50 AM	7.65	H	11/26/2011	Sat	12:15 PM	8.66	H
12/22/2011	Thu	8:41 AM	6.96	H	9.59	Extreme	12/22/2011	Thu	9:09 AM	7.71	H	12/22/2011	Thu	9:33 AM	8.69	H
12/23/2011	Fri	9:30 AM	7.06	H	9.69	Extreme	12/23/2011	Fri	9:59 AM	7.8	H	12/23/2011	Fri	10:24 AM	8.8	H
12/24/2011	Sat	10:18 AM	7.04	H	9.67	Extreme	12/24/2011	Sat	10:48 AM	7.74	H	12/24/2011	Sat	11:13 AM	8.75	H
11/14/2012	Wed	10:52 AM	6.97	H	9.6	Extreme	11/14/2012	Wed	11:21 AM	7.73	H	11/14/2012	Wed	11:45 AM	8.68	H
11/15/2012	Thu	11:39 AM	6.91	H	9.54	Extreme	11/15/2012	Thu	12:08 PM	7.67	H	11/15/2012	Thu	12:33 PM	8.6	H
12/11/2012	Tue	8:57 AM	6.93	H	9.56	Extreme	12/11/2012	Tue	9:26 AM	7.68	H	12/11/2012	Tue	9:48 AM	8.63	H
12/12/2012	Wed	9:45 AM	7.13	H	9.76	Extreme	12/12/2012	Wed	10:14 AM	7.87	H	12/12/2012	Wed	10:37 AM	8.85	H
12/13/2012	Thu	10:34 AM	7.18	H	9.81	Extreme	12/13/2012	Thu	11:03 AM	7.91	H	12/13/2012	Thu	11:28 AM	8.89	H
12/14/2012	Fri	11:24 AM	7.05	H	9.68	Extreme	12/14/2012	Fri	11:54 AM	7.76	H	12/14/2012	Fri	12:19 PM	8.74	H
1/9/2013	Wed	8:42 AM	6.95	H	9.58	Extreme	1/9/2013	Wed	9:11 AM	7.67	H	1/9/2013	Wed	9:33 AM	8.61	H
1/10/2013	Thu	9:35 AM	7.1	H	9.73	Extreme	1/10/2013	Thu	10:04 AM	7.81	H	1/10/2013	Thu	10:27 AM	8.78	H
1/11/2013	Fri	10:26 AM	7.11	H	9.74	Extreme	1/11/2013	Fri	10:56 AM	7.81	H	1/11/2013	Fri	11:20 AM	8.79	H
1/12/2013	Sat	11:17 AM	6.94	H	9.57	Extreme	1/12/2013	Sat	11:47 AM	7.63	H	1/12/2013	Sat	12:12 PM	8.6	H

Attachment Three

Proposed Access Points

Figure 1: Proposed Access Points

Attachment Four

Proposed Wetlands Walking Paths

Figure 2: Path of Cleanup

Figure 3: Path of Cleanup Continued

Figure 4: Path of Cleanup Continued

Figure 5: Path of Cleanup Continued

Figure 6: Path of Cleanup Continued

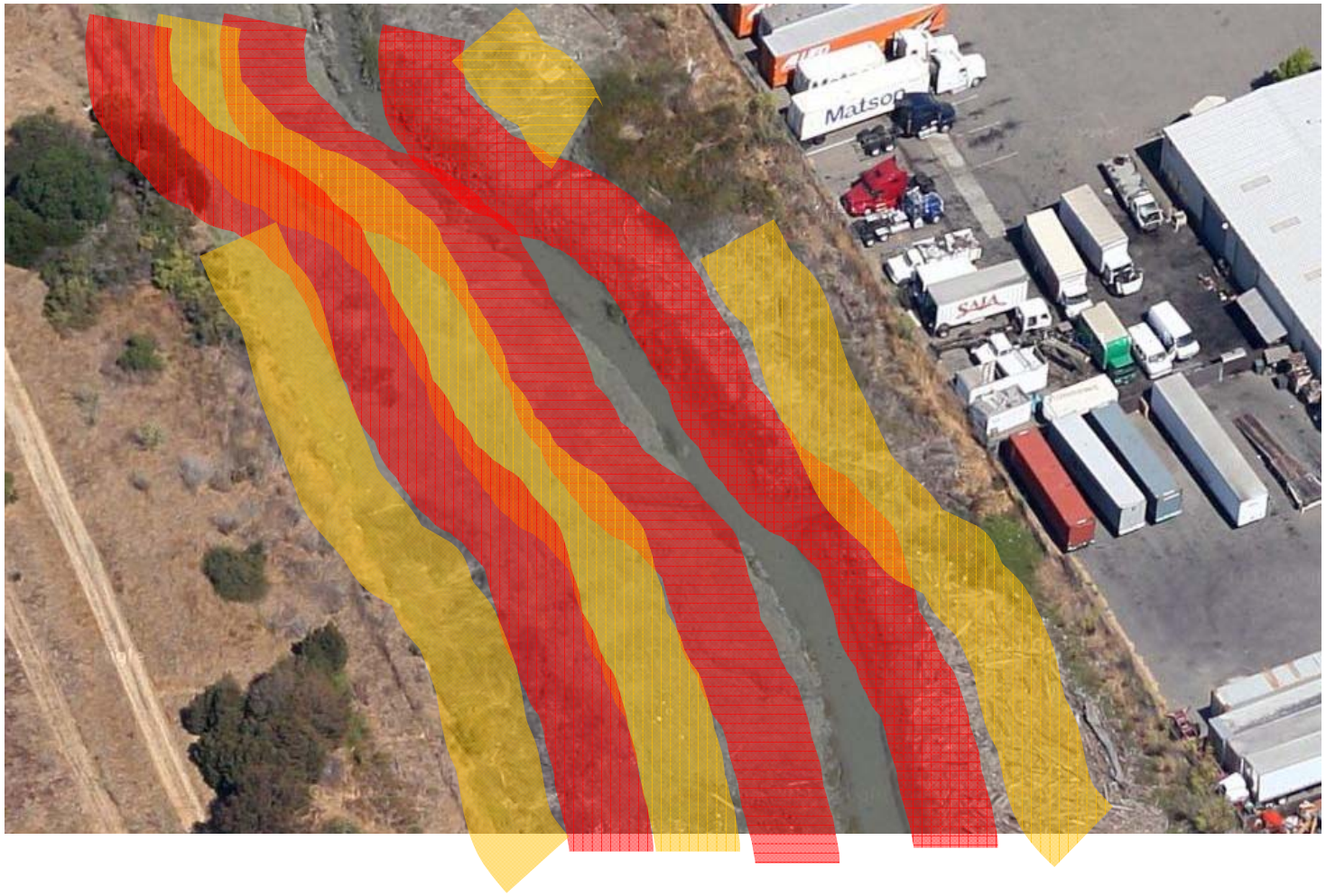


Figure 7: Path of Cleanup Continued

Enclosure 2

“Track Changes” copy of the Final Corrective Action Plan

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Final Corrective Action Plan – Tidal Salt Marsh

Cleanup and Abatement Order No. R2-2011-033 for The Waters Of The State Located At: Approximately 4.7 Acres Of Tidal Salt Marsh, Parallel To Neptune Drive Along The Southeastern Edge Of Oyster Bay Regional Shoreline, San Leandro, Alameda County, California

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

Project Number: PRJ03820110070
Revision: A

Date Finalized: September 6, 2011

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Prepared by:

OTIS INSTITUTE

1026 Folsom Street, Unit 10
San Francisco, CA 94103
(415) 992-7458

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Attachment Four

Proposed Wetlands Walking Paths .....

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Section One

Certification

This is an engineering report of opinions and conclusions based on the data provided by Kaneka Texas Corporation, based on the contents of the Cleanup and Abatement Order No. R2-2011-033, Dated June 7, 2011 from the San Francisco Bay Region California Regional Water Quality Control Board (SFBRWQCB), recommendations of wetland specialist, Gary Deghi, Senior Environmental Scientist (Huffman-Broadway Group, Inc. (HBG)) and by actual field observations made of the waters of the State located at: approximately 4.7 acres of tidal salt marsh, parallel to Neptune Drive along the southeastern edge of Oyster Bay Regional Shoreline, San Leandro, Alameda County, California by Troy Christensen, PE or personnel working under my direction.

By this certification, I attest that:

- This Final Corrective Action Plan (Plan) proposes to remove pre-production plastic pellets and trash from the tidal salt marsh area ensuring that our plan minimizes adverse impact during cleanup operations to ensure the health of the estuary and wetlands and any other biologically sensitive area. See Section Four "Final Corrective Action Plan" for details on the cleanup plan.
- This Final Corrective Action Plan meets the plan submittal requirements and intent of the
  - Cleanup and Abatement Order No. R2-2011-033 (Order), Section B. Cleanup and Abatement Tasks - 1. Submit and Implement Final Corrective Action Plan for Cleaning Up Oyster Bay Regional Shoreline.
  - Follow-up emails, meetings, and conversations with San Francisco Bay Regional Water Quality Control Board staff and other appropriate agencies.
- Biological requirements of the order are documented in Section Three "Biological Requirements".
- Restoration of the wetlands' function and performance standards related to their full re-establishment is documented in Section Five "Verification and Monitoring".
- This Final Corrective Action Plan should not have any adverse impact on hydrology and channel morphology at and in the vicinity of the site and neighboring areas, including but not limited to the estuary, wetlands and waterways of the Oyster Bay Regional Shoreline.

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August, 3, 2011

Troy A. Christensen, PE Date
California Registered Professional Engineer, C64870

Section Two

Background

Otis Institute, Inc. has been contracted to develop the Final Corrective Action Plan for Cleanup of the Tidal Salt Marsh (wetlands) on behalf of:

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- Kaneka Texas Corporation, For The Property Located At: 2451 Polvorosa Drive San Leandro, Alameda County, California,
- E* Poly Star, Incorporated For The Property Located At: 2085 Burroughs Avenue San Leandro, Alameda County, California,
- Metro Poly, Incorporated For The Property Located At: 1651 Aurora Drive San Leandro, Alameda County, California, and,
- Unipoly, Incorporated For The Property Located At: 2020 Williams Street San Leandro, Alameda County, California.

This order requires the above listed companies to develop a Final Corrective Action Plan for:

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- 1. Final Corrective Action Plan for Oyster Bay Regional Shoreline
- 2. Final Corrective Action Plan for 2451 Polvorosa Drive and Adjacent Areas

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Troy Christensen, PE, consultant and managing principal in charge for all parties listed above, requested an extension to August 3, 2011 in a letter dated July 20, 2010 sent to Ms. Christine Boschen, Section Leader of the California Regional Water Control Board, which was verbally granted by Christine Boschen on July 27th and reconfirmed on July 29, 2011 and documented in a letter dated August 2, 2011.

Terry Huffman, PhD, Wetland Regulatory Scientist and Gary Deghi, Vice President/Senior Environmental Scientist from the Huffman-Broadway Group, Inc. (HBG) were contracted by Otis Institute to meet the professional wetland biologist and/or wetland restoration specialist input requirement of the Order.

This Final Corrective Action Plan includes the waters of the State located at: approximately 4.7 acres of Tidal Salt Marsh, Parallel to Neptune Drive along the southeastern edge of Oyster Bay Regional Shoreline, San Leandro, Alameda County, California.

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Definitions

The following definitions have been added to clarify meaning of words used within this Final Corrective Action Plan:

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1. TAKE, which is defined under the federal Endangered Species Act (ESA) as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The U.S. Fish and Wildlife Service (USFWS) has also interpreted the definition of "harm" to include significant habitat modification that could result in take. Under the California Endangered Species Act (CESA) take is defined in the Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." Because CESA does not have a provision for "harm" California Department of Fish and Game (CDFG) considerations pursuant to

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CESA are limited to those actions that would result in the direct take of a listed species.

2. MISCELLANEOUS TRASH, which is defined, for the purpose of this Cleanup and Abatement Order Final Corrective Action Plan, as litter and particles of litter, which include, but are not limited to, discarded toys, clothes, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state. Trash, as defined for the purpose of this Cleanup and Abatement Order Final Corrective Action Plan, are only those articles that can be reasonably removed by hand and skimmer net, and does not include
   a. large debris such as couches, tires, barrels, and lumber,
   b. wood, or other plant matter,
   c. any articles that, in picking them up from the project area, would endanger the safety and health of the workers.

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Deleted: as man-made debris including items made of plastic, paper, rubber that can be reasonably removed by hand without endangering safety and health of the worker in the wetlands area. Not included in miscellaneous trash are

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Site Assessment – Visual Observations

Visual observations were conducted by Troy Christensen, PE, Principal Engineer in Charge, LaToya Christensen, Project Manager, and Laura Cremer, EHS Specialist/Junior Engineer (under direction of principal) of the Otis Institute of the wetlands:

1. On June 24th, 2010 from 22:30 to June 25th, 2010 00:30, Troy Christensen observed the 8.2 feet high tide above the Mean Lower Low Water [1](MLLW) at 23:31 hours. Beads were floating in the tide, but the pickleweed and other vegetation was still above the water's surface. Based on this visual observation and the HBG Report requirement to not come into contact with the vegetation within the marsh area, it was determined that a minimum tide of 8.6 feet above MLLW is required to raise the water level above the pickleweed such that cleanup activities may take place.
2. On November 6th, 2010, LaToya Christensen, Project Manager and Troy Christensen, PE performed a survey of the high tide from 12:15 PM to 1:00 PM and completed a second survey from 1:55 PM to 2:20 PM. The objective was to determine if the Final Corrective Action Plan dated August 22, 2010 was still valid. The predicted high tide for this date was at 12:33 PM PDT and was to reach 8.69 ft. MLLW at San Leandro Marina. Based on our survey it appears that it is not possible to remove the preproduction plastic pellets without the collection skimmer coming into contact with the pickleweed and other vegetation.
3. On July 13th, 2011, Laura Cremer performed a tidal survey from 10:25 AM t 1:34 PM with a predicted high tide of 6.07 feet MLLW at San Leandro Marina. It was determined that a small motor-less craft would have difficulty entering the channel of the wetlands based on the width of the channel.
4. On July 15th, 2011, Troy Christensen, PE and Laura Cremer performed a second survey to confirm findings and determine the extent of trash in the wetlands, access points into the wetlands area, and potential strategies based on the wording in the cleanup order.
5. On July 26th, 2011, Troy Christensen accompanied by Laura Cremer, Gary Deghi, HBG, Ms. Christine Boschen, RWQCB and Thomas Garrisi, PE of KTC performed a further survey to strategize potential cleanup of the wetlands with minimal impact on the wetland habitat. It was confirmed that an extreme high tide was necessary for cleanup activities, that a small craft would not be successful in accessing the marsh, and that impact on wildlife and wetland habitat would be minimized by using a skimmer net on a 15 foot pole to capture pellets and trash.
6. On July 29th, 2001, Troy Christensen accompanied by Christine Boschen, RWQCB, John Camp, City of San Leandro, Matt Graul, East Bay Regional Park District, performed on overview walk-through of the wetlands to confirm access points, owners of property on eastside of wetland that will need to be contacted for access to wetlands, and review of the proposed general cleanup plan for the wetlands.

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[1] Tidal Data in this report for 2011-2013 is from "2010 & 2011 NOAA Tide Predictions: San Leandro Marina"

Final Corrective Action Plan Responsibility

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The following table provides a list of primary responsibilities for the Final Corrective Action Plan (CAP) lead personnel on behalf of the parties.

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Table 1: Final Corrective Action Plan Responsibility

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Company and Contacts	Responsibilities
Troy Christensen, PE Otis Institute, Inc.	Engineering Principal in Charge of the Final Corrective Action Plan development and implementation. Coordination of contractors and biological monitor as needed for the implementation of the plan including cleanup, verification, monitoring and reporting.
Terry Huffman, PhD Huffman-Broadway Group, Inc.	Coordination of other wetlands specialists as needed to implement this Final Corrective Action Plan
Contractors/Workers To Be Determined	Provide waste disposal, labor, tools and necessary equipment to implement the Final Corrective Action Plan.

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Limitations

This Final Corrective Action Plan has been prepared by consultants who have experience and are knowledgeable about environmental contamination, wetland restoration, and rare, threatened, or endangered plant or animal species. This Final Corrective Action Plan has been prepared based on information provided by the listed parties, based on the contents of the Cleanup and Abatement Order No. R2-2011-0033, Dated June 7, 2011 from the California Regional Water Quality Control Board, San Francisco Bay Region, and by actual field observations made of the Oyster Bay Regional Shoreline Area.

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No warranty, express or implied, is made. In the event that changes in the nature, use, or layout of the wetlands are made or discovered, the information contained in this Final Corrective Action Plan may not be valid and may require a resubmit and update of the Final Corrective Action Plan upon discovery of the changes.

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Section Three

Biological Requirements

California Seablite Survey

Upon approval of this Final Corrective Action Plan, biological monitor(s) will be selected and resumes sent to the U.S. Fish and Wildlife Service (USFWS) for approval of credentials who is (are) familiar with the California clapper rail, salt marsh harvest mouse, California Seablite, and any other special status species known or suspected to be in the area.

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Upon approval of the biological monitor and approvals documented in Section Six, a biological survey of the wetlands will be performed that includes:

1. Determining if California Seablite is located within the wetlands area
2. Flagging California Seablite locations and setting up a 50-foot buffer
3. Documenting any new information that reveals effects of the proposed project, may affect listed species in a manner or to an extent not considered, or a new species is listed
4. Documenting this survey in a report
5. Provide a copy of the report to USFWS before cleanup

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Biological Monitor Requirements

The approved biological monitor will perform the following at the beginning of each day that a cleanup activity is scheduled:

1. Verify that California Seablite 50 foot buffer is in place
2. Hold a “tail gate” meeting to discuss specific precautions and procedures to protect the special status species that may be on site.
3. The biological monitor will look out for (and train the cleanup crew to assist in looking out for) raptors, herons, and gulls. This is particularly important considering the proximity of a waste transfer station (which attracts gulls) to the cleanup area. If raptors, herons, or gulls are present, the biological monitor may halt the cleanup activities and assess the risk to sensitive species before deciding whether to continue the cleanup.
4. The biological monitor has the authority and the responsibility to shut down or alter operations at any time if he/she finds that operations endanger any sensitive species in the vicinity.
5. The biological monitor will report to the East Bay Regional Park District, California Department of Fish and Game, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, and the Regional Water Quality Control Board regarding their observations of wildlife activity in the area, including California clapper rails, salt-marsh harvest mouse, and other general wildlife such as wandering shrews, etc., and how the cleanup activities are affecting wildlife behavior.

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Biological Effects

Additional information on the Biological Effects was prepared last year by the Huffman-Broadway Group, Inc. "Sensitive Species and Habitat Protection Plan in Support of Corrective Active Plan Developed In Response to RWQCB Cleanup and Abatement Order No. R2-20 10-0070 Oyster Point Bay Regional Shoreline". A copy of the Final Corrective Action Plan (20100823 Final Corrective Action Plan Oyster Bay Regional Shoreline With Attachments) that was submitted last year by Otis Institute on behalf of Kaneka Texas Corporation included this biological report as Attachment Three, for which a web-link appears below.

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ftp://swrcb2a.waterboards.ca.gov/pub/swrcb/dwq/stormwater/GTG%20Stuff/SanLeandroPlastics/20100823%20Corrective%20Action%20PlanOyster%20Bay%20Regional%20Shoreline%20With%20Attachments.pdf

The linked report details the Biological Effects in Section 3.

Section Four

Tidal Marsh Cleanup Activities

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The Plan developed herein recommends strategies that should be implemented during the cleanup operations to ensure compliance with federal and state regulations related to sensitive habitats and special status species. These strategies include measures to avoid or minimize unavoidable impacts to species and habitats. Methods of removing miscellaneous trash and pellets from the Oyster Bay Regional Shoreline tidal wetlands are set forth that would minimize (1) disturbing and remobilizing contaminated tidal marsh sediments and (2) adverse effects of the cleanup operations on federal or state listed species or species of special concern.

Based on our visual observations, cleanup operations can only take place during extreme high tides of 8.6-foot or higher MLLW at the San Leandro Marina during daylight hours (Monday – Friday) during good weather. There are seven (7) possible tidal events above 8.6-foot in September 2011- January 2012 year and nine (9) possible in September 2012 – January 2013. The first possible cleanup event is October 27th, 2011. See Attachment Two – Tidal Tables for addition tides.

At the completion of each set of high tide events, a report will be sent to RWQCB and a meeting held to document findings and determine if further clean up actions will be required based on Section Five Cleanup Verification and Success Criteria and the observations of areas cleaned up the preceding cleanup work day before.

Tidal Marsh Cleanup Activities

Within areas of tidal marsh depicted in the Order the following procedures would be used to remove miscellaneous trash and pellets:

1. Cleanup shall be conducted between September 1, 2011, to January 31, 2012, and September 1, 2012, to January 31, 2013, in order to avoid working during the California clapper rail breeding season. Cleanup events shall occur over the extreme high tides that cluster around the full moon each month.
2. Cleanup of the wetlands will be planned for either the east side or west side of the channel, but both sides will not be scheduled on the same date to minimize impact on wildlife.
3. Cleanup crews will consist of 2-4 personnel plus a biological monitor. The reduced size of the cleanup crews will minimize the impact to the wetlands and wildlife.
4. While moving through the marsh, the cleanup workers shall do the following:
    a. Keep noise to a minimum.
    b. At all times, observe the environment they are walking through to avoid disturbance.
    c. Plan and map their route to minimize environmental impacts and decrease running into hazards/barriers such as large channels.

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5. Cleanup personnel will only enter and exit the wetlands through approved access points – See Attachment Three.
    a. Some access points may have a temporary access walkway installed at the beginning of the cleanup which will be removed at the end of each day to minimize impact to vegetation and soil.
    b. In addition to the temporary access walkway, Access Point 2 will have a jute ground cover installed (approximately 10-15 feet in length and 6 feet wide) to minimize erosion to the slope when people access the wetlands at this area.

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6. Cleanup personnel will work in teams of two and will be equipped with protective gloves, waders, a walking stick, a ~15 foot pole with a pool leaf skimming net attached and a trash bag that is either attached to the waist or over the shoulder.
7. Cleanup personnel will be trained per the Health and Safety Plan that will be developed to protect workers while working in and around the wetlands. The Health and Safety plan will be created upon approval of this Final Corrective Action Plan.

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8. Cleanup operations will start by personnel entering at the designated access point approximately 90 minutes before the daily predicted high tide at the San Leandro Marina and will proceed by staying approximately 15 feet from the central channel.
    a. Starting and staying close to the channel will allow wildlife additional time to retreat to higher vegetation while cleanup operations start and the high tide continues to come in.
    b. While walking down the wetlands, personnel will use the skimmer net to collect miscellaneous trash and pellets. Personnel will continue along the channel either until the waste bag is full or at the time of the high tide and proceed back to the original access point.
        i. Attachment Four shows proposed wetlands walking paths to minimize impact to vegetation by workers. Use of the paths will follow the procedure below:
            1. First pass will be approximately 15 feet from the central channel.
            2. Return/second pass will be approximately 45 feet from the channel
            3. Continuing to work towards the shore if multiple paths are required.
            4. Note personnel will not enter any areas with standing vegetation or vegetation that is sticking out of the water surface to minimize impact on wildlife and habitat.
    c. Skimming operations and personnel will be instructed to not skim with the net or enter any vegetated areas where vegetation is sticking out of the water.
    d. It is to be noted that cleanup personnel may inadvertently collect fragments of vegetation during skimming operations.

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9. Hand Removal. Workers will remove reasonably accessible miscellaneous trash and pellets by hand using disposable gloves during low tide following the first scheduled cleanup on October 27, 2011, along unvegetated upland portion of tidal shoreline (no closer than 5 feet of tidal marsh).

Note: All collected trash and pellets and waste gloves will be placed in trash receptacles and transported off-site and properly disposed of. No other equipment or supplies will be utilized during Tidal Marsh miscellaneous trash and pellet removal operations.

Section Five

Verification and Monitoring

Clean-up Verification – Success Criteria

Based on our understanding of the Biological Effects of the preproduction plastic pellets and the limitations on cleanup activities that restrict take or removal of plants and species from the wetland and waterway areas, we propose the following success criteria that the wetland and waterway areas are considered as clean as reasonably possible:

1. Clean reasonably accessible pellets and trash with a skimming operation beginning 90 minutes before and ending 90 minutes after a high tide event 8.6 feet above MLLW at the San Leandro Marina.
   a. The day following cleanup operations observations will be taken to document the status of previously cleaned up area.
   b. The cleanup crews will rotate through each area of the wetlands, conducting a cleanup event during each of the extreme high tide events that occur during the allowed work window of the 2011/2012 and 2012/2013 seasons.
2. Clean reasonably accessible pellets by hand along unvegetated tidal shoreline where beads may be found present following extreme high tide skimming operations.
3. At the end of each cleanup event, total trash and pellets removed shall be quantified by weight or by volume, whichever gives the most accurate description of the removal results (in other words, whichever is the measurement least skewed by water content). The relative percentage of pellets to trash shall also be estimated and reported with an explanation of how the estimate was arrived upon.
   a. This information shall be recorded and graphed to show the effectiveness of the cleanup efforts.
   b. This information shall be reported in writing to the Water Board (see next requirement.)
4. Within two weeks of each cleanup event, the Responsible Parties shall submit a written progress report to the Water Board. The report shall provide details of the materials removed, and it shall discuss observations of flora and fauna as relate to the protection of wildlife, California seablite, and any other issues relevant to the execution of this Final Corrective Action Plan.
5. By the final cleanup event of January 2013, Water Board staff will review and evaluate the overall cleanup effectiveness on the reduction of pellets in the marsh. If pellets continue to be present in the marsh in quantities similar to what was observed in the first year of cleanup activities, an additional season of cleanup may be required. Conversely, if, after the first season, if the cleanup activities reduce pellets to the point they are not detected in the marsh, Water Board staff may consider shortening the overall required cleanup period.

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California Wetland Portal

Otis Institute will complete the standard California Wetlands Project form within seven (7) days of Final Corrective Action Plan approval providing Oyster Bay Regional Shoreline information describing impacts and mitigation/restoration measures. The completed California Wetlands Project form will be submitted electronically to habitatdata@waterboards.ca.gov and may be submitted as a hard copy to both: 1) San Francisco Bay Regional Water Quality Control Board, to the attention of Wetland Tracker, and, 2) San Francisco Estuary Institute, 7770 Pardee Lane, Oakland, CA 94621-1424, to the attention of Mike May. All monitoring activities will be documented and communicated using the standard California Wetlands Project form.

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Section Six

Approval

Otis Institute, on behalf of the parties listed, requests that, in addition to Regional Water Quality Control Board (RWQCB) approval, both California Department of Fish and Game (CDFG) and U.S. Fish and Wildlife Service (USFWS) provide written approval that the activities and methodologies described in this Final Corrective Action Plan will not create a take or the potential for take of a listed species. To avoid legal exposure the companies named in the Order need assurance for the clean-up project, as ordered by the RWQCB, that the parties implementing the Order will not be subject to terms of a take under either the federal Endangered Species Act or the California Endangered Species Act.

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To satisfy this request from the Responsible Parties, Water Board staff has obtained letters from the CDFG and the USFWS, and the letters are attached with the transmittal of this final Final Corrective Action Plan.

Deleted: Unless these assurances can be provided, Otis Institute will have to apply for the appropriate authorizations from both agencies. It is our understanding that if a permit or authorization is required to implement this Corrective Action Plan, that RWQCB, USFWS, and CDFG will work to expedite the permitting process such that our first cleanup activities can commence on October 27, 2011. Without the required permits/authorizations received in a timely manner, the work may necessarily be delayed.

Upon receipt of approval, Otis Institute will obtain the appropriate permits from East Bay Regional Park District for access to the park for the cleanup activities.

Comment [DP1]: Attachment omitted in this track changes version.

Attachment One

Cleanup and Abatement Order No. R2-2011-0033

Comment [DP2]: Attachment omitted in this track changes version.

Attachment Two

Tidal Tables

Attachment Three

Proposed Access Points

Figure 1: Proposed Access Points

Attachment Four

Proposed Wetlands Walking Paths

Figure 2: Path of Cleanup

Figure 3: Path of Cleanup Continued

Figure 4: Path of Cleanup Continued

Figure 5: Path of Cleanup Continued

Figure 6: Path of Cleanup Continued

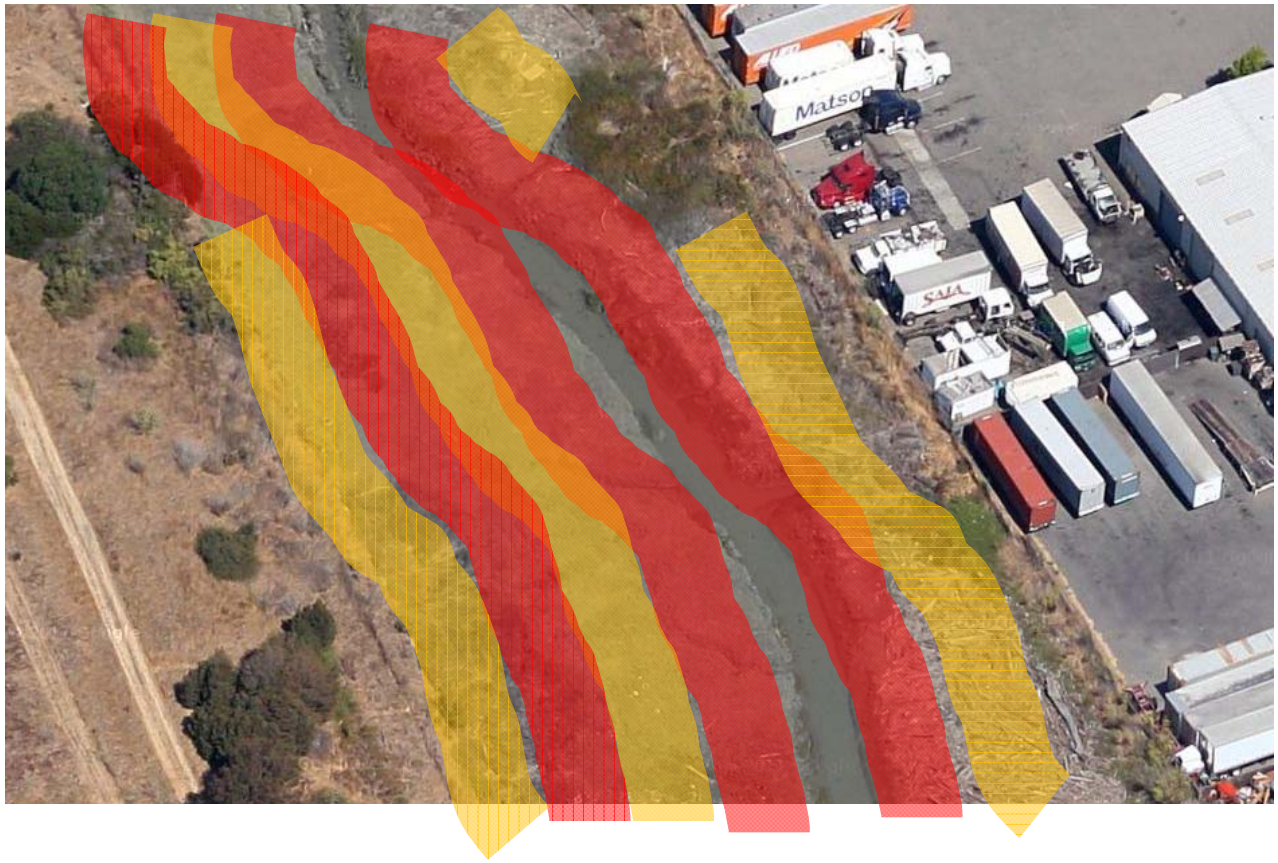

Figure 7: Path of Cleanup Continued

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Enclosure 3

USFWS Letter

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

In Reply Refer To:
81420-2011-TA-0071-2

AUG 30 2011

Ms. Christine Boschen
San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612

Subject: Additional Technical Assistance under the Endangered Species Act for the Cleanup of Plastic Pellets in the Salt Marsh at Oyster Bay Regional Shoreline in the City of San Leandro, Alameda County, California

Dear Ms. Boschen:

This letter responds to your July 28, 2011, request to the U.S. Fish and Wildlife Service (Service) via electronic mail for additional technical assistance regarding the San Francisco Bay Regional Water Quality Control Board's (SF Bay Water Board) Cleanup and Abatement Order No. R2-2011-033 for cleaning up plastic pellets in the salt marsh at Oyster Bay Regional Shoreline Proposed Project (Proposed Project) in the City of San Leandro, Alameda County, California. At issue are the potential effects of the proposed project on the endangered California clapper rail (*Rallus longirostris obsoletus*), endangered salt marsh harvest mouse (*Reithrodontomys raviventris*), and endangered California seablite (*Suaeda californica*). This letter is issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

It is our understanding that the SF Bay Water Board has issued Cleanup and Abatement Order No. R2-2011-033, which requires the responsible parties to cleanup plastic pellets as well as "run of the mill" trash from about 4.7 acres of salt marsh that runs parallel to Neptune Drive along the southeastern edge of Oyster Bay Regional Shoreline in the City of San Leandro, Alameda County, California.

The Service first provided technical assistance on the Proposed Project in a letter dated November 29, 2010 (enclosed) (Service file number 81420-2011-TA-0071-1). In our November 29, 2010 letter we stated:

> California clapper rails and salt marsh harvest mice are most vulnerable to disturbance and predation during extreme high tides when they are forced out of the marsh into upland areas that often lack cover. Therefore, cleanup activities would cease within two hours of extreme high tides (e.g., within two hours before and after high tides exceeding 6.0 feet NGVD at the Golden Gate Bridge adjusted to the timing of local tidal peaks).

However, in your electronic mail message dated July 27, 2011, you stated that in order to effectively cleanup the plastic pellets, the responsible parties need to conduct the marsh cleanup work during extreme high tides when the pickleweed is inundated because the pellets need water to float them out of the pickleweed. During extreme high tides, California clapper rails and salt marsh harvest mice are likely to escape the inundated pickleweed areas and take cover in the adjacent upland areas. Thus, by conducting the marsh cleanup work when the pickleweed is inundated, the proposed cleanup work will avoid the potential for disturbing any California clapper rails and salt marsh harvest mice in the marsh. Photographs and videos of the project site show sufficient upland refugia cover adjacent to the marsh where California clapper rails and salt marsh harvest mice can hide during the extreme high tide event. The proposed cleanup work will reduce the potential for disturbing any California clapper rails and salt marsh harvest mice in upland refugia during the marsh cleanup activities by minimizing the disturbance of upland refugia cover. The proposed cleanup work will further minimize the potential for disturbing any California clapper rails and salt marsh harvest mice by reducing the size of the cleanup crew to fewer than the 25 people. Additionally, the proposed cleanup work would be limited to one side of the marsh at a time. Thus, the Service believes that with the implementation of the currently proposed avoidance and minimization measures, the proposed changes to the cleanup activities will not result in the take of the California clapper rail and salt marsh harvest mouse or adverse effects to the California seablite.

Unless new information reveals effects of the Proposed Project that may affect listed species in a manner or to an extent not considered, or a new species is listed, no further action pursuant to the Act is necessary for the Proposed Project. Please contact Joseph Terry, Senior Biologist, or Ryan Olah, Coast Bay/Forest Foothills Division Chief, at the letterhead address, electronic mail (Joseph_Terry@fws.gov; Ryan_Olah@fws.gov), or at telephone (916) 414-6600, if you have any questions regarding this response.

Sincerely,

E. Tattersall

Eric Tattersall
Deputy Assistant Field Supervisor

Enclosure

cc:
Greg Martinelli, California Department of Fish and Game, Napa, California

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

In Reply Refer To:
81420-2011-TA-0071-1

NOV 29 2010

Mr. Xavier Fernandez
San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612

Subject: Technical Assistance under the Endangered Species Act for the Cleanup of Plastic Pellets in the Salt Marsh at Oyster Bay Regional Shoreline, San Leandro, Alameda County, California

Dear Mr. Fernandez:

This letter responds to your November 4, 2010, request to the U.S. Fish and Wildlife Service (Service) via electronic mail for technical assistance regarding the State Regional Water Quality Control Board's (SRWQCB) Cleanup and Abatement Order for cleaning up plastic pellets in the salt marsh at Oyster Bay Regional Shoreline (proposed project) in the City of San Leandro, Alameda County, California. At issue are the potential effects of the proposed project on the endangered California clapper rail (*Rallus longirostris obsoletus*), salt marsh harvest mouse (*Reithrodontomys raviventris*), and California seablite (*Suaeda californica*). This letter is issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

It is our understanding that the SRWQCB is preparing a Cleanup and Abatement Order that will require the responsible parties to clean up plastic pellets as well as "run of the mill" trash from about 4.7 acres of salt marsh that runs parallel to Neptune Drive along the southeastern edge of Oyster Bay Regional Shoreline in the City of San Leandro, Alameda County, California.

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. The Service defines harass as an intentional or negligent act or omission which creates the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is defined to include significant habitat modification or degradation that results in death or injury to listed species by impairing behavioral patterns including breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section

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7(b)(4) and section 7(o)(2), take that is incidental to and not intended as part of the agency action is not considered to be prohibited, provided such taking is in compliance with the terms and conditions of an Incidental Take Statement.

Sections 7(b)(4) and 7(o)(2) of the Act generally do not apply to listed plant species. However, limited protection of listed plants from take is provided to the extent that the Act prohibits the removal and reduction to possession of federally listed endangered plants or the malicious damage of such plants on areas under Federal jurisdiction, or the destruction of endangered plants on non-Federal areas in violation of State law or regulation or in the course of any violation of State criminal trespass law.

In electronic mail messages dated November 12, 2010, and November 22, 2010, the SRWQCB proposed implementing the following avoidance measures to reduce the likelihood of "take" of the California clapper rail and salt marsh harvest mouse and the potential for adverse effects to the California seablite during the proposed cleanup activities:

1. Cleanup shall be conducted in 2010, 2011, 2012, and 2013 as stipulated below.

2. Cleanup activities may not occur from February 1 through August 31 to avoid the California clapper rail breeding season. Trash and plastic bead/pellet removal must be done by hand with crews limited to 25 people, working two weeks per month, for a period of three months each year. Removal of vegetation, in the course of the marsh cleanup, is strictly prohibited. Cleanup events must start at high tide (estimated for the specific site location) and continue for two hours.

3. Cleanup activities must be overseen by a Service-approved biological monitor familiar with the California clapper rail, salt marsh harvest mouse, California seablite, and any other special status species known or suspected to be in the area.

4. Before marsh cleanup commences, the responsible party(ies) must hire a qualified wetland biologist to survey the cleanup area for the California seablite. If California seablite is found in the marsh, the location of the California seablite must be flagged, and a minimum 50-foot buffer must be maintained around the California seablite plants.

5. While walking through the marsh, the cleanup workers shall do the following:

    a. Keep noise to a minimum.

    b. At all times, observe the environment they are walking through to avoid disturbance.

    c. Avoid using multiple pathways through the marsh. Use trails if they exist.

    d. Plan and map their route to minimize environmental impacts and decrease running into hazards/barriers such as large channels.

    e. When looking for a suitable place to jump a channel, do not walk along the edge of the channel/slough because these areas provide nesting habitat for many species including

the endangered California clapper rail. To find an alternate jump site, walk parallel to the channel at a distance where vegetation is lower in height and where visibility of the ground surface is greater. Choose channel jump sites where vegetation is lower or you can clearly discern what you are jumping onto.

f. In general, avoid walking adjacent and parallel to channels/sloughs.

The Service believes that the implementation of the proposed avoidance measures along with the following conservation measures will eliminate the likelihood of "take" of the California clapper rail and salt marsh harvest mouse and the potential for adverse effects to the California seablite:

1. California clapper rails and salt marsh harvest mice are most vulnerable to disturbance and predation during extreme high tides when they are forced out of the marsh into upland areas that often lack cover. Therefore, cleanup activities would cease within two hours of extreme high tides (e.g., within two hours before and after high tides exceeding 6.0 feet NGVD at the Golden Gate Bridge adjusted to the timing of local tidal peaks).

2. The responsible party(ies) must provide the results of the California seablite surveys to the Service before cleanup commences. If the California seablite is found, then cleanup activities must not commence until the Service has given approval to proceed. The results of the surveys should be reported to the California Natural Diversity Database (CNDDB).

Unless new information reveals effects of the proposed project that may affect listed species in a manner or to an extent not considered, or a new species is listed, no further action pursuant to the Act is necessary for the proposed project. Please contact Joseph Terry, Senior Biologist, or Ryan Olah, Coast Bay Branch Chief, at (916) 414-6600, if you have any questions regarding this response.

Sincerely,

Chris Nagano
Division Chief, Endangered Species Program

cc:
Greg Martinelli, California Department of Fish and Game, Napa, California

Enclosure 4

CA DFG Letter

State of California
Department of Fish and Game

Memorandum

Date: August 16, 2011

To: Mr. Thomas Mumley, Assistant Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Scott Wilson FOR

From: Carl Wilcox, Regional Manager
Department of Fish and Game – Bay Delta Region, 7329 Silverado Trail, Napa, California 94558

Subject: Proposal to Conduct Cleanup and Abatement of Plastic Pellets, Oyster Bay Regional Shoreline, City of San Leandro, Alameda County

Department of Fish and Game (DFG) personnel have reviewed the Corrective Action Plan-Tidal Salt Marsh, Revision A (Plan) dated August 3, 2011, prepared by Otis Institute, for the proposed cleanup of plastic pellets and miscellaneous trash at the Oyster Bay Regional Shoreline in Alameda County. The Plan meets the requirements of Cleanup and Abatement Order No. R2-2011-033 (Order), Section B, Cleanup and Abatement Tasks - Task 1, Submit and Implement Corrective Action Plan for Cleaning Up Oyster Bay Regional Shoreline. The Order was issued by California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) to Kaneka Texas Corporation; Dude, Incorporated; Foamex Innovations Operating Company; E* Poly Star, Incorporated; Metro Poly, Incorporated; and Unipoly, Incorporated (hereafter "Dischargers") on July 7, 2011.

In November 2010, the Regional Water Board requested Technical Assistance from DFG and U.S. Fish and Wildlife Service (USFWS) regarding the potential effects of the proposed project on the federally and state endangered California clapper rail (*Rallus longirostris obsoletus*) and salt marsh harvest mouse (*Reithrodontomys raviventris*). Both the rail and mouse are designated as Fully Protected species pursuant to Fish and Game Code Section 3511 and 4700, respectively. Fully Protected species may not be taken or possessed at any time. Therefore, DFG cannot authorize any activities that may cause take of either species. DFG recommended avoidance of California clapper rail and salt marsh harvest mouse habitat and recommended the cleanup activities avoid extreme high tides.

On July 27, 2011, Regional Water Board staff requested additional technical assistance to allow the proposed cleanup to take place during extreme high tides when the pickleweed is inundated in order to float the pellets out of the pickleweed. During extreme high tides, California clapper rails and salt marsh harvest mice are likely to escape the inundated pickleweed areas and take cover in the adjacent upland areas. Photographs and videos of the project site show sufficient upland refugia cover adjacent to the marsh where California clapper rails and salt marsh harvest mice can hide during the extreme high tide event.

Therefore, by conducting the marsh cleanup work when the pickleweed is inundated, the proposed cleanup work will avoid the potential for disturbing any California clapper rails and salt marsh harvest mice in the marsh. The proposed cleanup work will reduce the potential for disturbing any California clapper rails and salt marsh harvest mice in upland refugia during the marsh cleanup activities by minimizing the disturbance of upland refugia cover. The proposed cleanup work will further minimize the potential for disturbing any California clapper rails and salt marsh harvest mice by significantly reducing the size of the cleanup crew to between two to four people. Additionally, the proposed cleanup work would be limited to one side of the marsh at a time.

DFG has determined that with the implementation of the currently proposed avoidance and minimization measures described in the Plan, the proposed changes to the cleanup activities will not result in the take of the California clapper rail or salt marsh harvest mouse.

If you have any questions, please contact Ms. Marcia Grefsrud, Environmental Scientist, at (707) 644-2812; or Mr. Liam Davis, Senior Environmental Scientist, at (707) 944-5529.