

RECEIVED

2:35 pm, Nov 06, 2007

Alameda County
Environmental Health

THRIFTY OIL CO.

September 27, 2007

O.80243

Mr. Steven Plunkett
Alameda County Health Care Services
Department of Environmental Health
1131 Harbor Bay Parkway, 2nd Floor
Alameda, CA 94502

Local #RO0000004
RWQCB #01-1478

RE: **Former Thrifty Oil Co. Station #049**

3400 San Pablo Avenue
Oakland, CA 94612

Encroachment Permit Delays and Request for Revised Well and Soil Boring Locations

Dear Mr. Plunkett:

In accordance with your letter dated August 7, 2007, Thrifty has been working towards conducting the soil and groundwater investigation at former Thrifty Oil Co. (Thrifty) Station #049 located at 3400 San Pablo Avenue, Oakland, California. Unfortunately, Thrifty has still not been able to acquire the encroachment permit from the City of Oakland (City) for the proposed offsite borings and groundwater wells that were to be located in San Pablo Avenue, Oakland, California (**Figure 1**). The City Attorney's office has not been responding to our communications in a timely manner and some major issues regarding the City's requirements for the encroachment permit are still unresolved. We have attached email communications between Thrifty's legal representatives and the City Attorney's Office (**Attachment A**).

Without an executed Indenture Agreement, and Encroachment Permit, Thrifty is unable to install the proposed groundwater wells in the proposed and approved locations, and therefore will not be able to submit the soil and groundwater investigation report by the requested due date of October 15, 2007. Since the issuance of the required Encroachment Permit is out of Thrifty's control and uncertain, in order to move forward with the offsite plume delineation, Thrifty proposes three alternate well locations on private property (**Figure 2**) and requests your review and approval. If the proposed relocation of the wells is approved Thrifty will contact the adjacent property owners to obtain Access Agreements. Once Access Agreements are obtained Thrifty will conduct the proposed field investigation and submit a report summarizing the results. If negotiations between Thrifty's legal representatives and the City yield an executed Encroachment Permit before the Access Agreements are obtained, Thrifty will install the wells in the original proposed locations (in San Pablo Avenue).

Should you have any questions regarding this report, please contact or the undersigned at (562) 921-3581, Ext. 390 (Chris) or 260 (Simon).

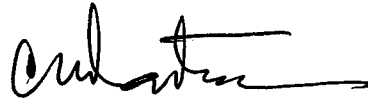


13116 Imperial Highway, Santa Fe Springs, CA 90670-0138 • (562) 921-3581

Respectfully submitted,



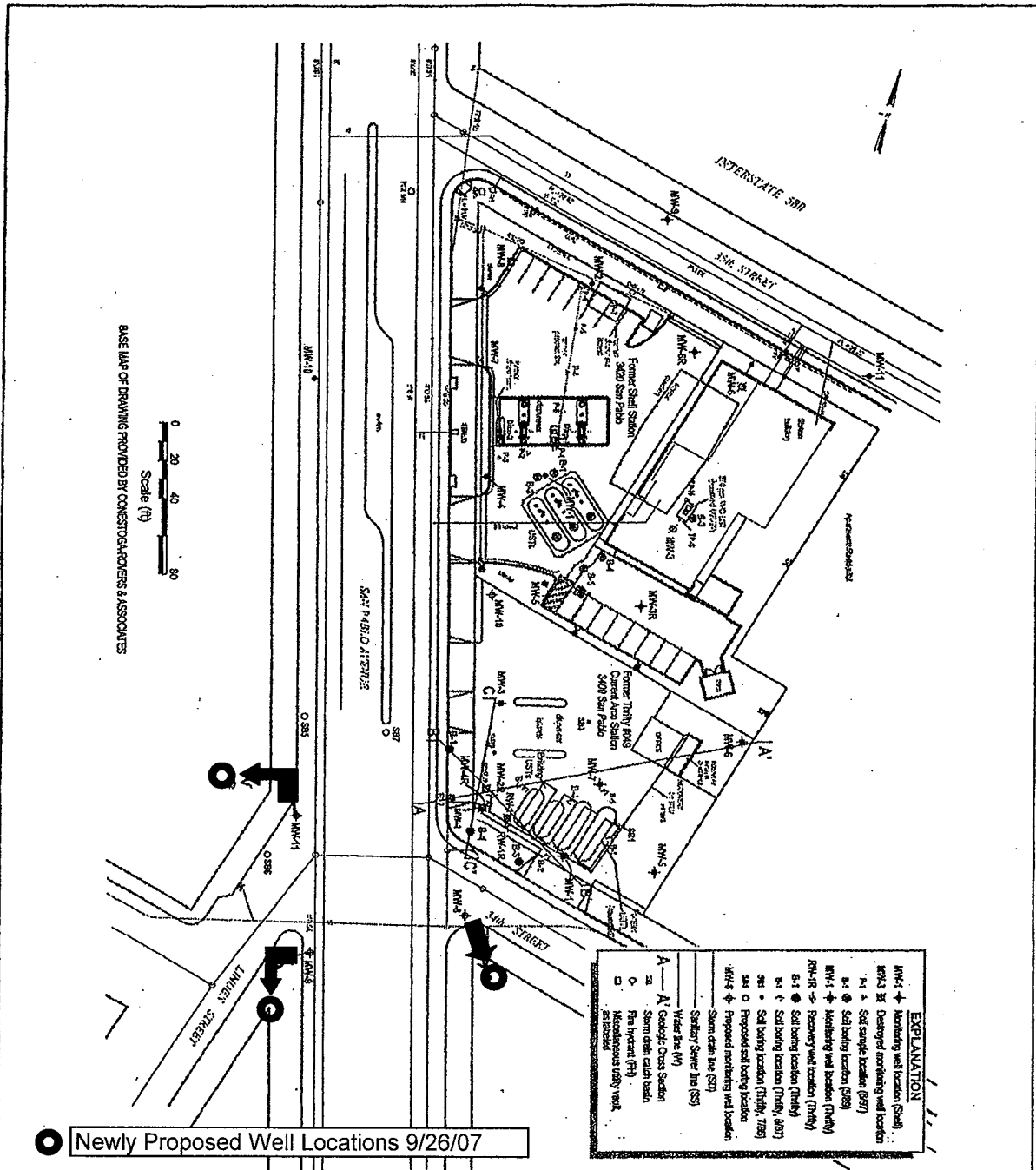
Simon Tregurtha
Project Manager



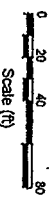
Chris Panaitescu
General Manager
Environmental Affairs

cc: BP West Coast Products LLC; Mr. Bobby Lu, P.G.
File

FIGURES



BASE MAP OF DRAWING PROVIDED BY CONESTOGA/ADRIANS & ASSOCIATES



EXPLANATION	
MW-1	Monitoring well location (Shell)
RW-1	Recovery well location (Shell)
M-1	Soil sample location (9/97)
S-1	Soil boring location (9/97)
MW-1	Monitoring well location (9/97)
RW-1	Recovery well location (9/97)
M-1	Soil boring location (Thriftly, 4/87)
S-1	Soil boring location (Thriftly, 4/87)
M-1	Soil boring location (Thriftly, 7/89)
S-1	Soil boring location (Thriftly, 7/89)
MW-1	Proposed monitoring well location
RW-1	Proposed recovery well location
M-1	Proposed soil boring location
S-1	Proposed soil boring location
SD	Storm drain line (SD)
SS	Sanitary Sewer line (SS)
W	Water line (W)
A	Air/Gasoline Dispenser Station
SD	Storm drain catch basin
PH	Pre-hydrant (PH)
MS	Mississippian (MS) well

○ Newly Proposed Well Locations 9/26/07

EQUIPOSE CORPORATION
 1401 El Camino Real, Suite 107
 San Clemente, California 92672
 Phone: 949 266 0280
 Fax: 949 266 0281

SITE PLAN
 Thrifty Service Station #049
 3400 San Pablo Avenue
 Oakland, California

FIGURE: **1**



o Alternate groundwater well locations

Figure 2 9/25/2007
Former Thrifty Oil Co. Station No.049
3400 San Pablo Avenue
Oakland, CA



ATTACHMENT A

Simon Tregurtha

From: MaryBeth Heydt
Sent: Friday, September 14, 2007 11:22 AM
To: Barry W Berkett; Chris Panaitescu; Simon Tregurtha
Subject: FW: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

FYI

From: Faiz, Farimah [mailto:FFaiz@oaklandcityattorney.org]
Sent: Friday, September 14, 2007 11:40 AM
To: MaryBeth Heydt
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

I am waiting to touch base with an expert in this area of law and to talk to my clients. This will likely take place early next week at which point I will contact you.

From: MaryBeth Heydt [mailto:Heydt@ThriftyOil.com]
Sent: Friday, September 14, 2007 11:15 AM
To: Faiz, Farimah
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

Farimah, I tried to call you yesterday to discuss this but have received no response. How are we coming along with this and when can we expect a response to our comments? Thanks, MaryBeth

From: Faiz, Farimah [mailto:FFaiz@oaklandcityattorney.org]
Sent: Thursday, September 13, 2007 8:48 AM
To: MaryBeth Heydt
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

Is the encroachment for a monitoring well only or is it more extensive? And why do you need to encroach on right-of-way, can you accomplish what you need via private property?

From: MaryBeth Heydt [mailto:Heydt@ThriftyOil.com]
Sent: Thursday, September 13, 2007 7:41 AM
To: Faiz, Farimah
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

To provide you with additional information in supplement to my email yesterday, your suggestion does not work or have the same meaning as our proposed language (or something similar) since things like waiver are permitted by law and we are not willing to waive our bankruptcy protection or allow this agreement to be construed as a waiver.

It would seem to make more sense at this point to have a discussion about all of the requested changes and attempt to finalize them versus to continue emailing back and forth. As previously mentioned, this process as been going on since 2004, and time is of the essence from our standpoint and the Agency's standpoint. Thanks, MaryBeth

9/24/2007

From: Faiz, Farimah [mailto:FFaiz@oaklandcityattorney.org]
Sent: Wed 9/12/2007 1:56 PM
To: MaryBeth Heydt
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

So a change to the City's standard indemnification language that says "to the extent permitted by law" would satisfy your concerns?

From: MaryBeth Heydt [mailto:Heydt@ThriftyOil.com]
Sent: Wednesday, September 12, 2007 1:52 PM
To: Faiz, Farimah
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

Dear Farimah, the simple answer to your request for analysis regarding the prior proposed Easement Agreement is also applicable to the new proposed Indenture Agreement Paragraph 17 (which is erroneously numbered and should be Paragraph 15 as demonstrated in our mark up emailed to you earlier today) which was previously provided to you on April 26, 2006. The paragraph in question provides that Thrifty is to be responsible for obligations and/or contamination that preceded the actions that are being proposed. Thrifty and the agency wish to assess and remediate the area, but the City's demand that Thrifty indemnify it from preexisting contamination that is not caused by the proposed actions seems to be prohibited by the Order and counterproductive. We all wish to get the area cleaned. It seems logical that the City's request should deal with the problems that arise from the proposed encroachment.

Pursuant to Paragraphs 3-5 of the Bankruptcy Order, as of the Effective Date of the Order, the Debtors are permanently discharged in relation to any and all claims which arose prior to the confirmation date, and all claimants and creditors are permanently enjoined from taking any steps to pursue such claims. In this instance, the City seeks to hold the Debtor responsible for any environmental contamination which emanates or emanated from the site. Such claims are barred as a matter of law by the Bankruptcy Order.

Under the Bankruptcy Code (and hence the Plan and Confirmation Order), the term "Claim" is given the "broadest possible definition . . . to ensure that all legal obligations of the debtor, *no matter how remote or contingent*, will be able to be dealt with in the bankruptcy case." *Siegel v. Federal Home Loan Mort. Corp.*, 143 F.3d 525, 532 (9th Cir. 1998) (emphasis in original). There is clearly not a preservation of discharged claims, such as those the City is attempting to preserve via its indemnification language. Further, as held in *Gull Industries, Inc. v. John Mitchell, Inc. (In re Hanna)*, 168 B.R. 386 (9th Cir. BAP 1994), environmental claims are deemed to arise as of the date of the contamination. In this instance, the subject alleged contamination predates the discharge in this case. Thus, "so long as a prepetition triggering event had occurred, the claim was dischargeable regardless of when the claim for relief was ripe for adjudication." *Id.*

I trust that once you have reviewed the pertinent sections of the Bankruptcy Order and the broad protections it provides, you will agree to our simple change which addresses the issue by limiting the indemnity re environmental contamination to that which you are allowed by law under these circumstances (e.g. post 2/28/95).

Should you have any further questions, please call me to discuss.

MaryBeth Heydt, Esq.

9/24/2007

Thrifty Oil Co.
 13116 Imperial Highway
 Santa Fe Springs, California 90670
 (562) 921-3581 Extension 338
 (562) 921-3562 Facsimile
Heydt@ThriftyOil.com

*****NOTICE*****

This e-mail transmission and all attachments, if any, may contain confidential or privileged information and is intended exclusively for the individual or entity named above. If you have received this communication in error, please notify the sender by reply transmission and delete the message without copying or disclosing it. Thank you.

From: Faiz, Farimah [mailto:FFaiz@oaklandcityattorney.org]
Sent: Wednesday, September 12, 2007 11:40 AM
To: MaryBeth Heydt
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 39)

Please provide it in writing so that I can share it with my supervisor and clients.

From: MaryBeth Heydt [mailto:Heydt@ThriftyOil.com]
Sent: Wednesday, September 12, 2007 11:45 AM
To: Faiz, Farimah
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 39)

I can discuss that with you over the phone. No problem.

From: Faiz, Farimah [mailto:FFaiz@oaklandcityattorney.org]
Sent: Wednesday, September 12, 2007 11:37 AM
To: MaryBeth Heydt
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 39)

I have discussed the matter with my supervisor and before we can sit down to discuss the issue, we need an analysis of the bankruptcy court order and its applicability to this situation. As you may be aware, granting the right to encroach on the City's right-of-way is discretionary.

Farimah

From: MaryBeth Heydt [mailto:Heydt@ThriftyOil.com]
Sent: Wednesday, September 12, 2007 11:32 AM
To: Faiz, Farimah
Subject: FW: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 39)

Dear Farimah, since this process started in 2004, we are told by the City that the form has changed and we were recently provided with a copy of the new one. In order to expedite the process, I have marked our comments on the form and attached them here for your review. If you could provide me with an

9/24/2007

electronic copy in Word, we would be happy to redline them for you.

To assist you in your review of the Bankruptcy Order, I am also providing you with a copy of the June 15, 1978 certificate of amendment changing the name of Orkin, Inc. to Thrifty Oil Co. .

I am happy to discuss the bankruptcy order and its applicability to this situation at your earliest convenience. I still await response to my email from yesterday regarding your availability to discuss this matter. Please advise so that we may resolve this matter and move forward with our work plan.

MaryBeth Heydt, Esq.
Thrifty Oil Co.
13116 Imperial Highway
Santa Fe Springs, California 90670
(562) 921-3581 Extension 338
(562) 921-3562 Facsimile
Heydt@ThriftyOil.com

Simon Tregurtha

From: MaryBeth Heydt
Sent: Thursday, September 13, 2007 10:30 AM
To: Chris Panaitescu; Simon Tregurtha
Cc: Barry W Berkett
Subject: FW: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

I have sent this along and also tried to call her to discuss. So far, she has insisted that all communications on this matter be in writing so she can forward them to her supervisor and others at the City.

From: MaryBeth Heydt
Sent: Thursday, September 13, 2007 11:05 AM
To: 'Faiz, Farimah'
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

I am told by our environmental department that according to the revised work plan **approved** by the ACHCS on August 07, 2007, Thrifty is required to install offsite (on streets) a total of 6 (six) borings, from which 3 (three) will be converted into monitoring wells, while the other three will be backfilled immediately after the soil samples will be collected. With respect to the location of the wells, these locations have been required / approved by the Agency, as being the most suitable (as distance and direction from the site) for plume delineation.

From: Faiz, Farimah [mailto:FFaiz@oaklandcityattorney.org]
Sent: Thursday, September 13, 2007 8:48 AM
To: MaryBeth Heydt
Cc: Lee, Heather; Derania, Ray
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MaryBeth Heydt, Esq.
Thrifty Oil Co.
13116 Imperial Highway

9/24/2007