

ALAMEDA COUNTY  
HEALTH CARE SERVICES

AGENCY  
DAVID J. KEARS, Agency Director



F

December 18, 2007

Mr. George Lockwood  
State Water Resources Control Board  
UST Cleanup Unit  
P.O. Box 2231  
Sacramento, CA 95812

ENVIRONMENTAL HEALTH SERVICES  
ENVIRONMENTAL PROTECTION  
1131 Harbor Bay Parkway, Suite 250  
Alameda, CA 94502-6577  
(510) 567-6700  
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Subject: Fuel Leak Case No. RO0000018 and Geotracker Global ID T0600100262, Carnation Dairy, 1310 14<sup>th</sup> Street, Oakland, CA 94607 – Response to Petition for Case Closure

Dear Mr. Lockwood:

This correspondence presents the Alameda County Environmental Health (ACEH) response to the, "Petition for Site Closure, Fuel Leak Case No. RO0000018 – Alameda County Health Care Services, Geotracker Global ID T0600100262, Carnation Dairy, 1310 14<sup>th</sup> Street, Oakland, CA 94607," dated October 26, 2007. The petition was submitted by Nestle' USA, Inc (Nestle) and was provided to ACEH in your correspondence dated December 4, 2007.

ACEH denied case closure in correspondence dated September 28, 2007, which is included as Attachment 1 to this correspondence. The October 26, 2007 petition (Attachment 2) is apparently based on: 1) a contention that the petroleum hydrocarbon plume in the northwestern portion of the site is stable and not migrating off-site; and 2) a contention that the existence of a deed restriction renders ACEH technical comments moot. Our September 28, 2007 correspondence identified 14 technical comments and requested that the responsible parties prepare a Work Plan that included responses to address those technical comments. At issue is whether the 14 technical comments in ACEH's September 28, 2007 correspondence were valid requests and provided a sufficient basis to deny case closure at that time. Based on the issues identified in our September 28, 2007 correspondence, we believe that the denial to close the case was justified.

The Nestle petition does not directly address the 14 technical comments in our September 28, 2007 correspondence other than indicating that, "The continuing existence of this deed restriction renders the issues raised by Alameda County Health Care Services Agency in its directive dated in the September 28, 2007 relative to the northwest corner of the property moot." A deed restriction is used as a means to limit potential future exposure to residual contamination but does not render issues related to adequacy of site characterization, potential vapor intrusion, and water quality moot. In order to directly respond to the October 26, 2007 petition, we have reviewed each of the 14 technical comments in our September 28, 2007 and provide a summary below for each comment relevant to the issues in the petition. However, the technical comments in our September 28, 2007 directive letter remain valid and must be considered when evaluating this case.

**SUMMARY OF TECHNICAL COMMENTS IN SEPTEMBER 28, 2007 DENIAL OF CLOSURE**

- 1. Separate Cases.** The former Nestle facility which constitutes the site consists of a one-block area bordered by 16<sup>th</sup> Street on the north, 14<sup>th</sup> Street on the south, Poplar Street on the east, and Mandela Parkway on the west (see Attachment 3). In our September 28, 2007 correspondence, we indicated that we had no objection to establishing separate regulatory cases for the northwestern portion of the site and the remainder of the site to potentially facilitate restoring or changing land use within a portion of the site and requested that Nestle submit a written proposal that includes a description of the parcels, the rationale for the separation, and a map showing an outline of the proposed parcels to be included. To date, Nestle has not submitted a request to establish separate regulatory cases for the northwestern portion and remainder of the site. Until the site is subdivided into separate regulatory cases, case closure applies to the entire site. Technical comments 11 through 14 identify issues outside the northwestern portion of the site that have not been addressed and remain as outstanding issues. A site-wide investigation was conducted in 2004 on behalf of DeNova Homes, a firm that is not a responsible party on the case (Phase I Environmental Site Assessment and Soil and Ground Water Quality Evaluation by Lowney Associates, March 17, 2004). During the 2004 site investigation by Lowney Associates, total petroleum hydrocarbons (TPH) as gasoline and TPH as diesel were detected in groundwater samples from soil borings in the eastern portion of the site at concentrations up to 85,000 µg/L and 120,000 µg/L, respectively. Vinyl chloride was detected in groundwater at concentrations up to 120 µg/L. Petroleum contamination in the eastern portion of the site is also discussed in a report entitled, "Phase II Subsurface Investigation," (AEI Consultants, October 7, 2005). The October 7, 2005 report indicates that, "Based on the presence of LNAPL in the groundwater samples, soil immediately above and below the top of the groundwater is significantly impacted." Subsequent to our September 28, 2007 denial for closure, we understand that Encinal 14<sup>th</sup> Street LLC (a responsible party along with Nestle) recently moved forward with some excavation in this area during building demolition; however, no reports describing the site activities have been submitted. ACEH cannot close case RO0000018 with one of the responsible parties undertaking investigation and cleanup of contamination from three closed-in-place underground storage tanks (technical comment 11 in our September 28, 2007 correspondence). Technical comments 12 through 14 also pertain to the area outside the northwestern portion of the site.
- 2. Soil Vapor Sampling Results and Potential Indoor Vapor Intrusion.** The existing deed restriction limits future development of the northwestern portion of the site to industrial, commercial, or office space. Limiting future development of the building to these uses eliminates sensitive receptors but does not eliminate the need to evaluate the potential for vapor intrusion to indoor air. Due to the highly elevated concentrations of petroleum hydrocarbons detected in soil and groundwater beneath the L-shaped building in the northwest corner of the site, the potential for vapor intrusion to indoor air must be evaluated in order to assess whether the building can be occupied for industrial, commercial, or office uses. Therefore, the issue of potential indoor vapor intrusion discussed in ACEH technical comment 2 remains valid and is not made moot by the existence of a deed restriction.
- 3. Free Phase Product.** Free phase product remains in place in the northwest portion of the site. We are not aware of any evaluation of potential preferential pathways at the site prior to issuance of our September 28, 2007 correspondence. In a meeting conducted on October

26, 2007 between Nestle, Encinal 14<sup>th</sup> Street LLC, and ACEH, Nestle indicated that some utility location had been conducted in response to our September 28, 2007 request; however, that information has not been submitted to date. The petition is silent on this issue. Technical comment 3 in our September 28, 2007 is a valid issue that needs to be addressed prior to consideration of case closure.

4. **Post-Remediation Groundwater Monitoring Results.** Nestle assumes that the hydrocarbon plume beneath the northwestern portion of the site is stable and not migrating off-site. However, the concentration profile is not consistent with decreasing concentrations along the groundwater flow path away from a source. There are significant inconsistencies in the hydraulic gradient shown on historic groundwater elevation contour maps, particularly along 16<sup>th</sup> Street. Water levels from wells MW-26 and MW-28 have frequently been discounted or ignored in drawing water level contours on previous water level contour maps. As a result, it is not clear whether changes in dissolved phase hydrocarbon concentrations indicate that the plume is stable or decreasing or whether the changes are due to variations in groundwater flow directions. In our September 28, 2007 correspondence, we requested that Nestle review the apparent fluctuations in hydraulic gradient along the downgradient portion of the plume and address the issue in a Site Conceptual Model or propose monitoring or additional investigation to verify plume stability. We believe this is a valid and reasonable request that should be addressed prior to case closure.
5. **Hydraulic Gradient and Plume Stability.** Please see the discussion in technical comment 4 regarding plume stability.
6. **Dairy Fat and Detergent.** Technical comment 6 in our September 28, 2007 correspondence was a request for more information regarding potential leakage from the sanitary sewer lines. Dairy fat and detergent, presumed to be from a sanitary sewer, were described in soil and groundwater beneath the site (*Remedial Action Plan* dated April 3, 1989 by Anania Geologic Engineering). Our concern was not based on water quality degradation due to dairy fat and detergent but was based on potential effects from possible discharge of large volumes of water and other chemicals from the sanitary sewer. This comment points out facts from historic documents and requests information but is not expected to require additional investigation or preclude site closure.
7. **Risk-Based Corrective Action Analysis.** The document entitled, "*Risk-Based Corrective Action Analysis*," dated August 22, 2000 was rejected because the individual who prepared the report does not have the credentials and professional licenses cited. Rejection of the "*Risk-Based Corrective Action Analysis*," does not preclude case closure and we have not requested that Nestle prepare a risk-based corrective action report to replace the document in question. Due to the false credentials on the report, we requested that Nestle not cite findings, conclusions, or recommendations from the "*Risk-Based Corrective Action Analysis*," dated August 22, 2000 in future reports.
8. **Site Conceptual Model.** We requested that Nestle prepare a site conceptual model for the northwestern portion of the site in order to clearly define the sources, contamination distribution, pathways, and receptors. Given the inconsistencies in site data and lack of evaluation of potential data gaps, we believe that the request for preparation of a site

conceptual model is a valid and reasonable request that should be addressed prior to case closure.

9. **Petroleum Hydrocarbons Detected in Soil and Soil Vapor at SB12.** Boring SB-12 is located approximately 40 feet southwest of the former UST excavation area. TPH as gasoline was detected in a soil vapor sample collected from SB12 at a concentration of 750,000 parts per billion by volume. Since limited investigation and no remediation was conducted in this area and the location is cross gradient from the presumed groundwater flow direction, we requested that Nestle evaluate whether the contamination detected in SB12 is related to releases from the former USTs and piping or whether the contamination represents a release from a separate source. The petition is silent regarding this issue. We believe this is a valid and reasonable request that should be addressed prior to case closure.
10. **PCBs.** Polychlorinated biphenyls (PCBs) were detected in a groundwater sample collected from PR12 in the northwest portion of the site at a concentration of 60 µg/L. A free phase product sample collected from PR12 contained 66,000 µg/L of PCBs. In our September 28, 2007 correspondence, ACEH questioned whether the source of the PCBs has been identified and whether the lateral and vertical extent of the PCBs has been defined. On November 15, 2007, Nestle USA submitted correspondence from Nestle to the California Department of Toxic Substances Control regarding the detection of PCBs in soil and groundwater at the site. The correspondence, which was not previously provided to ACEH, lists 12 attachments including various reports, memoranda, manifest, and other documentation regarding PCBs at the facility. Nestle USA has verbally indicated that they will provide the attachments to ACEH but has not done so to date. We believe that the case should not be closed without review of the relevant information on PCBs.
11. **Closed in Place USTs.** Free phase product and elevated concentrations of fuel hydrocarbons in groundwater were encountered in the eastern portion of the site in the area of three closed in place USTs and a former gas and oil pump. Encinal 14<sup>th</sup> Street LLC recently moved forward with some excavation in this area during building demolition; however, no reports describing the site activities have been submitted. As previously discussed in comment 1, ACEH cannot close case RO0000018 with one of the responsible parties (Encinal 14<sup>th</sup> Street LLC) undertaking investigation and cleanup of contamination from three closed-in-place underground storage tanks.
12. **Former Gasoline UST near EB-11.** ACEH requested information regarding the size, use, and removal of a former gasoline UST described in the southern portion of the site adjacent to boring EB-11. This information has not been presented in previous reports. We believe the request for information regarding an unknown UST is a valid and reasonable request that should be addressed prior to case closure.
13. **Vinyl Chloride in Groundwater.** Vinyl chloride was detected in groundwater samples collected in the eastern portion of the site at concentrations up to 120 µg/L (Lowney Associates 2004). We requested that the responsible parties conduct further investigation to identify the source and lateral and vertical extent of vinyl chloride in soil, soil vapor, and groundwater. Based on the presence of vinyl chloride in groundwater at concentrations that could potentially pose a risk from vapor intrusion to indoor air, we believe this is a valid and reasonable request that should be addressed prior to case closure.

14. **Petroleum Hydrocarbons Detected in Boring EB-20.** TPH as motor oil was detected at a reported concentration of 11,000 ppm in a soil sample collected from boring EB-20, which is inside a former cold storage room in the eastern portion of the site (Lowney Associates 2004). No information on the extent or significance of the contamination was provided. We requested that Nestle propose additional activities and investigation as necessary to evaluate the reported detection. We believe this is a valid and reasonable request that should be addressed prior to case closure.

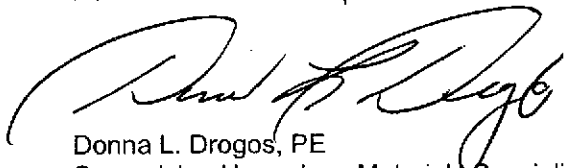
The denial of case closure in ACEH's September 27, 2007 is substantiated by the site-specific issues described above and is consistent with regulatory actions taken at similar underground storage tank sites in this area. The requests for information in our September 27, 2007 represent the minimum level of information necessary to make reliable technical decision regarding case closure. Upon review of the petition, the record, and all responses, we request that the State Water Resources Control Board staff refuse to further review the case closure request because the petition fails to raise substantial issues that are appropriate for review by the Board. We are not aware of any persons other than those listed in your December 4, 2007 correspondence who have an interest in this case.

If you have any questions regarding this case, please call Jerry Wickham at (510) 567-6791 or Donna Drogos at (510) 567-6721.

Sincerely,



Jerry Wickham, California PG 3766, CEG 1177, and CHG 297  
Hazardous Materials Specialist



Donna L. Drogos, PE  
Supervising Hazardous Materials Specialist

Attachment 1: Petition for Site Closure dated October 26, 2007

Attachment 2: ACEH Correspondence dated September 28, 2007

Attachment 3: Site Map of Former Nestle Facility

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December 18, 2007  
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cc: Noelia Marti-Colon  
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Bill Pitcher, Donna Drogos, Jerry Wickham, File RO0000018

Attachment 1

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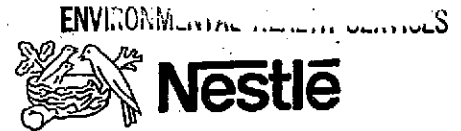
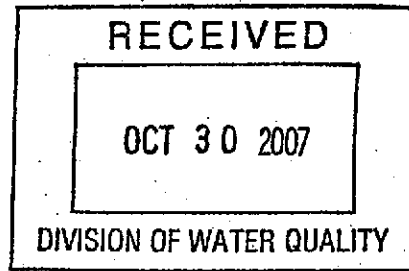
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Nestlé USA  
Legal Department

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TEL (818) 549-5633  
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NOELIA MARTI-COLÓN  
Senior Counsel

October 26, 2007

Via U.S. Mail, fax and email:  
GLockwood@waterboards.ca.gov  
Fax #: 916-341-5808

George Lockwood  
State Water Resources Control Board  
Division of Water Quality  
P.O. Box 2231  
Sacramento, CA 95812

Re: Petition for Site Closure  
Fuel Leak Case No. RO0000018 – Alameda County Health Care Services  
Geotracker Global ID TO600100262  
Carnation Dairy, 1310 14<sup>th</sup> Street, Oakland, CA 94607

Dear Mr. Lockwood:

Please accept this petition for site closure for a site located at 1310 14<sup>th</sup> Street, in Oakland, California. By this petition, Nestlé USA, Inc. seeks review of a decision of the Alameda County Health Care Services Agency dated September 28, 2007, denying a closure request for this site. The State Water Resources Control Board has authority to review this decision as provided by Health and Safety Code §25296.40(a)(1) and 23 CCR §2814.6-2814.8

**The name and address of the petitioner is:**

Nestlé USA, Inc.  
Noelia Martí-Colón, Senior Counsel  
800 N. Brand Blvd.  
Glendale, CA 91208

**The address of the site is:**

1310 14<sup>th</sup> Street, Oakland, CA 94607

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**The name and address of the current owner of the site is:**

Encinal 14<sup>th</sup> Street, LLC  
c/o Hall Equities – Ken Cheitlin  
1855 Olympic Boulevard, Suite 250  
Walnut Creek, CA 94596

**The owners of adjacent properties that are across the street from the site:**

Nestlé USA, Inc. is working to identify this information and will amend this petition when the information becomes available.

**The name, address, and telephone number of all responsible parties.**

Nestlé USA, Inc.  
Noelia Martí-Colón, Senior Counsel  
800 N. Brand Blvd.  
Glendale, CA 91208  
818-549-6220

Encinal 14<sup>th</sup> Street, LLC  
c/o Hall Equities – Ken Cheitlin  
1855 Olympic Boulevard, Suite 250  
Walnut Creek, CA 94596  
925-472-5289

**A copy of the decision denying case closure by the regulatory agency overseeing corrective action at the site:**

Attached to this petition is the denial of case closure from Alameda County Health Care Services Agency dated September 28, 2007.  
(Attachment 1)

**A statement of reasons why the case should be reviewed:**

Nestlé removed free product to the maximum extent practicable at this site, as required for State Water Resources Control Board review of the local agency decision.

Remediation activities are detailed in several technical reports, including the "Comprehensive Site Characterization Report" by ETIC dated January 2001 and the "Request for Case Closure Report – Former Nestlé USA, Inc. Facility, 1310 14<sup>th</sup> Street, Oakland, California" prepared by ETIC Engineering, Inc. dated February 2, 2002.



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These and other reports providing information on the remediation and environmental conditions of the northwest portion of the site are available on the Alameda County Health Care Services Agency website, on the link for LOP documents.

To summarize the remedial activities at the site:

- 1,200 cubic yard soils were excavated in the area of former tank locations (see Figure 2 of Comprehensive site Characterization Report (ETIC, January 24, 2001). The soil was treated onsite and placed back into the excavation;
- 1.5 million gallons of groundwater was extracted and treated removing 5,000 gallons of petroleum hydrocarbons following the removal of underground storage tanks;
- Product skimming between January and March 1989 removed approximately 1,800 gallons of liquid petroleum hydrocarbon;
- A soil vapor extraction system removed 5,200 gallons of hydrocarbon equivalent between January 1994 through December 1995;
- A multi-phase extraction system operated from August 1997 through June 2000, removed approximately 1,500 gallons of hydrocarbon;
- A total of 13,500 gallons of free product was removed from the site by various technologies.

Alameda County Health Care Services Agency directed Nestlé USA, Inc. to complete two years of semi-annual monitoring subsequent to the ETIC 2002 request for case closure. (See a letter dated November 14, 2002, included with this Petition as Attachment 2.) The agency stated that if the monitoring verified that the plume is not migrating, site closure would be approved. Nestlé USA, Inc. complied with this directive and confirmed that the plume is stable and not migrating off-site. Nestlé renewed its closure request on several occasions.

By letter dated September 28, 2007, the Alameda County Health Care Services Agency arbitrarily and capriciously denied the request for closure of the northwest portion of the site and required additional investigation. The agency established a clearly defined standard for closure in 2002, and then delayed action on the ensuing closure requests. Alameda County Health Care Services Agency now seeks to impose new assessment and investigation requirements, notwithstanding the fact monitoring shows that the plume is stable and not migrating off-site.

A Covenant and Environmental Restriction On Property was recorded on June 12, 2000 (Attachment 3). This deed restriction limits the development, use and conveyance of the property. It is enforceable by the California Regional Water Quality Control Board for the San Francisco Bay Region to protect public health and safety.

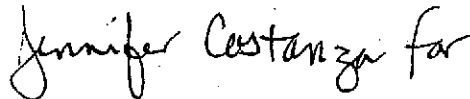
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The continuing existence of this deed restriction renders the issues raised by Alameda County Health Care Services Agency in its directive dated in the September 28, 2007 relative to the northwest corner of the property moot.

Nestlé respectfully requests your favorable consideration of this request.

Very truly yours,



Noelia Martí-Colón  
Senior Counsel

Enclosures as indicated

cc: Alameda County Health Care Services Agency – attn: Jerry Wickham  
Hall Equities – Ken Cheitlan