



ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
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April 15, 2010

Charles Carmel (*Sent via e-mail to: charles.carmel@bp.com*)
Atlantic Richfield Company
(A BP Affiliated Company)
P.O. Box 1257
San Ramon, CA 94583

Richard Rathbun (*Sent via e-mail to: rich@rathbunproperties.com*)
Rathbun Richard W TR Kimberly Barth ETAL
318 Diablo Road, Suite 240
Danville, CA 94526-3443

Subject: Off-site Access for Subsurface Investigation of RO0000200 and GeoTracker Global ID T0600100113, ARCO #00771, 899 Rincon Avenue, Livermore, CA 94550

Dear Messrs. Carmel and Rathbun:

Alameda County Environmental Health (ACEH) understands that Mr. Charles Carmel with Atlantic Richfield Company (ARCO), the Responsible Party for the subject Fuel Release Case, has requested access to your property at 783 Rincon Avenue in Livermore to conduct a subsurface investigation required by ACEH. The Responsible Party and Mr. Rathbun's attorney Ms. Christine Noma have informed ACEH that terms of access are in dispute and site access has not been granted to the 783 Rincon Avenue property. The purpose of this letter is to request that both parties resolve access agreement disputes promptly and reasonably. Please note that ACEH will not render legal opinions on reasonableness of terms of the access agreement. However, ACEH will comment on terms presented in the access agreement that do not appear to be common practice based on experience with off-site access agreements reviewed for other cases.

A suspected hydrocarbon release has occurred at the 899 Rincon Avenue, Livermore property and has contaminated the soil and groundwater beneath the site and may extend off-site to adjacent properties. As the Responsible Party, Mr. Carmel on behalf of ARCO is required to investigate the extent of the release(s) and to clean up the contamination. This Agency provides local oversight for compliance with these requirements, which are set by the State of California. For this reason Mr. Carmel on behalf of ARCO has requested access to determine the extent of the contamination that may be beneath Mr. Rathbun's property and perform the cleanup as necessary, thereby complying with State law as required by this Agency.

Based on a review of e-mail correspondences and the terms stipulated in the "Agreement for Right of Entry and Indemnification," a monthly access fee of \$2,500 per month, legal fees in the amount of \$3,500 to \$5,500, as well as re-negotiating entry after December 1, 2010 seem unreasonable. ACEH encourages Mr. Rathbun to work with ARCO and their environmental consultant, and agree upon the terms necessary (i.e. reasonable legal fees and executing the access agreement) to allow ARCO access to the 783 Rincon Avenue property to conduct the

Messrs. Carmel and Rathbun
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subsurface investigation. If the terms of access cannot be negotiated and Mr. Rathbun continues to deny access or does not respond by the date specified below, and if the release does affect the 783 Rincon Avenue property, then this Agency and the Regional Water Quality Control Board may hold Mr. Rathbun legally responsible for the contaminated condition of the 783 Rincon Avenue property. Mr. Rathbun may then be required to conduct remedial investigation of the contamination at his own expense. Since the costs for such investigations are often high, it is clearly more reasonable for Mr. Rathbun to allow access to ARCO and their consultants. ACEH respectfully requests Mr. Rathbun to reconsider ARCO's previous request to access the 783 Rincon Avenue property and respond to this correspondence within thirty (30) days from the date of this letter (**May 17, 2010**) with his decision.

Thank you in advance for your cooperation. Should either party have any questions regarding this correspondence, please contact me at (510) 777-2478 or send me an electronic mail message at paresh.khatri@acgov.org

Sincerely,

Paresh C. Khatri
Hazardous Materials Specialist

Enclosure: Responsible Party(ies) Legal Requirements/Obligations
ACEH Electronic Report Upload (ftp) Instructions

cc: Christine K. Noma, Wendel, Rosen, Black & Dean LLP, 1111 Broadway, 24th Floor, Oakland, CA 94607 (*Sent via e-mail to: cnoma@wendel.com*)
Mary Rose Cassa, Regional Water Quality Control Board, 1515 Clay Street. Suite 1400, Oakland, CA 94612 (*Sent via E-mail to: MCassa@waterboards.ca.gov*)
Danielle Stefani, Livermore Pleasanton Fire Department, 3560 Nevada St, Pleasanton, CA 94566
Cheryl Dizon (QIC 8021), Zone 7 Water Agency, 100 North Canyons Pkwy, Livermore, CA 94551 (*Sent via e-mail to: cdizon@zone7water.com*)
Donna Drogos, ACEH (*Sent via E-mail to: donna.drogos@acgov.org*)
Paresh Khatri, ACEH (*Sent via E-mail to: paresh.khatri@acgov.org*)
GeoTracker
File

Responsible Party(ies) Legal Requirements/Obligations

REPORT REQUESTS

These reports are being requested pursuant to California Health and Safety Code Section 25296.10. 23 CCR Sections 2652 through 2654, and 2721 through 2728 outline the responsibilities of a responsible party in response to an unauthorized release from a petroleum UST system, and require your compliance with this request.

ELECTRONIC SUBMITTAL OF REPORTS

ACEH's Environmental Cleanup Oversight Programs (LOP and SLIC) require submission of reports in electronic form. The electronic copy replaces paper copies and is expected to be used for all public information requests, regulatory review, and compliance/enforcement activities. Instructions for submission of electronic documents to the Alameda County Environmental Cleanup Oversight Program FTP site are provided on the attached "Electronic Report Upload Instructions." Submission of reports to the Alameda County FTP site is an addition to existing requirements for electronic submittal of information to the State Water Resources Control Board (SWRCB) GeoTracker website. In September 2004, the SWRCB adopted regulations that require electronic submittal of information for all groundwater cleanup programs. For several years, responsible parties for cleanup of leaks from underground storage tanks (USTs) have been required to submit groundwater analytical data, surveyed locations of monitoring wells, and other data to the GeoTracker database over the Internet. Beginning July 1, 2005, these same reporting requirements were added to Spills, Leaks, Investigations, and Cleanup (SLIC) sites. Beginning July 1, 2005, electronic submittal of a complete copy of all reports for all sites is required in GeoTracker (in PDF format). Please visit the SWRCB website for more information on these requirements (http://www.swrcb.ca.gov/ust/electronic_submittal/report_rqmts.shtml).

PERJURY STATEMENT

All work plans, technical reports, or technical documents submitted to ACEH must be accompanied by a cover letter from the responsible party that states, at a minimum, the following: "I declare, under penalty of perjury, that the information and/or recommendations contained in the attached document or report is true and correct to the best of my knowledge." This letter must be signed by an officer or legally authorized representative of your company. Please include a cover letter satisfying these requirements with all future reports and technical documents submitted for this fuel leak case.

PROFESSIONAL CERTIFICATION & CONCLUSIONS/RECOMMENDATIONS

The California Business and Professions Code (Sections 6735, 6835, and 7835.1) requires that work plans and technical or implementation reports containing geologic or engineering evaluations and/or judgments be performed under the direction of an appropriately registered or certified professional. For your submittal to be considered a valid technical report, you are to present site specific data, data interpretations, and recommendations prepared by an appropriately licensed professional and include the professional registration stamp, signature, and statement of professional certification. Please ensure all that all technical reports submitted for this fuel leak case meet this requirement.

UNDERGROUND STORAGE TANK CLEANUP FUND

Please note that delays in investigation, later reports, or enforcement actions may result in your becoming ineligible to receive grant money from the state's Underground Storage Tank Cleanup Fund (Senate Bill 2004) to reimburse you for the cost of cleanup.

AGENCY OVERSIGHT

If it appears as though significant delays are occurring or reports are not submitted as requested, we will consider referring your case to the Regional Board or other appropriate agency, including the County District Attorney, for possible enforcement actions. California Health and Safety Code, Section 25299.76 authorizes enforcement including administrative action or monetary penalties of up to \$10,000 per day for each day of violation.

Alameda County Environmental Cleanup Oversight Programs (LOP and SLIC)	ISSUE DATE: July 5, 2005
	REVISION DATE: March 27, 2009
	PREVIOUS REVISIONS: December 16, 2005, October 31, 2005
SECTION: Miscellaneous Administrative Topics & Procedures	SUBJECT: Electronic Report Upload (ftp) Instructions

The Alameda County Environmental Cleanup Oversight Programs (LOP and SLIC) require submission of all reports in electronic form to the county's ftp site. Paper copies of reports will no longer be accepted. The electronic copy replaces the paper copy and will be used for all public information requests, regulatory review, and compliance/enforcement activities.

REQUIREMENTS

- Entire report including cover letter must be submitted to the ftp site as a **single portable document format (PDF) with no password protection**. (Please do not submit reports as attachments to electronic mail.)
- It is **preferable** that reports be converted to PDF format from their original format, (e.g., Microsoft Word) rather than scanned.
- Signature pages and perjury statements **must** be included and have either original or electronic signature.
- **Do not password protect the document**. Once indexed and inserted into the correct electronic case file, the document will be secured in compliance with the County's current security standards and a password. **Documents with password protection will not be accepted.**
- Each page in the PDF document should be rotated in the direction that will make it easiest to read on a computer monitor.
- Reports must be named and saved using the following naming convention:
RO#_Report Name_Year-Month-Date (e.g., RO#5555_WorkPlan_2005-06-14)

Additional Recommendations

- A separate copy of the tables in the document should be submitted by e-mail to your Caseworker in **Excel** format. These are for use by assigned Caseworker only.

Submission Instructions

- 1) Obtain User Name and Password:
 - a) Contact the Alameda County Environmental Health Department to obtain a User Name and Password to upload files to the ftp site.
 - i) Send an e-mail to dehloptoxic@acgov.org
Or
 - ii) Send a fax on company letterhead to (510) 337-9335, to the attention of My Le Huynh.
 - b) In the subject line of your request, be sure to include **"ftp PASSWORD REQUEST"** and in the body of your request, include the **Contact Information, Site Addresses**, and the **Case Numbers (RO# available in Geotracker) you will be posting for**.
- 2) Upload Files to the ftp Site
 - a) Using Internet Explorer (IE4+), go to <ftp://alcoftp1.acgov.org>
 - (i) Note: Netscape and Firefox browsers will not open the FTP site.
 - b) Click on File, then on Login As.
 - c) Enter your User Name and Password. (Note: Both are Case Sensitive.)
 - d) Open "My Computer" on your computer and navigate to the file(s) you wish to upload to the ftp site.
 - e) With both "My Computer" and the ftp site open in separate windows, drag and drop the file(s) from "My Computer" to the ftp window.
- 3) Send E-mail Notifications to the Environmental Cleanup Oversight Programs
 - a) Send email to dehloptoxic@acgov.org notify us that you have placed a report on our ftp site.
 - b) Copy your Caseworker on the e-mail. Your Caseworker's e-mail address is the entire first name then a period and entire last name @acgov.org. (e.g., firstname.lastname@acgov.org)
 - c) The subject line of the e-mail must start with the RO# followed by **Report Upload**. (e.g., Subject: RO1234 Report Upload) If site is a new case without an RO# use the street address instead.
 - d) If your document meets the above requirements and you follow the submission instructions, you will receive a notification by email indicating that your document was successfully uploaded to the ftp site.