

City of San Leandro
Civic Center, 835 E. 14th Street
San Leandro, California 94577



August 2, 1992

Mr. Walt Pettit
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

UNDERGROUND STORAGE TANK CLEANUP FUND: PETITION OF SEUNG T. LEE, CLAIM NO. 4431. OCC FILE NO. UST-17.

At the request of Mr. Seung Lee's representative, Mr. Bob Mathes, I am issuing this letter to verify that the San Leandro Fire Department did perform an inspection at 301 East 14th Street on November 16, 1989 as evidenced by the attached inspection report. Based on the inspection report, it appears that Mr. Lee was not advised of his requirement to obtain a Section 25284 permit.

Should you have any questions, please call me at (510) 577-3331.

Sincerely,

Michael Bakaldin
Hazardous Materials Coordinator
San Leandro Fire Department

Attachment

cc: Mr. Seung Lee

John E. Faria, Mayor



City Council: Ellen M. Corbett; Howard W. Kerr; Kent W. Myers;
Paul S. Nahm; Linda Perry; Julian P. Polvorosa; Mike Oliver, City Manager

STATE OF CALIFORNIA - CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

PETE WILSON, Governor

STATE WATER RESOURCES CONTROL BOARD

PAUL R. BONDARSON BUILDING

801 P STREET

P. O. BOX 100

SACRAMENTO, CALIFORNIA 95812-0100

(916) 657-0941

FAX: (916) 657-0932



CERTIFIED MAIL

JUN 2 1993

Mr. Seung T. Lee
German Autocraft
301 East 14th Street
San Leandro, CA 94577

Dear Mr. Lee:

UNDERGROUND STORAGE TANK CLEANUP FUND: PETITION OF SEUNG T. LEE,
CLAIM NO. 4431. OCC FILE NO. UST-17.

The above-entitled petition has been forwarded to me for further action. My review of your petition indicates that you have owned the site at 301 East 14th Street, San Leandro, California since April of 1985. There were several underground storage tanks (UST) located on this property and although the tanks were operable, you did not utilize them and had them removed in September of 1990. [You never obtained a permit to own or operate the tanks as required by Section 25284(a) of the Health and Safety Code.]

As you know from prior communications with the State Water Resources Control Board (State Water Board) staff, applicable regulations provide that in order to obtain reimbursement from the Underground Storage Tank Cleanup Fund (Fund) a claimant must have:

1. ... obtained any permit or permits required of the claimant pursuant to Chapter 6.7, Division 20, of the California Health and Safety Code, or had filed substantially complete application for such permit or permits, not later than January 1, 1990, unless the claimant can demonstrate to the satisfaction of the Division that obtaining any required permit was beyond the reasonable control of the claimant or that under the circumstances of the particular case it would be unreasonable or inequitable to require the claimant to have filed an application for such a permit by January 1, 1990. Any claimant who is

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excused from obtaining a permit or filing an application pursuant to this subsection shall continue to pursue and obtain any permits required by Chapter 6.7 with reasonable diligence"

✓ Since you did not obtain the necessary Section 25284(a) permit, you are ineligible for reimbursement from the Fund, unless the facts and circumstances are such that it would be unreasonable to require compliance with the permit condition. The justification you provided for permit noncompliance is that you were unaware of the permit requirement and that the San Leandro Fire Department should have informed you of the requirement since, at one time, they were aware of the existence of the tanks on your property.

The State Water Board held in the Lloyd matter (In the Matter of the Petition of Lloyd Properties, Order No. WQ 93-1-UST) that lack of knowledge of the permit requirement was not an acceptable excuse for permit noncompliance. The Lloyd matter did set forth situations which have been held to be sufficient to justify relief from the permit requirement. One such situation is where the permitting agency actually inspected a claimant's tank but failed to advise the claimant of the requirement to obtain a Section 25284 permit. Information in your file indicates that the San Leandro Fire Department inspected the site in October of 1983, three months before the effective date of Section 25284 of the Health and Safety Code which requires permits for underground storage tanks. Since the permit was not required at that time, the Fire Department was not the "permitting agency" and it would have been unreasonable, if not impossible, for the Fire Department to inform the previous owner of the permit requirement. Therefore, the facts and circumstances in your case is not specifically addressed in the Lloyd matter.

Although the circumstances surrounding your claim are not specifically provided for in the Lloyd matter, the State Water Board indicated that there may be other circumstances which will justify waiver of the permit requirement. Your file indicates that although the Fire Department knew of the tanks in October of 1983, apparently those records were not retained by the Department. In a letter dated May 6, 1992, Mr. Bakaldin of the San Leandro Fire Department states that the Fire Department did not become aware of the tanks in question until July of 1990. The Fire Department had no legal obligation to inform you of the permit required by Section 25284(a) of the Health and Safety Code. Furthermore, it is unreasonable to expect the Fire Department to notify tank owners, on an individual basis, of their permitting obligations. Since the site was previously used as a service station and the site included a service island, the presence of the tanks was apparent and it is not unreasonable to

site visited
by US Marine at
Andrade's time, not
LEE

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expect that you would either obtain or make substantial application for the permit required by Section 25284(a) of the Health and Safety Code by January 1, 1990.

It is my understanding that you were previously provided with a copy of the Lloyd order and given an opportunity to supply any further facts or arguments that you felt might justify waiver of the permit requirement. Although you provided general arguments as to why the requirement for permit compliance is unfair, you provided no additional facts demonstrating why the requirement for permit compliance is unreasonable or inequitable in your particular situation.

It is clear that your existing claim against the Fund is ineligible because you did not obtain a permit required by Section 25284(a) of the Health and Safety Code and the facts and circumstances you provided are such that it would not be unreasonable to require compliance with the permit condition. Accordingly, the State Water Board has declined to review your petition on the grounds that the petition does not raise substantial issues which are appropriate for or which require the State Water Board's review. (See California Code of Regulations, Title 23, Division 3, Chapter 18, Section 2814.3(a)(1).) Your petition is therefore dismissed. This dismissal constitutes final agency action on your petition.

There are two additional comments which I wish to make. First, the finding of ineligibility to claim against the Fund is not intended to imply any intentional violation of law or wrongdoing on your part. Many persons acting in the highest good faith were simply unaware of the permit requirement which existed after January 1, 1984. However, as the Lloyd order indicates, the Legislature specifically made permit compliance a condition of access to the Fund, and the State Water Board has no real alternative except to enforce the permit requirement in a reasonable manner regardless of good intentions on the part of any particular person or persons.

Second, dismissal of your petition is without prejudice to any future claim that you may have against the Fund. The essential reason for rejection of your current claim is that you did not comply with the permit requirements of Section 25284(a) of the Health and Safety Code.

There is legislation pending which in its original form, among other things, would have allowed claims against the Fund even if the permit requirements of Section 25284 were not complied with. The legislation involved is contained in Senate Bill 108 authored by Senator David G. Kelley. Unfortunately, this bill was

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recently amended by the Senate Committee on Toxics and Public Health to eliminate those provisions which would have eased the permit requirement. This bill is still active and it is possible that provisions which ease the permit requirement could be added back to the bill as a result of Assembly proceedings. You may wish to track the bill and/or support those amendments which would be necessary to allow claims against the Fund by persons in your position. In any event, if any subsequent legislation is passed which would permit your submission of a claim against the Fund, you may resubmit your application and your eligibility for reimbursement from the Fund will be reconsidered at that time.

Sincerely,



Walt Pettit
Executive Director

FIRE SAFETY INSPECTION REPORT

FIRE PREVENTION BUREAU

835 E. 14th STREET

577-3316

OCCUPANCY NAME GERMAN AUTO CRAFT	ADDRESS 301 E 14th	PHONE 638-5472
BUSINESS OWNER SEUNG TAE LEE	ADDRESS 350 CHERYLWOOD	PHONE 5680770
EMERGENCY CONTACT	ADDRESS	PHONE

SLIP SECTION	NATURE OF VIOLATION	REMARKS
85 105a	1. ELECTRICAL: <input checked="" type="checkbox"/> a. Discontinue use of extension cords in lieu of permanent wiring.	1a - CORRECTED 11-6-89 RJS
85 105b	<input type="checkbox"/> b. Remove extension cords run through openings or attached in series.	
85 105c	<input type="checkbox"/> c. Remove extension cords placed under rugs, furniture, or where subject to damage.	
85 104	<input type="checkbox"/> d. Maintain wiring in good condition and protect from damage.	
7-19	2. EXITS: <input type="checkbox"/> a. Remove all other locks or latches from doors with panic hardware.	
12 103a	<input type="checkbox"/> b. Remove obstructions from exits, aisles, corridors, and stairways.	
12 104b	<input type="checkbox"/> c. Unlock all exit doors during business hours.	
12 113	<input type="checkbox"/> d. Provide lighting for corridors, stairways, and exterior exitways.	
12 114a	<input type="checkbox"/> e. Exit signs <input type="checkbox"/> Install <input type="checkbox"/> Repair	
10 402	<input type="checkbox"/> f. Remove obstruction(s) and alterations to fire doors	
10 301	3. FIRE EXTINGUISHERS: <input type="checkbox"/> a. Provide <u>2A 10BC</u> extinguisher(s) of a _____ minimum rating.	
10 301	<input type="checkbox"/> b. Mount extinguishers where readily available, with top not higher than 5 feet.	
10 301	<input type="checkbox"/> c. Post signs indicating location where extinguishers are not readily visible.	
7-19	<input checked="" type="checkbox"/> d. Service and tag (by State Licensee) each extinguisher annually and after use.	
10 302	4. FIRE PROTECTION INSTALLATIONS: Sprinkler System Yes <input type="checkbox"/> No <input type="checkbox"/>	
10 302	<input type="checkbox"/> a. Maintain access to, and operation of standpipes, fire hose, and sprinkler valves.	
10 302	<input type="checkbox"/> b. Inspect and test sprinkler system monthly and maintain records.	
10 302	<input type="checkbox"/> c. Identify sprinkler valves and secure in open position.	
10 302	<input type="checkbox"/> d. Provide spare sprinklers (6 minimum) and sprinkler wrench.	
10 315a	<input type="checkbox"/> e. Inspect and service hood and duct extinguishing system over cooking equipment semi-annually and after use	
10 302	<input type="checkbox"/> f. Remove decorations or other attachments from sprinkler system.	
10 302	<input type="checkbox"/> g. Replace damaged, corroded or painted sprinkler heads.	
10 307a	5. FIRE ALARM SYSTEMS <input type="checkbox"/> a. Maintain fire alarm system in operable condition and test monthly.	
79 201a	6. FLAMMABLE LIQUIDS <input type="checkbox"/> a. Reduce Class 1 (gasoline, etc.) to less than 5 gallons indoors, not in storage cabinets.	
79 201a	<input type="checkbox"/> b. Reduce Class 2, (fl) (solvents, etc.) to less than 25 gallons indoors, not in storage cabinets.	
79 201a	<input type="checkbox"/> c. Remove flammable liquids not used for maintenance in assembly buildings, offices, apartments and motels.	
79 201f	<input type="checkbox"/> d. Remove flammable liquids not stored in original cans or approved safety containers.	
79 201g	<input type="checkbox"/> e. Provide static electrical bonding and grounding for all dispensing operations.	
79 201h	<input type="checkbox"/> f. Store flammable liquids away from corridors, main aisles, stairways, and exit areas.	
79 202a	<input type="checkbox"/> g. Discontinue gravity dispensing from containers exceeding 5 gallons or provide pump taking suction from the top.	
79 202b	<input type="checkbox"/> h. Discontinue the discharge of flammable and combustible liquids into drains or on the ground.	
11 402a	7. HEAT PRODUCING APPLIANCES: <input type="checkbox"/> a. Remove combustibles and storage from heater area or room.	
11 405	<input type="checkbox"/> b. Provide clearance between heat producing appliances and combustible material.	
11 202	8. HOUSEKEEPING (INTERIOR): <input type="checkbox"/> a. Remove or store rubbish, waste material, and oily rags in closed metal containers.	
10 315f	<input type="checkbox"/> b. Clean grease filters and hood duct systems over cooking appliances.	
78 103	<input type="checkbox"/> c. Provide waste collecting receptacles at dust producing machines.	
11 202	9. RUBBISH (OUTSIDE ACCUMULATION): <input type="checkbox"/> a. Remove waste, trash, and weeds. OR store in closed metal or metal-lined containers.	
13 101	10. SMOKING AND OPEN FLAMES: <input type="checkbox"/> a. Post and enforce "NO SMOKING" signs: _____	
13 101	<input type="checkbox"/> b. Provide ash trays, sand receptacles, or butt cans, where smoking is permitted.	
12 103a	11. STORAGE: <input type="checkbox"/> a. Remove storage from exits, aisles, corridors and on or under stairways.	
11 202	<input type="checkbox"/> b. Arrange storage in orderly manner and provide for exiting and Fire Department access.	
NFPA 13	<input type="checkbox"/> c. Remove storage to 18" below level of sprinklers (36" for storage piled over 12 feet high).	
11 202a	<input type="checkbox"/> d. Reduce storage height to at least 2 feet below ceiling.	
74 107	<input type="checkbox"/> e. Secure and identify compressed gas cylinders with name of product.	
11 408	<input type="checkbox"/> f. Keep attic access and scuttle openings closed.	

ADDITIONAL COMMENTS AND/OR REQUIREMENTS

CHAIN CYLINDER TO WALL -

COMPANY OFFICER

R. SALAZAR

COMPANY

SHIFT

DATE OF FIRST INSP

11-6-89

YOU ARE HEREBY NOTIFIED TO CORRECT THE ABOVE CONDITIONS WITHIN 15 DAYS.