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ENVIRONMENTAL
PROTECTION

95 OCT -4 PM 2:49

Attorney for Jessen and Agnes Calleri

STATE WATER RESOURCES CONTROL BOARD

In re the Property Known as:)	PETITION FOR REVIEW
)	OF THE CALIFORNIA REGIONAL
)	WATER QUALITY CONTROL
Linda Shell)	BOARD'S DESIGNATION OF
15595 Washington Avenue)	JESSEN AND AGNES CALLERI
San Lorenzo, California)	AS RESPONSIBLE PARTIES
)	
)	
)	

Jessen and Agnes Calleri (the "Petitioners"), 10901 Cliffland Avenue, Oakland, California 94605, hereby petition the State Water Resources Control Board ("SWRCB") for review of the California Regional Water Quality Control Board, San Francisco Bay Region's (the "Regional Board's") designation of them as responsible parties with respect to the soil and groundwater contamination at 15595 Washington Avenue, San Lorenzo, California, and ask the SWRCB to (i) remove them from the list of responsible parties and (ii) set aside the Regional Board's order directing Petitioners to submit technical reports.

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The Regional Board mailed notice of its designation of the Petitioners as responsible parties and its request that the Petitioners submit technical reports on or about August 31, 1995. According to the notice, and subject to any extensions granted, the Petitioners have until October 15, 1995 to submit technical reports. A true copy of the Regional Board's notice is attached hereto as Exhibit 1 and incorporated herein by reference.

Petitioners contend that the Regional Board acted improperly in naming them as responsible parties for three separate and independent reasons. **First**, Petitioners contend that the corrective action provisions of Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 do not apply retroactively to them. **Second**, that the Regional Board does not have any authority to issue a corrective action order against them, because they are not "responsible parties", as that term is defined in Section 2720 of the California Code of Regulations. **Third**, and finally, the Regional Board is barred from issuing a corrective action order against them because all of the environmental claims against the Callaris with respect to the subject property have been discharged in bankruptcy. The Petitioners' Memorandum of Points and Authorities in support of each of these legal arguments is being filed concurrently herewith.

Petitioners will be aggrieved if the Regional Board's decision to designate them as responsible parties is not reversed because they are not responsible for the

contamination which exists at 15595 Washington Avenue, San Lorenzo, California, and should not, therefore, be required to participate financially and otherwise in the investigation and clean up of that site.

The following is a list of the other persons known to have an interest in the subject matter of this petition because they were named as responsible parties along with the Petitioners:

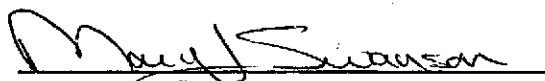
Mehdi Mohammadian
Linda Shell
15595 Washington Avenue
San Lorenzo, CA 94580
(Current owner/operator,
3rd generation of tanks)

Bertram Kubo
5772 Sellers Avenue
Oakley, CA 94561
(Former owner/operator,
3rd generation of tanks)

Texaco, Inc.
10 Universal City Plaza
13th Floor
Universal City, CA 91608-1006
Attn: Douglas A. Gravelle
(Former owner/operator,
2nd generation of tanks)

A copy of this petition has been served on all of the above parties, along with Petitioner's Request for Preparation of Record and Request for Stay.

LAW OFFICE OF MARY J. SWANSON


Mary J. Swanson
Attorney for Petitioners
Jessen and Agnes Calleri

STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

PETE WILSON, Governor

SAN FRANCISCO BAY REGION
2101 WEBSTER STREET, SUITE 500
OAKLAND, CA 94612
(510) 286-1333



AUG 31 1995

RB File No. 01-1489 (KLG)

Mehdi Mohammadian
Linda Shell
15595 Washington Avenue
San Lorenzo, CA 94580

Texaco, Inc.
10 Universal City Plaza, 13th Floor
Universal City, CA 91608-1006
Attn: Douglas A. Gravelle

Bertram Kubo
5772 Sellers Avenue
Oakley, CA 94561

Jessen and Agnes Calleri
10901 Cliffland Avenue
Oakland, CA 94605

RE: Legal Designation of Responsible Party and Request for Submittal of Technical Reports Resulting from the Alameda County Department of Environmental Health's Reset Pre-Enforcement Review Panel Meeting of February 28, 1995.

Dear Mr. and Mrs. Calleri, and Messrs. Mohammadian, Gravelle and Kubo:

It has been brought to my attention by Regional Board staff that a condition of soil and ground water pollution exists on the property located at 15595 Washington Avenue, San Lorenzo, from an underground storage tank (UST) system release. The Alameda County Department of Environmental Health (ACDEH) staff have requested technical reports from one or more of you to fulfill your obligations per California Code of Regulations, Title 23, Waters, Chapter 16, Underground Storage Tank Regulations, Article 11, Corrective Action Requirements.

A Reset Pre-Enforcement Review Panel (PERP) meeting was held at the ACDEH Offices on February 28, 1995, attended by Mr. John Kaiser of my staff, and was the second such meeting to be held regarding this case. It is my understanding that the Panel was presented new information during the February 28th reset meeting, and allowed the record to remain open an extended period of time

EXHIBIT 1

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so that all parties would have ample opportunity to comment and present additional information which might shed light on the salient issues of this case.

The Panel, having considered all of the evidence, made the following determinations:

- 1) Texaco had control over the USTs following an unauthorized release of a hazardous substance.
- 2) Texaco cannot be given secondary responsibility status as there is no primary responsible party performing corrective action.
- 3) The Calleris had control over the USTs at the time of or following an unauthorized release of a hazardous substance, and they were the last owners of the USTs immediately before the discontinuation of their use.
- 4) The Calleris' 1984 bankruptcy does not shield them from responsibility because the contamination was not known at the time of the filing, and, therefore, was not fairly contemplated by any of the parties.
- 5) Mr. Kubo was the owner of property where an unauthorized release of a hazardous substance from an UST occurred.
- 6) Mr. Mohammadian is the owner of property where an unauthorized release of a hazardous substance from an UST occurred.
- 7) Texaco did not file an "UST Unauthorized Release (Leak)/Contamination Site Report" with the State or Regional Boards although a release from an UST was first discovered during August 1986.

Based on these determinations, and pursuant to the Regional Board's authority under Section 13267(b) of the California Water Code, you are hereby found to be a **responsible party** as defined by Title 23 of the California Code of Regulations, Division 3, Chapter 16, Article 11, Section 2720. A Responsible Party is "any person who owned or operated the UST immediately before the discontinuation of its use" and "any person who had or has control over an UST at the time of or following an unauthorized release of petroleum occurred." A responsible party also includes, among others, any owner of property where an unauthorized release of a hazardous substance from an UST has occurred.

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As a Responsible Party, you are required to conduct both soil and ground water investigations to determine the extent of environmental contamination resulting from any release. You are also required to perform a minimum of monitoring and sampling of any wells presently (or to be) associated with the investigation, perform corrective action where necessary, and submit summary reports documenting the results of each phase of work.

Therefore, within 45 days of the date of this letter, you are requested to submit technical reports specifically addressing the following numbered items:

- 1) Submit a soil and water investigation (SWI) work plan, pursuant to the provisions of Article 11, Corrective Action Requirements, Title 23, California Code of Regulations, detailing proposed tasks associated with determining the extent of soil and ground water contamination resulting from the release(s) from the UST system(s).
- 2) Submit an "UST Unauthorized Release (Leak)/Contamination Site Report," pursuant to Section 2652(c), Title 23, California Code of Regulations.
- 3) Begin adhering to a quarterly schedule of well monitoring, sampling, and reporting, pursuant to Section 2652(d), Title 23, California Code of Regulations.

All proposed assessment work should adhere to the requirements articulated in The Tri-Regional Board Staff Recommendations for the Preliminary Evaluation and Investigation of Underground Storage Tank Sites - 8/10/90 and Article 11 of Title 23, Waters, California Code of Regulations.

I am hereby transmitting this request for technical reports to ACDEH for service and continued case handling. You should be aware that failure on your part to submit the requested technical reports, or a submittal received after the date specified in this request, may result in fines up to \$1,000 per day of delinquency. Your response to this technical report request should be sent to Mr. Scott Seery, at ACDEH. Please inform Mr. Seery at least three working days in advance of all field activities.

Please be advised that this is a formal request for technical reports pursuant to California Water Code Section 13267(b). Any extensions of the stated deadlines, or modifications of the required tasks, must be confirmed in writing by either this agency or the Alameda County Department of Environmental Health, Environmental Protection Division.

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If you have any questions regarding the contents of this letter,
please contact Mr. Seery, of ACDEH, at (510) 567-6783.

Sincerely,

Lawrence Kolb
Lawrence Kolb
Acting Executive Officer

- cc: Gil Jensen, Alameda County District Attorney's Office,
Consumer & Environmental Protection Division.
- Scott Seery, Hazardous Materials Specialist, ACDEH.
- Don Atkinson-Adams, Hazardous Materials Specialist, ACDEH
- Jim Ferdinand, Alameda County Fire Department

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