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AUG 27 2002



**DELIVERED VIA FAX TRANSMISSION (916) 653-0428**

August 23, 2002

Mr. Andrew H. Sawyer  
Assistant Chief Counsel  
Office of Chief Counsel  
STATE WATER RESOURCES CONTROL BOARD  
P.O. Box 100  
Sacramento, CA 95812-0100

Re: IN THE MATTER OF THE PETITION OF MEHDI MOHAMMADIAN FOR REVIEW OF  
ALAMEDA COUNTY'S NOTICE OF REVISION TO RESPONSIBLE PARTY DESIGNATION

DRAFT ORDER (WQO2002-) AND NOTIFICATION OF BOARD WORKSHOP

15595 Washington Avenue, San Lorenzo, CA

Dear Mr. Sawyer:

I received a copy of the above-referenced Notification of Board Workshop and a copy of the Draft Order relating to the San Lorenzo site, on Tuesday August 20, 2002. This letter is being submitted in response to the requirement that written replies be submitted by August 23, 2002. In light of my receipt of the Notification and Draft Order only within the last two days, it is not possible for ChevronTexaco to present a complete written response to the content of the Draft Order without additional time being provided which will afford us an opportunity to locate relevant files and review their contents.

Chevron Corporation and Texaco Inc. merged in September of 2001 forming ChevronTexaco Corporation. Since that time we have been involved in the process of assimilating Texaco's files and taking back in-house much of the legal representation that has historically been performed by outside law firms. As the result of the merger the relationship with James Wesley Kinnear, Texaco's former counsel in prior litigation relating to this matter, and the party to who notices relating to the Mohammadian Petition were presumably sent, were terminated as it relates to the ongoing day-to-day advice and legal services he previously provided. Further, many in-house Texaco attorneys listed in the mailing list attached to the Notification elected not to remain with ChevronTexaco after the merger. As the result of the merger and the subsequent reorganization, there was a resulting delay in the ultimate transmission of the Notification and Draft Order to me for the preparation of a response. Since receipt of the documents we have diligently attempted to locate and retrieve files and documents that would appear relevant to the subject site. I have been able to locate files relating to a suit filed by Mohammadian which was ultimately settled, which contains a number of the historical site characterization studies referenced in the Draft Order, but we have been unable to locate any

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documentation relating to the decision by Alameda County to remove the Callaris and Texaco as responsible parties for cleanup at the above-referenced site. As the result of the delay in receiving the Notification and Draft Order we have insufficient time to complete our file search, review files at Alameda County relevant to the site, and review and analyze all of the site data relating to the historical and more recent release events at the site.

We therefore request that the Board continue its workshop for a period of at least sixty (60) days and that ChevronTexaco be granted an extension of at least thirty (30) days to complete its review of the facts and data relating to this matter and submit its formal written evidence and comments relating to the Draft Order.

In the event that the Board does not agree to grant the continuance/extension that is requested by ChevronTexaco, we submit the following comments relating to the Draft Order:

1. At Page 8. of the Draft Order, the Board finds that *"it is appropriate for any agency participating in the LOP to designate a person as a responsible party for cleanup at a site if its has 'credible and reasonable evidence' to indicate that the person has responsibility... Credible and reasonable evidence that a person 'has responsibility at an LOP site exists if the person meets the definition of 'responsible party', as the term is defined in Section 2720 of the California Code of Regulations."*

A. The first test of whether a party should be designated as a responsible party ("RP") is the determination of whether that person "owned" or "operated" the underground storage tank "used for the storage of any hazardous substance". The Draft Order at Page 9. acknowledges that Texaco *"never operated the second generation USTs"*. The last owners and operators of the tanks were the Longs and the Callaris. Texaco never conducted service station operations at the site and never operated them or used them for the storage of hazardous substances on the site. While Texaco may have owned the tanks, the tanks were never used by them for the storage of any hazardous substances and simple ownership of tanks that were unused during Texaco's tenure on the site is not a sufficient basis for a finding that Texaco should have been named as an RP.

B. The second test under Section 2720 of whether a party should be designated as an RP relating to tanks no longer in service is that the RP must have *"owned or operated the underground storage tank immediately before the discontinuance of its use."* The Draft Order at Page 3. recognizes that the service station was closed in 1982, and that *"Texaco purchased the facility at the foreclosure sale in August of 1983, but never operated the service station."* As recognized by the Board the use of the UST's was discontinued prior to Texaco's purchase of the site, such that second test under Section 2720 does not support a conclusion that Texaco was properly named as an RP by Alameda County.

C. The third test under Section 2720 requires that a party be an "owner of property at the time that an unauthorized release occurs." As is set forth above, Texaco did not operate the site and although the site may have been contaminated at the time of its purchase, Texaco was not an owner of the property at the time the release occurred and should not have been named as an RP.

D. The fourth test under Section 2720 requires that a party "had or has control over an underground storage tank at the time or following an unauthorized release of a hazardous substance." While it is clear that a set of underground storage tanks was present on the site at the time Texaco purchased the site, no evidence has been proffered to my knowledge in this matter which substantiates that a release occurred from those tanks during the ownership of the tanks by Texaco's predecessor Callaris or during Texaco's brief 2 ½ year period of ownership. While data was developed by GTI in 1986 indicating that contamination was present on the site, no evidence conclusively demonstrates that the release occurred from the UST system operated by the Callaris prior to the purchase of the site by Texaco.

Texaco has previously argued that it should not have been designated by Alameda County as an RP, based upon the holding of the Board's Decision, *In re the Matter of the Petitions of Wenwest et al.* (SWRCB Order WQ 92-13). The Draft Order finds that Texaco's argument that the facts of its relationship to this site is analogous to Wendy's position in the above-referenced Wenwest matter is misplaced because the issue in for review by the Board is not whether Alameda County appropriately named Texaco and the Callaris as responsible parties, but whether it appropriately removed them as responsible parties in the first instance. We respectfully disagree. The Wenwest decision deals directly with the removal of Wendy's as a responsible party, and while the Petition in this matter directly challenges Alameda County's decision to remove Texaco and the Callaris as RP's, the Board's Draft Order evidences the need to first review whether the original designation of Texaco and the Callaris as responsible parties was proper, just as the same issue was reviewed by the Board in the *Wenwest* matter.

The *Wenwest* decision at Page 5. confirms the Board's past position that no responsibility for a cleanup should lie for "a former landowner who had no part in the activity which resulted in the discharge of the waste and whose ownership interest did not cover the time during which that activity was taking place." The Board also acknowledged its practice to require current owners to address contamination even if they had nothing whatsoever to do with putting it there, but the Board acknowledged that that the "same policy and legal arguments do not necessarily apply to former landowners." Like Wendy's, the contamination that was discovered at this site by GTI in 1986 was already in place at the time Texaco purchased the site in 1983. Further, like Wendy's Texaco did not operate at the site and did nothing to aggravate the situation. The Board further states, that "had a cleanup been ordered while Wendy's owned the site, it would have been proper to name them as a

*discharger.*" Like Wendy's, no cleanup had been ordered by any agency during the period of Texaco's ownership of the site from 1983-1986.

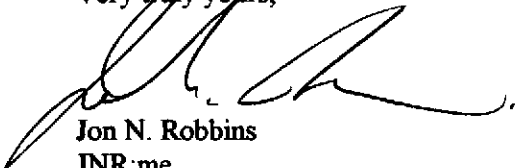
Page 6. of the *Wenwest* decision sets forth a series of nine factors that were found to be unique to the Wendy's facts. The following response to those factors demonstrates that the facts of the Wendy's case are in fact comparable and parallel to the Texaco facts and support our assertion that Texaco should not have been named by Alameda County as a responsible party.

- *Wendy's purchased the site specifically for the purpose of conveying it to a franchisee.* In this instance Texaco did not purchase the site simply for the purpose of selling it to a dealer, but quickly determined that the square footage size of the site was not consistent with the site requirements for its operations. Texaco never conducted service station operations on the site.
- *Wendy's owned the site for a very short period of time.* Wendy's owned the site for approximately one year before selling it. Texaco owned the site for a period of less than three years before selling it. An additional ownership period of two years should not be a compelling factor supporting a determination that the findings in the *Wenwest* matter have no application to the facts of this case.
- *The franchisee who bought the property from Wendy's is named in the order.* The cleanup Order in this matter includes Mohammadian, the operator of the original underground storage tanks installed subsequently to the sale of the site by Texaco.
- *Wendy's had nothing to do with the activity that caused the leaks.* The draft Order confirms at Page 3. that Texaco never operated the service station and therefore had nothing to do with the use of the underground storage tanks system that caused the original release detected in 1986.
- *Wendy's never engaged in any cleanup or other activity on the site which may have exacerbated the problem.* While Texaco through GTI performed soil and groundwater investigatory activities on the site in 1986 prior to the sale of the site, there is no data which demonstrates that those activities exacerbated conditions on the site.

- ***While Wendy's had some knowledge of a pollution problem at the site, the focus at the time was on a single spill, not an on-going leak.*** The 1986 GTI Report as set forth at Page 4. of the Draft Order states that "...concentrations of petroleum hydrocarbons in the groundwater samples were the result of an 'older' pre-1986 release, caused by a 'small localized loss [that] likely occurred at the pump island.' Therefore, the focus of the contamination was on a single spill in a specific location that like in the Wendy's matter, was not an on-going leak.
- ***Wendy's purchased the site in 1984 at a time when leaking underground tanks were just being recognized as a general problem and before most of the underground tank legislation was enacted.*** The contamination discovered at this site was discovered during a similar early period of underground storage tank regulation.
- ***There are several responsible parties who are properly named in the order.*** The draft Order discloses that a later significant release occurred at this site. The currently named RP Mehdi Mohammadian will be remediating not only the Mtbe and BETX contamination that is present on the site as the result of a release which occurred during his tenure on the site, but Mr. Mohammadian's remediation will also remediate any residual contamination that was released on the site prior to 1986.
- ***The cleanup is proceeding.*** The site is being kept in compliance with remedial requirements by Mohammadian.

The Board should find that Texaco was not properly named as a party responsible for contamination at this site, thereby eliminating any need as to Texaco for Alameda County to make a finding that the contamination identified in 1986 is not contributing to the current need for corrective action at the site.

Very truly yours,



Jon N. Robbins  
JNR:me

cc: To parties identified on the attached distribution list.

Petition of  
**MEHDI MOHAMMADIAN**  
for Review of Alameda County's Notice  
of Revision to Responsible Party  
Designation  
SWRCB/OCC File UST-XXXX

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