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Attorney for Petitioner
Agnes Calleri

Alameda County
NOV 04 2003
Environmental Health

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In Re:)	AGNES CALLERI'S REPLY
)	TO M. MOHAMMADIAN'S
Alameda County Health Care Services)	RESPONSE TO HER PETITION
Agency Record ID: RO000374)	FOR REVIEW
Letter dated July 7, 2003, issued to)	
Agnes Calleri re 15595 Washington)	(Review Pursuant to Health & Safety
Avenue, San Lorenzo, California)	Code §25297.1(h) and SWRCB
)	Resolution No. 88-23)

Mrs. Agnes Calleri ("**Mrs. Calleri**") respectfully submits the following reply to Mehdi Mohammadian's response to her petition to the State Water Resources Control Board ("**SWRCB**" or "**Board**") for review of the Alameda County Health Care Services Agency's ("**Local Agency's**") designation of her as a secondary responsible party for investigation and cleanup of the soil and groundwater at, and in the vicinity of, 15595 Washington Avenue, San Lorenzo, California 94580 (the "**Site**").

REPLY TO M. MOHAMMADIAN RESPONSE

As a preliminary matter, it is important to point out that in responding to Mrs. Calleri's Petition for Review, Mr. Mohammadian has completely failed to address *any* of the substantive

issues raised by Mrs. Calleri in her Petition. This includes: (1) the impropriety of the Local Agency's action in naming Texaco and Mrs. Calleri as secondarily responsible parties without first complying with the SWRCB's November 22, 2002 Remand Order; (2) the preponderance of evidence supporting the removal of Texaco and the Calleris as responsible parties under the SWRCB's recently outlined test at multiple release sites; and (3) the impropriety of retroactively applying the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 to Mrs. Calleri.

Instead, Mr. Mohammadian attempts to divert the SWRCB's attention from the real issues at hand by rewriting the history regarding his "third generation" of tanks, and by making an absurd and totally unsubstantiated claim that Texaco and Mrs. Calleri illegally conspired to contaminate the monitoring wells at the Site with MTBE in or about 1998 in the hopes of being released from liability with respect to the pre-1986 unauthorized release. While these accusations are completely ridiculous, and one hopes that the SWRCB sees them for what they are – a desperate attempt by Mr. Mohammadian to shed blame on someone other than himself for the current condition of the Site – out of concern that a failure to respond to the accusations will ~~be~~ give them more weight than they deserve, Mrs. Calleri is compelled to respond.

First, Mr. Mohammadian's claim that there is no facts or evidence that his "third generation" of tanks and lines leaked MTBE is completely false. In the fall of 1999, in responding to Mr. Mohammadian's original petition contesting the removal of Texaco and the Calleris as responsible parties at the Site, Scott O. Seery of the Local Agency submitted a letter to Lori Casias of the SWRCB, which stated, in pertinent part, as follows:

"[Mr. Mohammadian] also claims that '[d]uring 1993 and 1994, the site [had] been under direct observation and inspection by the ACHCSA and all of the equipment [had] been tested and there was no sign of any leakage from existing equipment.' This statement could not be further from the truth. The record reflects that, between December 1990 and March 1995, no inspections of UST system compliance or other direct interaction by this office regarding UST system compliance occurred.

“The reader is directed to a series of letters from this office and inspection records generated in response to UST compliance inspections performed during 1995 and 1996. As an example, [Mr. Mohammadian] was issued a “NOTICE OF VIOLATION” in March 1995 after one such inspection. During this inspection, the inspector, Robert Weston, observed, among other conditions noted, that the alarm lights of the Pollulert UST monitoring system were activated, and the audible alarm bypassed, a violation of the UST monitoring requirement set forth under 23 CCR. Further inspection of the Pollulert panel and integral test functions revealed that the unit appeared not to be functioning properly, and that it had likely not been serviced since it had been installed in 1987. Unfortunately, [Mr. Mohammadian] was unclear on the proper operation of the Pollulert system, . . .

”Further observations made in the course of the March 1995 inspection revealed that the area under the dispensers lacked containment pans and showed subjective evidence of leaks from pipe joints above the shear valves. In follow-up to this inspection, this office requested, among other numerous requirements, that repairs be made to the leaking pipes and that the Red Jacket leak detectors and Pollulert system be serviced and tested.

“A subsequent test of the Red Jacket pipeline leak detectors, performed in July 1995, demonstrated that each detector failed to comply with the Health & Safety Code (HSC) §25292(b)(4)(C) standards that applied at the time. Since December 1990, §25292(b)(4)(C) required that line leak detectors be capable of detecting a leak of 3 gph at a test pressure of 10 psi. Petitioner’s leak detector leak rate was higher than this. . . .

“These observations and violations demonstrate that for many years the UST system, for all intents and purposes, had not been appropriately monitored, nor the site managed, in compliance with HSC and 23 CCR standards and UST operating permit conditions.”

See Scott O. Seery’s September 3, 1999 letter to Lori Casias, a copy of which is attached (emphasis added).

Based on Mr. Seery’s observations, it is clear that the history of Mr. Mohammadian’s tanks and lines is not as pristine as he would like the Board to believe. The fact of the matter is that even if Mr. Mohammadian had reliable records that there was no leakage from his third generation of tanks and lines prior to the initial detection of MTBE in August of 1998 (which Mrs. Calleri argues he does not), vapor releases and the migration of MTBE in the vapor phase are still a plausible explanation for that contamination.

The point is that there has been a significant unauthorized release on the Site since 1990, when Mr. Mohammadian acquired title to the property, and that release contained high levels of

MTBE. This appears to be something that even Mr. Medhi Mohammadian is willing to admit.¹

Second, there is no credible evidence that Texaco or the Calleri's ever conspired to, or actually did, anything to contaminate the monitoring wells at the Site. In 1998, Mr. & Mrs. Calleri were both over 80 years old; had not owned or been physically present on the Site for over 15 years; and had no access to either the monitoring wells or MTBE. Nor were they, or have they ever been, partners with Texaco, as Mr. Mohammadian suggests. The thought that Texaco had anything to do with the MTBE contamination is equally preposterous.

The bottom line is that when the Local Agency originally removed Texaco and the Calleri's as responsible parties in 1999, they recognized that there was solid ground for doing so. In Mr. Seery's September 3, 1999 letter to Lori Casias, cited above, he concludes:

“[I]t is not anticipated that the historic [pre-1986] release was either necessarily large in extent or would pose a risk to nearby potential receptors. This opinion is based on: 1) the underlying geology at the site, 2) the chemistry of fuel releases from that era, 3) the intrinsic attenuation factors that would have acted upon this release over the years, and 4) an understanding that the historic release occurred a minimum of 16 [now 20] years ago. . . . The recent release, however, is significant in terms of the MtBE concentrations detected recently in groundwater at the site. . . .”

See Scott O. Seery letter to Lori Casias, dated September 3, 1999.

The technical data recently submitted by Cambria Environmental Technology, Inc. on behalf of ChevronTexaco only adds additional support for the Local Agency's earlier decision to remove Texaco and the Calleri's as responsible parties. Cambria's analysis indicates that BTX concentrations detected in 1986 would now be near or below drinking water standards based on attenuation, and that the BTX concentrations detected in 1986 do not have similar effects as MTBE on beneficial uses for the Site. (See Supplemental Petition of ChevronTexaco Corp. for Review of July 7, 2003 Letter from Alameda County Health Care Services Agency Designating ChevronTexaco and Agnes Calleri

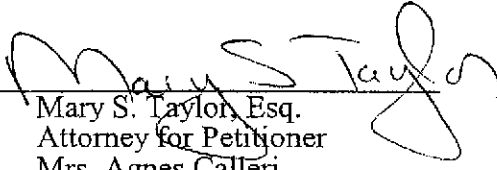
¹ On page 4 of Mr. Mohammadian's Response to Mrs. Calleri's Petition for Review he states: “. . . something happened in 1998. It appears that somebody contaminated or discharged gas and/or MTBE to all and only the Monitoring wells.”

as Secondary Responsible Parties and the Exhibits thereto).

CONCLUSION

Accordingly, Mrs. Calleri respectfully requests that Mr. Mohammadian's response to her Petition for Review be disregarded, and that the Local Agency's designation of her as a responsible party be reversed (or declared void) and that the Local Agency be directed to issue a site closure notice with respect to any unauthorized release which may have occurred at the Site prior to 1986.

LAW OFFICE OF MARY S. TAYLOR

By: 
Mary S. Taylor, Esq.
Attorney for Petitioner
Mrs. Agnes Calleri

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES

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Alameda, CA 94502-6577
(510) 567-6700
(510) 337-9335 (FAX)

September 3, 1999

Lori Casias
State Water Resources Control Board
Division of Clean Water Programs
P.O. Box 94412
Sacramento, CA 95814

RE: Response to Petition, Underground Storage Tank Local Oversight Program
Site No. 1360, 15595 Washington Avenue, San Lorenzo, Alameda County,
California

Dear Ms. Casias:

This letter is sent in response to a Petition to the State Water Resources Control Board (SWRCB) submitted by counsel on behalf of Mehdi Mohammadian ("Petitioner") regarding the subject site. Following is a brief discussion and response to the crux of Petitioner's claims. Transmitted to the SWRCB with this response is a copy of the Local Oversight Program (LOP) and underground storage tank (UST) compliance files for this case.

Petitioner claims that the Alameda County Health Care Services Agency ("ACHCSA") acted improperly in removing both Texaco and the Calleris from the list of "responsible parties", pursuant to Title 23, §2720, California Code of Regulations (CCR). This claim has no merit. Both Texaco and the Calleris (and, more recently, the Bert Kubo Trust) were removed for cause, based on the following facts:

- (1) ACHCSA originally named Texaco, Inc., Bertram Kubo, and the Petitioner as "responsible parties" in April 1993. The Calleris were added in September 1995. These responsible party designations were in conformance with 23CCR §2720 criteria and substantially based on an October 1986 Groundwater Technology, Inc. (GTI) report that identified the presence of detectable concentrations of gasoline compounds in groundwater sampled from wells at the site during August 1986.

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The following §2720 criteria and site history were applied in making this determination:

- i) The Calleris were the last known owners of the property and 2nd generation USTs immediately before the discontinuation of their use, which occurred during or prior to 1983.
 - ii) Texaco was a subsequent owner of the property, including the 2nd generation USTs, acquiring the property in August 1983 in a foreclosure sale. The USTs were reportedly never used during Texaco's tenure at the site. The 2nd generation USTs were reportedly removed prior to sale of the property in December 1986.
 - iii) Bertram Kubo was a subsequent owner of the site, acquiring the property in December 1986 from Texaco. The 2nd generation USTs had reportedly been removed by the time of his purchase. The 3rd and current generation USTs were installed in February 1987.
 - iv) The Petitioner is a subsequent owner of the site and 3rd generation USTs, acquiring the property in June 1990.
- (2) August 1998 and early 1999 site assessment data document the presence of up to 340,000 ug/l of methyl tert-butyl ether (MtBE), among other gasoline compounds, in sampled groundwater, consistent with a "recent" release associated with the 3rd generation UST system.
 - (3) This recent release occurred subsequent to the release first identified in 1986, as the 2nd generation USTs were last used in the early 1980's, a period of time when MtBE was not in widespread use in California.
 - (4) Neither the Calleris nor Texaco were owners of the property or the USTs at the time the subsequent (MtBE) release occurred.

The record reflects that ACHCSA did not become aware of a release at this site, let alone the presence of monitoring wells there, until January 1993, when a December 1992 GTI well sampling report was received unsolicited. Tracy Federal Bank (TFB) apparently contracted GTI to conduct this work and produce the cited report when TFB was processing a commercial loan on the property, apparently for the Petitioner. The 1986 GTI report was not received by this office until March 1993, two months after receipt of the 1992 report, at the request of Bertram Kubo.

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As a result of the sampling data presented in the cited reports and our review of site ownership records, three of the aforementioned parties (Texaco, Kubo, Petitioner) were subsequently named and notified in April 1993 of their joint responsibilities. The Calleris were later named in September 1995 following the second of two Pre-Enforcement Review Panels (PERP), convened by this office in October 1994 and February 1995 due to disputes between the parties regarding their responsible party status and their combined resistance to comply with directives from this office. The decision to name the Calleris was initially challenged in a petition to the SWRCB, and later rescinded. (See: August 31, 1995 directive from Lawrence Kolb, San Francisco Bay RWQCB, and [undated] petition to the SWRCB from Mary J. Swanson, attorney for Jessen and Agnes Calleri.)

Between 1993 and the end of 1995, the three original wells at the site were sampled only twice: during March 1994 and December 1995. Each event was financed by Texaco, who agreed to pay for all site work in the interim while the parties were still negotiating and disputing their respective roles. Between July and September 1998, an expanded soil and water investigation (SWI) was performed at the site, the workplan for which had been approved by this office in February 1996. Both the SWI workplan and its implementation were, again, financed by Texaco. (Note: No work occurred at the site for over 2 years [1996-1998], reportedly as a result of continued disputes, negotiations, and legal actions between the parties.)

During completion of the SWI two new wells were constructed and several soil borings advanced. The original wells were also sampled. It is during this initial phase of the SWI that MtBE was first sought and consequently discovered at the site at a concentration of up to 340,000 ug/l in sampled groundwater. Subsequent sampling events, which included the use of EPA Method 8260, confirmed the high concentrations of MtBE at the site.

Petitioner claims some correlation between the temporarily-missing well plug ("J-plug") on one of the wells, and exposed casing irregularities in two other wells, with the occurrence of MtBE in sampled groundwater. The Petitioner speculates that "contaminated run-off" must have entered the subsurface through the unplugged well casing or by infiltration into two other wells from partially inundated well boxes, and in this way MtBE could have impacted underlying groundwater. Consequently, Petitioner argues, Texaco should be responsible for the MtBE impact to groundwater as Texaco, he claims, and their agents are solely responsible for the integrity of and access to the wells at the site. Petitioner further argues that had this author been aware of these "facts", the decision to release the Calleris and Texaco from further responsibility may have been affected.

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Although it is true that the (now remedied) condition of the three subject wells was unknown to this author when the decision to release the Calleris and Texaco was made, such knowledge would not have changed this decision, as Petitioner's arguments have no technical or practical merit. For an exploration of and rebuttal to Petitioner's claims on this issue, the reader is directed to the June 28, 1999 response to the SWRCB from Toxichem Management Systems, Inc. ("Toxichem") and their August 17, 1999 addendum to Karen Fineran's letter.

The issue of "contaminated run-off" and observations made during a June 1999 site inspection have raised a specter of concern, however, regarding the Petitioner's UST spill prevention and response program, unauthorized release reporting compliance, adequacy of employee training, and general integrity of the surface seal (e.g., asphalt) across the site. According to Petitioner's August 1995 UST permit conditions, employees must be sufficiently trained to respond to, and sufficient supplies on hand to clean-up, any unauthorized releases, such as incidental spills or "drive-offs", hence preventing the occurrence of so-called "contaminated run-off". Petitioner's current Hazardous Materials Business Plan (HMBP) also indicates that his employees are both trained and sufficient spill supplies readily on hand to respond to such events.

Further, pursuant to 23CCR §2650(e), any unauthorized release that escapes the primary container is to be reported to the local agency within 24 hours, followed by a full written report within 5 days. In addition, Petitioner's HMBP indicates that he is specifically aware of the requirement to immediately contact this office if a release occurs. The record reflects that this office has not become aware of any notifications being made or reports submitted on behalf of Petitioner for such releases.

This office, therefore, can only conclude from these facts that: 1) no releases that might have produced "contaminated run-off" occurred, or 2) if such releases did occur, Petitioner both failed to notify this office and take appropriate clean-up actions. Nevertheless, if such releases did occur, it is much more plausible that gasoline has infiltrated the subsurface, not through uncapped wells or inundated well boxes, but rather, via the copious surface cracks in the asphaltic concrete and joints clearly evident near the dispenser and UST areas at the site.

Petitioner also claims that "[d]uring 1993 and 1994, the site [had] been under direct observation and inspection by the ACHCSA and all of the equipment [had] been tested and there was no sign of any leakage from existing equipment." This statement could not be further from the truth. The record reflects that, between December 1990 and March 1995, no inspections of UST system compliance or other direct interaction by this office regarding UST system compliance occurred.

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The reader is directed to a series of letters from this office and inspection records generated in response to UST compliance inspections performed during 1995 and 1996. As an example, Petitioner was issued a "NOTICE OF VIOLATION" in March 1995 after one such inspection. During this inspection, the inspector, Robert Weston, observed, among other conditions noted, that the alarm lights of the Pollulert UST monitoring system were activated, and the audible alarm bypassed, a violation of the UST monitoring requirements set forth under 23CCR. Further inspection of the Pollulert panel and integral test functions revealed that the unit appeared not to be functioning properly, and that it had likely not been serviced since it had been installed in 1987. Unfortunately, Petitioner was unclear on the proper operation of the Pollulert system, as he claimed to have only received verbal instructions from the previous owner (Kubo). (Note: A subsequent inspection in April 1996, again, demonstrated that the employee in control of the facility at that time also did not know how to operate the Pollulert system.)

Further observations made in the course of the March 1995 inspection revealed that the area under the dispensers lacked containment pans and showed subjective evidence of leaks from pipe joints above the shear valves. In follow-up to this inspection, this office requested, among other numerous requirements, that repairs be made to the leaking pipes, and that the Red Jacket leak detectors and Pollulert system be serviced and tested.

A subsequent test of the Red Jacket pipeline leak detectors, performed in July 1995, demonstrated that each detector failed to comply with the Health & Safety Code (HSC) §25292(b)(4)(C) standards that applied at that time. Since December 1990, §25292(b)(4)(C) required that line leak detectors be capable of detecting a leak of 3 gph at a test pressure of 10 psi. Petitioner's leak detector leak rate was higher than this. (Note: Petitioner upgraded the leak detectors in September 1995, and again in January 1999 to comply with December 1998 standards.)

These observations and violations demonstrate that for many years the UST system, for all intents and purposes, had not been appropriately monitored, nor the site managed, in compliance with HSC and 23CCR standards and UST operating permit conditions.

It is true that the extent of the "historic" (pre-1984) release had not been fully defined by the time clear evidence of a recent release was discovered in August 1998. There are numerous reasons for this, including an initial failure to inform this office or that of the Regional Water Quality Control Board (RWQCB) of the historic release. However, once this office was informed of the release in 1993 and the parties were directed to act, long delays ensued, primarily due to the reluctance of many of the parties to assume their responsible roles. Texaco was the only party that expended resources directly to continue the site investigation, however limited that effort was.

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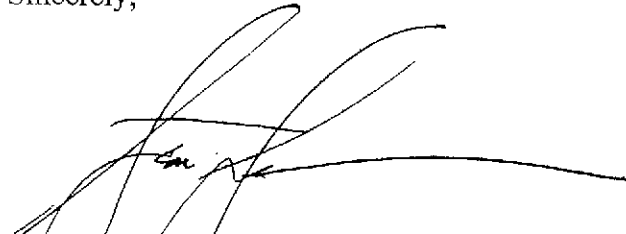
Nevertheless, it is not anticipated that the historic release was either necessarily large in extent or would pose a risk to nearby potential receptors. This opinion is based on: 1) the underlying geology at the site, 2) the chemistry of fuel releases from that era, 3) the intrinsic attenuation factors that would have acted upon this release over the years, and 4) an understanding that the historic release occurred a minimum of 16 years ago. Although difficult to clearly contemplate now, it is not expected that the investigation of the historic release would have expanded greatly in scope.

The recent release, however, is significant in terms of the MtBE concentrations detected recently in groundwater at the site. The investigation, therefore, must expand to off-site locations. A directive from this office dated May 19, 1999, now in abeyance pending the outcome of this petition, directed the parties to do just that. In addition, an active irrigation well (3S / 3W 12 J4) was recently discovered nearby and, in this author's view, may be at risk from the MtBE contamination should work at the site fail to move forward now at a brisk pace.

To assign any level of responsibility for this recent and more significant release to the Callaris or Texaco is unreasonable based on the facts of this case.

Please call me at (510) 567-6783 should you need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott O. Seery', with a long horizontal flourish extending to the right.

Scott O. Seery, CHMM
Hazardous materials Specialist

Enclosure (addressee, only)

cc: See attached list

Ms. Casias

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cc: Robert Weston, ACHCSA, Hazardous Materials Program
Tom Peacock, Manager, LOP, ACHCSA
Ariu Levi, Chief, ACHCSA
Chuck Headlee, RWQCB

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Mehdi Mohammadian
15595 Washington Avenue
San Lorenzo, CA 94580

PROOF OF SERVICE

I, Mary Swanson Taylor, am employed in Solano County, California; I am over the age of 18 years and not a party to the within action; my business address is: 77 Solano Square #330, Benicia, California 94510-2712.

On October 31, 2003, I served the AGNES CALLERI'S REPLY TO M. MOHAMMADIAN'S RESPONSE TO HER PETITION FOR REVIEW on all interested parties by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

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San Lorenzo, CA 94580

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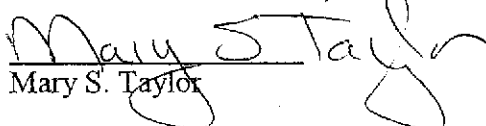
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Agnes Calleri
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I caused such envelopes with postage thereon fully paid to be placed in the United States mail in Benicia, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 31, 2003 in Benicia, California.


Mary S. Taylor