

Caldwell Leslie

Alameda County

MAR 08 2012

Caldwell Leslie & Proctor, PC

1000 Wilshire Boulevard, Suite 600 Los Angeles, CA 90017-2463 Tel 213.629.9040 Fax 213.629.9022 www.caldwell-leslie.com

BY FACSIMILE AND
FIRST-CLASS MAIL

SANDRA L. THOLEN
tholen@caldwell-leslie.com

March 6, 2012

William H. Paynter
Law Offices of William H. Paynter
809 Broadway, Suite 6
Sonoma, CA 95476

Xavier A.M. Lavoipierre
Law Offices of Xavier A.M. Lavoipierre
809 Broadway, Suite 5
Sonoma, CA 95476-0256

Re: 1230 Fourteenth Street, Oakland CA 94607
Notice to Comply from Alameda County Environmental Health

Dear Counsel:

Enclosed please find a copy of a Notice to Comply ("Notice") from Jerry Wickham of the Alameda County Environmental Health ("ACEH"). The Notice identifies various deficiencies in Mr. Saberi's site investigation, monitoring and reporting activities at the former Shell service station site located at 1230 Fourteenth Street, Oakland, CA 94607 (the "Property"), and requests a response to certain technical comments, performance of the proposed work, and compliance with reporting requirements. The Notice is addressed to Mr. Saberi; Denis Brown, Shell Oil Products US; and Mr. Som Gupta, c/o Glen Moss.

As you are well aware, under the terms of the parties' 2007 Settlement Agreement in Alameda County Superior Court Case No. 821274-8 ("Settlement") and the Modified Stipulated Judgment entered in Case No. H-184353-6 ("Stipulated Judgment"), Saberi assumed any and all obligation and liability for any investigation, corrective action, remediation, or maintenance to be performed on the Property and was charged with the responsibility for obtaining regulatory site closure. Shell Oil Company ("SOC") and its affiliates were specifically released from any obligation or responsibility for the administration and financing of any investigation, corrective action, or remediation responsibilities relating to the Property. In addition, Saberi specifically agreed to indemnify, defend and hold SOC harmless for all costs, fees, expenses, liens, damages and liabilities in connection with, related to, or arising out of, these releases, any

William H. Paynter
Xavier A.M. Lavoipierre
March 6, 2012
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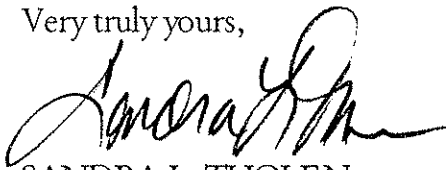
contamination on the Property, any failure by Saberi to obtain regulatory closure, and any claims, demands, lawsuits, costs, expenses, obligations, liabilities damages and orders by any third party, including any governmental agency. To secure these indemnity obligations, Saberi agreed to grant SOC a lien on the Property in the event Saberi defaulted on any of his obligations under the Settlement.

Accordingly, under the terms of these agreements, SOC has no further responsibility, obligation or liability for the Property, all of which have been expressly assumed by Saberi. By this letter, SOC thus demands that Saberi promptly cure each of the defaults identified by ACEH in the Notice and ensure that all future actions comply with the parties' settlements, the Modified Stipulated Judgment and any and all agency directives and orders. Should Mr. Saberi fail to do so, SOC will take all appropriate steps to ensure that Mr. Saberi complies with his contractual and regulatory obligations and pursue all appropriate remedies.

If you have any questions or would like to discuss any of these issues, please do not hesitate to contact me.

Nothing herein should be deemed a waiver of any of my clients' rights and remedies, all of which are expressly reserved.

Very truly yours,



SANDRA L. THOLEN

Enclosure

cc: Jerry Wickham (w/ enclosure)
Denis Brown, Shell Oil Products US (w/ enclosure)
Dorine Kohn (w/ enclosure)
Glen Moss (w/ enclosure)
Michael R. Leslie (w/o enclosure)



ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
FAX (510) 337-9335

NOTICE TO COMPLY

February 23, 2012

Mr. Andrew Saberi
Sabek, Inc.
1045 Airport Blvd.
South San Francisco, CA 94080

Mr. Som Gupta
c/o Glen Moss
Moss & Murphy
1297 B Street
Hayward, CA 94541

Mr. Denis Brown
Shell Oil Products US
20945 S. Wilmington Ave.
Carson, CA 90810-1039

Subject: Reporting Deficiencies for Corrective Action for Fuel Leak Case No. RO0000433 and GeoTracker Global ID T0600101691, Shell/Sabek Inc, 1230 14th Street, Oakland, CA 94607

Dear Mr. Saberi, Mr. Brown, and Mr. Gupta:

Alameda County Environmental Health (ACEH) staff has reviewed the fuel leak case file for the above-referenced site and found that expected monitoring and reporting for startup and operation of the remediation system have either not been completed or not been submitted for review. In addition to the reports submitted to the ACEH fuel leak case file, we have also reviewed a report submitted to the Bay Area Air Quality Management District entitled, "*SVE System Startup Results*", dated May 19, 2011 and a report submitted to EBMUD entitled, "*Discharge Compliance Report – Second Half 2011*", dated December 28, 2011. These reports were found on GeoTracker, but have not been submitted to the ACEH fuel leak case file. In the future, please submit all technical reports to the ACEH fuel leak case file.

The report titled "*SVE System Startup Results*" explains that the soil vapor extraction system was shut down on May 19, 2011 because the abatement/destruction efficiency of >90%, as required by the Authority to Construct (ATC) permit, was not being achieved. The cause of this problem was later discovered to be leakage around the catalytic cell within the oxidation chamber. The only reported influent/effluent air sample recorded for this site was on May 5, 2011 and was out of compliance with the permit limit due to the malfunction of the catalytic cell. The report "*Discharge Compliance Report – Second Half 2011*" indicates that a new catalytic cell was installed October 24, 2011. There was also a DPE event shown on September 6, 2011, between the May 5th shutdown and the new catalytic cell installation on October 24th. The oxidizer efficiency with the malfunctioning catalytic cell was recorded as 21.4 %, indicating that the soil vapor extracted on September 6, 2011 was apparently not being treated to the compliance standards of the ATC permit.

System start-up and operation does not appear to have been implemented and monitored in accordance with the "*Draft Corrective Action Plan and Pilot Test Work Plan*," dated January 18, 2008. ACEH has not received any vapor sampling results of the DPE or DPE/AS system in conjunction with the recorded operations after May 5, 2011. We request that you address the technical comments below, perform the proposed work, and send us the reports requested below.

TECHNICAL COMMENTS

1. **Vapor Sampling and System Performance Monitoring.** Vapor sampling and system performance monitoring does not appear to be adequate and does not appear to have been conducted as described in the "*Draft Corrective Action Plan and Pilot Test Work Plan*" dated January 18, 2008 (CAP). The CAP indicates that applied vacuum, vapor extraction flow rates, hydrocarbon concentrations in extracted vapor for individual wells and the system effluent will be monitored. Air injection pressures and flow rates are to be monitored for each air sparge well and vapor samples are to be collected periodically from each vapor extraction well. The CAP also includes procedures for the start-up and monitoring of air sparging and weekly maintenance and monitoring during the first three months of operation. No later than March 27, 2012, we request that you provide a complete tabulation and description of vapor sampling and system monitoring conducted to date and provide detailed plans for future vapor sampling and systems performance monitoring.
2. **Reporting.** The most recent technical report in ACEH case files is a report entitled, "*Groundwater Monitoring and Remediation Report – First Half of 2011*," dated August 11, 2011. As described in the conditional approval of the CAP (ACEH correspondence dated October 29, 2008) and approval of the design plans (ACEH correspondence dated February 6, 2009), a Quarterly Groundwater Monitoring and Remediation System report is required during operation of the system. Please submit Quarterly Groundwater Monitoring and Remediation Reports as shown in the Technical Report Request below.
3. **Air Sparging and Soil Vapor Monitoring Probe VMP-1.** The CAP described procedures for initiating air sparging at the site to ensure capture of hydrocarbon vapors created by sparging. In addition, ACEH requested the installation and sampling of vapor probe VMP-1 to evaluate whether vapors may migrate to the site boundary due to the air sparging. From the reports submitted to date, it is not clear whether these procedures were implemented. You are required to stop all air sparging operations until it can be demonstrated that the dual-phase extraction system is effectively capturing hydrocarbon vapors generated by air sparging. In the Remediation Systems Monitoring and Operations Report requested below, please present the data and evaluation to demonstrate that hydrocarbon vapors generated by air sparging are being captured.
4. **Groundwater Monitoring.** The "*Groundwater Monitoring and Remediation Report – First Half of 2011*," dated August 11, 2011 indicates that groundwater monitoring frequency has been reduced from quarterly to semi-annual or annual as authorized by an ACEH letter dated July 23, 2009. We have attached the July 23, 2009 correspondence which indicates that quarterly groundwater monitoring is to be resumed upon startup of the remediation system. You are required to implement quarterly groundwater monitoring and present the results in the Quarterly Groundwater Monitoring and Remediation Reports requested below.

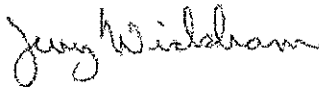
TECHNICAL REPORT REQUEST

Please submit technical reports to Alameda County Environmental Health (Attention: Jerry Wickham), according to the following schedule:

- **Remediation Systems Monitoring and Operations Report (including plans for future monitoring and operations and operation of air sparging system)– March 27, 2012**
- **Quarterly Groundwater Monitoring and Remediation Report – 45 days following the end of each quarter**

If you have any questions, please call me at (510) 567-6791 or send me an electronic mail message at jerry.wickham@acgov.org.

Sincerely,



Digitally signed by Jerry Wickham
DN: cn=Jerry Wickham, o=Environmental Health,
ou=Alameda County, email=jerry.wickham@acgov.org,
c=US
Date: 2012.02.23 15:48:06 -08'00'

Jerry Wickham, California PG 3766, CEG 1177, and CHG 297
Senior Hazardous Materials Specialist

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

cc: Leroy Griffin, Oakland Fire Department, 250 Frank H. Ogawa Plaza, Ste. 3341, Oakland, CA 94612-2032 2032 (*Sent via E-mail to: lgriffin@oaklandnet.com*)

Robert Clark-Ridell, Pangea, 1710 Franklin Street, Suite 200, Oakland, CA 94612 (*Sent via E-mail to: BRiddell@pangeaenv.com*)

Joan Mack, Caldwell, Leslie, & Proctor, 1000 Wilshire Blvd., Suite 600, Los Angeles, CA 90017-2463

William Paynter, Law Offices of William H. Paynter, 809 Broadway, Suite 6, Sonoma, CA 94576

Dorine Kohn, Poeschi & Kohn LLP, 825 Washington Street, Suite 301, Oakland, CA 94607

Ellen Wyrick-Parkinson, 1420 Magnolia Street, Oakland, CA 94607

M. Willingham, 1418-1420 Union Street, Oakland, CA 94607

Donna Drogos, ACEH (*Sent via E-mail to: donna.drogos@acgov.org*)
Jerry Wickham, ACEH (*Sent via E-mail to: jerry.wickham@acgov.org*)

GeoTracker, eFile

Attachment 1

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.waterboards.ca.gov/water_issues/programs/ust/electronic_submittal/).

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)	REVISION DATE: July 20, 2010
	ISSUE DATE: July 5, 2005
	PREVIOUS REVISIONS: October 31, 2005; December 16, 2005; March 27, 2009; July 8, 2010
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

- Please **do not** submit reports as attachments to electronic mail.
- Entire report including cover letter must be submitted to the ftp site as a **single portable document format (PDF) with no password protection**.
- 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)

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 deh.loptoxic@acgov.org
 - 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, Safari, and Firefox browsers will not open the FTP site as they are NOT being supported at this time.
 - b) Click on Page located on the Command bar on upper right side of window, and then scroll down to Open FTP Site in Windows Explorer.
 - 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 deh.loptoxic@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.