

SCHARFF & GREBEN

ATTORNEYS AT LAW

WELLS FARGO BUILDING

400 CAPITOL MALL, SUITE 1100

SACRAMENTO, CALIFORNIA 95814

JAN ADAM GREBEN
JEFFORY J SCHARFF

925 1111 TELEPHONE
(916) 558-6192
FACSIMILE
(916) 446-1611

December 18, 1992

Mr. Scott Seery
Alameda County Health Care Services Agency
Environmental Management Dept.
80 Swan Way, Room 200
Oakland, CA 94621

Re: Ray Lorge & Sons
2522 Castro Valley Boulevard

Dear Mr. Seery:

I am writing to you on behalf of Lorge & Sons in response to your correspondence of November 24, 1992.

Your correspondence of November 24 requests that a work plan be submitted within 45 days of the date of this letter or January 8. By the time your correspondence was received, less than 30 days remain in which to respond. During such time, Lorge & Sons will have many tasks to which it must attend, all of which will be slowed down due to the onset of the holiday season. As a result, I am requesting an extension in time for Lorge & Sons to obtain proposals and estimates for the requested work plan. The time will be used to contact consultants, obtain proposals for work to be done and evaluate alternatives in developing a work plan acceptable to Alameda County.

As you are aware, Lorge & Sons has made good faith efforts to comply with the County's requests relating to the underground tanks located on their property. To that end, the tanks have been promptly removed subsequent to their initial discovery. There has been considerable financial hardship due to the small business nature of Lorge & Sons. Their efforts have been consistent with the financial constraints under which they continue to operate. In fact, Mr. Lorge advises me that he has not seen any profits for the past several years as a direct and proximate result of dealing with the underground tank compliance. Lorge & Sons was, is and remains willing to cooperate to the fullest extent possible with the County for purposes of complying with the Underground Storage Tank Clean-up Program.

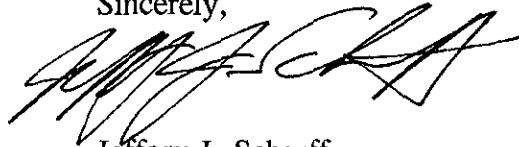
Speaking of the Underground Tank Program, enclosed for your information is a recent article from a local publication, *The Sacramento Business Journal*. As the article indicates, the Clean-up Fund is proving somewhat slower than all parties may have hoped in disbursing funds to assist applicants in dealing with the enormous expense and financial burden in compliance with the underground storage tank clean-up laws.

Mr. Scott Seery
December 18, 1992
Page 2

At this time, Lorge & Sons is on the list as a Priority B applicant. However, I am advised by SWRCB staff that there is further review which is yet to be conducted on the financial component for qualification under the Fund prior to actual disbursement from the Clean-up Fund for the purposes of defraying Lorge & Sons' compliance with Alameda County's request.

Let me thank you for your understanding, cooperation and patience in working with Lorge & Sons given the financial constraints they face in attempting to comply with the County's request. Should you have any questions concerning the foregoing, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffory J. Scharff", written in a cursive style.

Jeffory J. Scharff

JJS:af

Enclosure

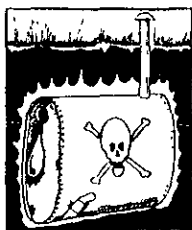
clients\lorge\seery.2

Money trickles slowly to clean leaks from tanks

By STAN DRAENOS

A state fund set up in 1990 to help pay for cleaning up leaks from underground storage tanks has finally begun to issue checks to claimants in Sacramento County and elsewhere in California.

So far, however, the intended beneficiaries of the Underground Storage Tank Clean-up Fund — mainly the small-business and property owners legally responsible for the tanks — have abstained from massive street celebrations.



The roughly half-million dollars in checks issued so far represents a mere drop in the bucket compared to the \$850 million that the 3,600 claimants say they need to cover their cleanup costs.

Nonetheless, the fund remains their last, best hope for coping with the financial liabilities imposed on them by federal legislation in the mid-1980s.

If you're stuck trying to sell property contaminated by a leaking tank, you've got to invest the money to start cleaning it up and cross your fingers that you'll be reimbursed.

Meanwhile, state workers are scrambling to keep up with a huge caseload of people filing claims, often with inadequate documentation — "virtually stuff collected in a shoebox," says the head of the program.

"The system is completely crazy," complains Hans Herb, a Santa Rosa attorney who represents 110 clients who have applied to the fund, many in this area.

In Sacramento County, Jacqueline Schuering is the only claimant to receive a check so far — \$12,114 against a cleanup cost that environmental engineers estimate could eventually reach \$254,000.

Schuering's property on Broadway contained two leaking tanks used to store solvent for a family dry-cleaning business she formerly owned with her husband, Leo, a 76-year old retired attorney.

"We're glad to see that the program

Leaking tanks: Cleanup money trickles slowly

Continued from page 1

progressed," Leo Schuering says. It hasn't, however, been what you would call a rapid progression.

Still, the Schuerings count themselves among the fortunate. They can expect to receive further reimbursements as remediation work proceeds.

Behind them stand 46 other Sacramento County small-business applicants whose cases are eligible for review and possible funding. Of those, only eight more will be reviewed in the current fiscal year. One has already received a letter of commitment. Statewide, 10 people received checks.

Statistics suggest that the number of claimants in Sacramento County will increase. Currently, 2,563 permitted tanks are operating in the county, not including those located at the region's numerous military facilities. Since 1986, roughly 650 underground tank leaks have been reported in the county. Statewide, the figure is around 18,000. The law covers "unauthorized releases" occurring from January 1988 onward.

"The state will be able to process only 500 (small-business) claims in 1992-93," said Dave Deaner, the state Water Resources Control Board official in charge of administering the program. "We plan to double that number in the next fiscal year by adding more staff."

In essence, the fund provides "no-fault" coverage to residential and small-business underground tank owners and operators for a liability few of them are in a position to bear, and no insurance underwriter is prepared to cover them for. Financed by a fee of six-tenths of a cent on every gallon pumped into the underground tanks, the fund currently stands at \$172 million.

Funds are intended for disbursement to claimants within four broad categories: residential, small business, and two classes of large businesses. The program gives priority of access to residential and small-business tank owners. Within each category, however, claimants are assigned priority by lot.

The costs of a leaking underground tank can be an enormous burden for the property owner stuck with cleanup. And in most cases, leaking tanks weren't necessarily the owner's fault.

Ironically, local authorities had required

Tank dilemma: seek funds, or buy lottery ticket?

Continued from page 17

burial of the Schuerings' two tanks when they were installed in 1923 and 1948 as a precaution against fire. At the time, little thought was given to the environmental harm that could be wreaked by spills of chemicals from rusting tanks.

In 1987, the release of the hazardous solvent, which has leached into the groundwater, was discovered in the course of selling the business to new owners. The sale was contingent on the Schuerings assuming liability for the leaks.

Under the federal Underground Storage of Hazardous Substances Act of 1984, that meant having the ability to pay up to \$1 million per tank for investigation, cleanup and closure costs. Since permitting and monitoring of the tanks was not required prior to the law, real estate transactions are often the occasion for the discovery of leaks.

To date, the couple has spent about \$32,000 to remove the tanks and start the cleanup. The fund does not pay for tank removal and requires the responsible party to pay the first \$10,000 of remediation costs. Of the \$12,000 they received from the cleanup fund, \$9,037 was paid back to the administering agency, the State Water Resources Control Board, to reimburse the county for the cost of overseeing remediations and closure of the Schuering's tank site.

For small-business people, the slow pace of reimbursement causes costs to grow. But Jerry Moore, president-elect of the California Independent Oil Marketers Association, is undaunted by the program's slow start. The association, whose members formed a powerful constituency of business financially threatened by the federal liability requirements, was the sponsor of the initial California legislation carried in 1989 by Sen. Barry Keene, the Ukiah Democrat who recently resigned in angst over legislative gridlock.

"The fact that there haven't been a lot of checks issued doesn't disturb me greatly," Moore says. "It takes time to get the procedures down so they can determine who qualifies."

Deaner of the Water Resources Control Board amplifies Moore's point.

Of the 290 claims reviewed thus far — including the 45 residential claims statewide, which the program gives precedence — 137 have received letters of commitment for funding totaling \$7.5 million. Only 20 percent of the letter recipients, however, have since provided the documentation required to issue checks.

"The problem is that a lot of the material was virtually stuff collected in a shoe-

box," Deaner says. "Sometimes we receive one-page documentation that is uncertified, unsigned and lacking in specificity."

Critics of the program are generally proponents of the concept who find serious fault in the execution. Among them is Jim Gigoux, executive vice president with the West Sacramento-based Independent Oil Marketers Association. He criticizes the way random rankings are assigned to the claimants within each of the four major applicant categories.

"The priority system currently being used doesn't take into consideration public health, safety and welfare," Gigoux says. "The fund should be directed to remedial actions needed to deal with a definitive contamination problem."

Deaner, however, defends the lottery system used to assign priority to claimants.

"It was the only way to get the program up and running," he says. "Besides, the law already provides for cases categorized as emergency, abandoned or recalcitrant. For these, the regional (water quality control) board or a regulatory agency initiates action. We've allocated \$5 million out of the fund this year for these cases and are asking the regional boards for candidates." The provision has been used only on one occasion.

Echoing Gigoux's criticisms, however, is Santa Rosa attorney Herb, whose 110 clients who have applied to the fund include many from the Central Valley and Tahoe regions.

"The environmental regulations are based on bad science," Herb claims. "California has no system for putting a priority on situations of fire and health risk. It's a problem the Cal-EPA should address."

Steve Goldberg, a Sacramento attorney with Downey, Brand, Seymour & Rohwer, sees a broader issue in the way the program is structured.

"The problem with the state fund is that there is no guarantee in regard to payment or timing," he says. "The clients want to go forward (with remediation efforts) because they want to sell their property. They have to put the money up front on the hope and prayer that they will get reimbursed from the fund."

While remediation is necessary to make the property salable, cleanup costs of doing so can easily exceed the property's selling price.

Adding to the complexity are ambiguities surrounding what party is responsible for cleanup.

"The courts are often the scene of 'who-dunnit' mysteries on this issue," Goldberg says. The property owner, he

points out, is often not the person responsible for causing the problem, but may still be held liable by the law. He or she then must make claims against former tenants or insurance carriers with whom they have comprehensive general liability coverage.

Former lessees may be difficult to trace, notes Goldberg, especially if they have changed their business name or been absorbed into another business.

As to insurers, the extent of insurance company liability is expected to receive major clarification in the spring or summer of next year when the California Supreme Court issues a decision on *Montrose Chemical Corp. vs. Admiral Insurance Co.*

Needless to say, the program's sluggish emergence from the starting gate has discouraged many of those it was meant to benefit.

"It's kind of like the lottery," says Jay Kamine, a project engineer at the geotechnical engineering firm of Woodward-Clyde. "Claimants don't see a great chance of getting funds."

Rather than the result of bureaucratic bungling, however, the program's plodding pace appears to be more a function of the enormous scope and complexity of the problem it seeks to solve.

The Independent Oil Marketers Association, sponsors of the program, plan to return to the Legislature in the new session to offer some ideas for expediting the review process and extending the life of the program from 1998 to 2002.

But the bottom line appears to be that the wheels of bureaucracy have been set in motion. And the often bemoaned difficulty in getting them to stop may, in this case, turn out to be a virtue rather than a failure.